MINUTES OF MEETING

Held in the Centre William Rappard
on 29 September-1 October 1992

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

Subjects discussed:

1. Requests for observer status
   (a) Latvia
   (b) Lithuania
   (c) Kazakhstan

2. Accession of Chinese Taipei
   - Statement by the Chairman

3. Accession of Ecuador
   - Communication from Ecuador

4. United States and European Economic Community wheat export subsidies
   - Communication from Australia

5. EEC - Import régime for bananas
   - Statement by the Latin American banana-exporting countries

6. Canada - Import, distribution and sale of certain alcoholic drinks by provincial marketing agencies
   - Follow-up on the Panel report
   - Communication from Canada
   - Communication from the United States

7. Negotiations under Article XXVIII:4
   concerning the modification of certain concessions included in the European Communities' Schedule LXXX-EC

8. European Economic Community - Payments and subsidies paid to processors and producers of oilseeds and related animal-feed proteins
   - Follow-up on the Panel report (DS28/R)
   - Communication from the United States

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9. Negotiating rights of Argentina in connection with the renegotiation of oilseed concessions by the European Communities
   - Recourse to Article XXIII:2
   - Communication from Argentina

10. 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

11. Roster of non-governmental panelists
    - Proposed nomination by Brazil

12. South Africa - Import surcharges
    - Communication from the United States

13. International Trade Centre (UNCTAD/GATT)
    - Report by the Chairman on his consultations with the Secretary-General of the United Nations

14. Southern Common Market (MERCOSUR)
    - Request by the United States for notification under Article XXIV and for the establishment of a working party

15. Russian Federation - Ongoing economic reforms

16. Norway - Subsidy in connection with a tender submitted for a hydro-electric project in Costa Rica

17. United States - Export subsidies on canned peaches under the Export Enhancement Programme (EEP)

18. United States - Denial of MFN treatment as to imports of non-rubber footwear from Brazil
    - Follow-up on the Panel report

19. Turkey - Anti-dumping measures on imports of cotton yarn from Pakistan


21. United States - Proposed legislation on anti-circumvention of anti-dumping actions

22. United States - Trade embargo against Cuba


24. Trade and environment
    - Statement by Council Chairman
Prior to adoption of the Agenda, representatives rose and observed a
minute of silence in memory of Mr. Janos Nyerges, former Special
Representative of Hungary, who had passed away on 31 August.

Also prior to adoption of the Agenda, the Chairman, on behalf of the
Council, welcomed Mozambique and Namibia as the 104th and 105th contracting
parties, respectively.

1. Requests for observer status
   (a) Latvia (L/7050)
   (b) Lithuania (L/7046)
   (c) Kazakhstan (L/7080)

   The Chairman proposed, on the basis of earlier informal consultations
   on the requests for observer status by the governments concerned, that the
   understandings regarding observers that had been noted at the May 1990
   Council meeting, and to which he had referred at length at the Council
   meeting in June, should also apply to the governments of Latvia, Lithuania
   and Kazakhstan if the Council approved their requests for observer status
   at the present meeting. He then proposed that the Council take note of his
   statement, agree to his suggestion and agree to grant Latvia, Lithuania and
   Kazakhstan observer status.

   The Council so agreed.

2. Accession of Chinese Taipei
   - Statement by the Chairman

   The Chairman said that in recent months he had carried out extensive
   consultations on the subject of establishing a working party to consider
   the possible accession of Chinese Taipei, known in the GATT as the Separate
   Customs Territory of Taiwan, Penghu, Kinmen and Matsu. All contracting
   parties had acknowledged the view that there was only one China, as
   expressed in the United Nations General Assembly Resolution 2758 of
   25 October 1971. Many contracting parties, therefore, had agreed with the
   view of the People's Republic of China (PRC) that Chinese Taipei, as a
   separate customs territory, should not accede to the GATT before the
   PRC itself. Some contracting parties had not shared this view. There had
   been, however, a general desire to establish a working party for Chinese
   Taipei. Taking account of all the views expressed, he had concluded that
   there was a consensus among contracting parties on the following terms,
   which also met the PRC's concerns:

   First, the Working Party on China's status as a contracting party
   should continue its work expeditiously, taking account of the pace of
   China's economic reforms, and report to the Council as soon as possible.

   Second, a Working Party on Chinese Taipei should be established at the
   present meeting, and should report to the Council expeditiously, with the
   following terms of reference and composition:
Terms of reference

"To examine the application of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (referred to as "Chinese Taipei") to accede to the General Agreement under Article XXXIII and to submit to the Council recommendations which may include a draft Protocol of Accession."

Membership

Membership would be open to all contracting parties indicating their wish to serve on the Working Party.

Chairman

Mr. Martin R. Morland (United Kingdom)

Third, the Council should give full consideration to all views expressed, in particular that the Council should examine the report of the Working Party on China and adopt the Protocol for the PRC's accession before examining the report and adopting the Protocol for Chinese Taipei, while noting that the working party reports should be examined independently.

The Chairman then proposed that the Council take note of his statement and agree to establish a working party on the basis of the understanding and the terms of reference and composition he had mentioned.

The Council so agreed.

The Chairman then stated that as a part of the understanding, the representation of Chinese Taipei in GATT would be along the same lines as that of Hong Kong and Macau during the course of its status as an observer and subsequently as a contracting-party delegation, and that the titles carried by its representative would not have any implication on the issue of sovereignty.

He then invited the delegation of Chinese Taipei, on behalf of the Council, to attend future meetings of the Council and of other GATT bodies as an observer during the period when the Working Party was carrying out its work. The Secretariat would also ask the Chinese Taipei authorities to submit the necessary information and documentation to facilitate the deliberations of the Working Party.

The Council took note of the statement.

3. Accession of Ecuador
   - Communication from Ecuador (L/7086)

The Chairman drew attention to the communication from Ecuador in document L/7086 concerning its request for accession to the General Agreement.
The observer for Ecuador said that the globalization of the world economy, and the increasing importance of trade liberalization as a mechanism for expanding that economy, characterized the present times. International trade, which was indispensable to ensure economic growth and overall development, required the elimination of protectionist barriers to enable competition between nations; the best instrument to reach these goals was a transparent international negotiation. The GATT was the best forum for countries to resolve their differences and to hold negotiations to ensure the promotion of world trade. A more open multilateral trading system was essential to promote growth and development, particularly that of developing countries. Ecuador attached maximum priority to strengthening its economic reforms and its foreign trade policies, and to adopting measures which aimed at integrating its economy into the world trading system. As to its external debt problem, Ecuador counted on the industrialized countries' understanding in reaching a solution thereto; a possible mechanism to solve the problem could be to convert such an external debt into investment in development projects. As part of its trade policy liberalization, Ecuador had eliminated import restrictions insofar as they involved prior deposits, tariff surcharges, monetary stabilization and prior licensing, with the exception of the imports of primary products to be used in the pharmaceutical sector, for controlling traffic in drugs and for national health protection. Customs tariffs ranged between 5 and 20 per cent, with a 40 per cent tariff in the automotive sector. Tariffs would continue to be revised in light of the process of integration of the Andean countries. Furthermore, the list of prohibited imports had been reduced. As to exports, there were no export incentives such as export or credit subsidies, nor any fiscal incentives. All products could be exported freely, with the exception of those items of an artistic, cultural, archeological or historical value, certain endangered flora and fauna species, and articles of primary necessity. Furthermore, since May 1992, Ecuador was applying the tariff nomenclature of the Andean group of countries (NANDINA), which was based on the Harmonized System (HS). Ecuador was also determined to implement the necessary structural adjustments in order to be trade competitive despite the very high costs. It had introduced substantive changes to come close to the objectives of the GATT and, furthermore, had abided by the basic rules and underlying principles thereof. It hoped that these structural adjustment efforts and trade liberalization measures would be duly recognized in the negotiation process leading to its accession.

The representatives of Argentina, Australia, Bangladesh, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, El Salvador, the European Communities, Guatemala, India, Israel, Jamaica, Japan, Malawi, Mexico, New Zealand, Pakistan, Peru, the Philippines on behalf of the ASEAN contracting parties, Senegal, Sweden, Switzerland, Turkey, the United States, Uruguay, and Venezuela, among others, wished to be placed on record as supporting and welcoming Ecuador's request for accession.

The Chairman proposed that the Council take note of this support and agree to establish a working party with the following terms of reference and composition:
Terms of reference

"To examine the application of the Government of Ecuador to accede to the General Agreement under Article XXXIII, and to submit to the Council recommendations which may include a draft Protocol of Accession."

Membership

Membership would be open to all contracting parties indicating their wish to serve on the Working Party.

Chairman

The Council would authorize him to designate the Chairman of the Working Party in consultation with representatives of contracting parties and with the representative of Ecuador.

The Council so agreed.

The Chairman then invited the representative of Ecuador to consult with the Secretariat as to further procedures, in particular regarding the basic documentation to be considered by the Working Party.

4. United States and European Economic Community wheat export subsidies - Communication from Australia (L/7076)

The representative of Australia said the issue outlined by his Government in document L/7076 was a global one and of concern to all. It involved the threat of a trade war between two of the world's dominant trading partners in which other countries, developed and developing, had been caught up. It also concerned trade that was being conducted contrary to GATT principles in a major basic food commodity. Left unchecked, this was bound to lead to continuing erosion of confidence in world wheat trade, which affected almost all contracting parties as producers, importers and exporters. Beyond this, it concerned the international climate of confidence in the multilateral trading system, to which contracting parties had subscribed for over forty years and were committed to through their participation in the Uruguay Round. While Australia's concerns before the present meeting concentrated on wheat export subsidization, the same concerns also arose in the global markets for dairy products, beef, canned fruit, cotton, and other commodities where similar subsidies were being paid. The United States and the European Economic Community -- major long-standing contracting parties which together accounted for over half of the world's wheat exports -- were engaged in intense competition for world market share. This was not fair trade competition. They both had subscribed to government intervention in the form of export subsidies, which had become institutionalized in world wheat trade. In these circumstances, increased market share could only be acquired at the expense of fair-trading nations.
He recalled that in the early 1960s, the Community had been a net wheat importer. In 1967, it had introduced a comprehensive export subsidy system on a zonal basis, involving tenders with the capacity to fine-tune for individual markets. Under the system, its wheat traders were able to obtain funds to target any market and to undercut any other supplier. It was notable that while world wheat trade had remained relatively constant at around 100 million tonnes between 1980/81 and 1990/91, Community wheat exports, with the benefit of export subsidies, had increased by 54 per cent over the same period, from around 13 million to 20 million tonnes. The Community presently accounted for 18 per cent of world wheat exports, and its current stocks, at 24 million tonnes, represented one-quarter of global wheat trade in 1991. As a result of such practices, its own citizens paid twice -- as tax payers through direct budgetary transfers, and as consumers through higher domestic prices. Other wheat exporters also paid, being forced to follow prices down or wind up their industries.

In 1985, the United States had also introduced wheat export subsidy arrangements. The Export Enhancement Programme (EEP), coming on top of the Community’s subsidies, effectively created a two-tiered world market where more than half the wheat traded was sold at predatory, subsidy-discounted prices, leaving non-subsidisers to compete for what was left. Needless to say, there was a clear negative correlation between the EEP bonus levels and the export prices achieved for Australia’s wheat. In mid-1989, when Australia’s standard wheat prices had been at a three-year peak, the EEP bonuses had been similarly at a three-year low. After an increase in the EEP bonuses in July 1989, Australia’s standard wheat prices had plunged by some 25 per cent. Movements in the Community export refunds paralleled those in the EEP bonus levels over this period. On 2 September 1992, the US President had announced an expansion of the EEP intended to combat Community export subsidies, and had stated that the United States would "fight for market share with countries that are not willing to reduce their export subsidies". Expansion of the EEP to additional markets had displaced Community-subsidized grain to an ever-widening range of markets previously untouched by subsidized exports. It had also indirectly provided additional support to US wheat producers, signalling them to expand production and thereby exacerbating the impact of the EEP in the coming years.

Practically all Community wheat exports currently received export subsidies at a rate of between US$100 and US$115 per tonne, while commercial wheat prices averaged around US$150 per tonne. The subsidy therefore was worth nearly the whole value of the product, and was available without quantitative limits to any market in the world. Such a level of subsidization implied budgetary expenditure by the Community of more than US$2 billion in 1991/92. One of the serious consequences of all this was that farmers that depended on the world market for their incomes would not plant if their assessment was that international market prices would not return them a living. The combination of the US and Community export subsidies was destroying the incentive for farmers in other countries to produce and undermining the food security of developing countries. Most non-subsidizing countries were heavily dependent on export markets -- on average, Australia exported about 80 per cent of its
production, Canada 75 per cent and Argentina 50 per cent. The majors could not seek to justify export subsidies solely on the grounds of irregular seasonal factors or current availability or stocks in non-subsidizing countries. In the short-term, Australian farmers and producers in other non-subsidizing countries had no choice but to follow the market down. They could not do this forever.

An objective examination of these facts would lead to the conclusion that the United States' and the Community's export subsidizing practices had caused, and were continuing to cause, real damage to the economies of non-subsidizing producers by suppressing prices at any given balance between supply and demand below what they would have been if only commercial considerations had applied. In the past ten years, wheat exports had provided Australia with 6 per cent of its export earnings, while in both the United States and the Community wheat contributed less than 1 per cent, despite their subsidies. Australia and other non-subsidizing wheat exports had had their export earnings reduced significantly over a long period. It was these earnings that determined their capacity to buy goods and services from industrialized economies required for their economic development.

There did not appear to be any "circuit breaker", despite the Punta Del Este commitments on standstill and rollback. As all were aware, the Uruguay Round Draft Final Act (MTN.TNC/W/FA) included provisions which would begin to address this problem. Australia hoped that agreement enabling those solutions to be implemented would soon be reached. In the meantime, however, Australia asked that the Council consider carefully whether it could stand aside from this global problem. The Council needed to reflect upon what sort of example an aggressive escalation of export subsidies in the wheat sector provided for others in adhering to GATT principles. Also, what did that mean for the security which all contracting parties had a reasonable right to expect in the conduct of trade from their membership of a multilateral trading system -- which included the expectation, arising from explicit GATT provisions that contracting parties should seek to avoid the use of export subsidies on primary products? It was not Australia's intention to engage the Council in a legalistic debate on GATT rights and obligations of individual contracting parties. Clearly, however, fundamental GATT principles were being undermined or ignored, and the question had to be asked as to whether, in terms of GATT objectives and shared aspirations for the future of the world trading system, the actions and public statements by the Community and the United States on wheat export trade constituted reasonable or acceptable behaviour.

Australia recognized that there was an imbalance between GATT rules on agricultural export subsidies, and export subsidies in other sectors. However, this did not mean that there were no GATT disciplines on agricultural export subsidies, or that GATT rules and basic principles did not cover agriculture. The GATT was based on reciprocity and the conclusion of mutually-advantageous trading arrangements in agriculture, as in other sectors. No multilateral trade instrument could function for the sole benefit of the major countries, or have its basic principles corrupted.
in a way that denied the legitimate expectations of other contracting parties. All contracting parties, whatever their size or status, developed or developing, had the right to expect the application of GATT principles to trade in a commodity valued at more than US$20 billion, and to a GATT-based respect for that trade. The GATT could not continue to stand aside from this problem, which needed to be addressed urgently. Australia hoped that the discussion at the present meeting would highlight the dangers to world wheat trade and to the stability of the international trading system. It also hoped that contracting parties would be prepared to consider what the GATT's rôle should be in confronting this global problem. Australia believed that this matter could not be allowed to rest after this initial exchange of views. Accordingly, it asked whether the Chairman would be prepared to hold informal consultations with interested parties as a matter of urgency, in order to examine the facts in more detail and to consider what action might be taken to mitigate the adverse effects of the US and Community export subsidies. In the light of these consultations, this issue could be reverted to in the Council, hopefully in the very near future.

The representative of the United States said he would convey Australia's statement, and the statements of others to come, to his authorities following the meeting. The EEP package, announced by the US President on 2 September, replaced all previously announced wheat initiatives, and would remain in effect through the 1992-93 international marketing year for wheat. The multi-country wheat EEP announcement did not constitute any significant increase in the programme level; it would merely annualize the EEP programme, and was not likely to result in significant increases in either the tonnage of subsidized wheat or the United States' overall spending for the programme. The United States was simply charting its export course for the marketing year ahead by announcing individual initiatives as a package, rather than spreading them out over the course of the year. As a result, the initiative included many programmes that had been announced previously.

The EEP had been designed solely to counter the current use of export subsidies by the Community. As a direct result of those subsidies, the Community had made a sharp shift to a net export position for wheat and coarse grains over a short period. For example, in 1976/77, the Community had been a net importer of almost 30 million tonnes; by 1992/93, it had become a net exporter of 30 million tonnes. During the period from 1983/84 to 1991/92, the Community's export market share for wheat had increased from almost 14 per cent to 22 per cent, while the United States' share had decreased from 38 per cent to 31 per cent. Even with the EEP, introduced in 1985, the United States had continued to see its international market share eroded. The Community, furthermore, subsidized wheat at an average rate of US$125 per tonne, which actually exceeded by US$10 per tonne the average value of the Community's wheat over the same period. By comparison, US bonuses under the EEP had been approximately US$40 per tonne. In 1990, the Community had spent almost US$1.7 billion to subsidize the export of wheat and wheat products. In addition, it had subsidized the export of a wide range of other commodities. Its total expenditures for export subsidies in 1990 had amounted to about US$9.4 billion, and had risen to nearly US$13 billion in 1991.
The United States had played, and would continue to play, a leading role in pushing for a Uruguay Round agreement with real disciplines on agricultural export subsidies. It would also continue to work closely with like-minded countries in a common effort to reform trade-distorting practices and market-access barriers in agricultural trade. In the absence of multilateral reform, however, the United States would not stand back and let its agricultural exports be displaced in world markets by highly-subsidized Community exports. If the United States stopped using the EEP to defend its trade interests against the Community's export subsidies, only the latter would stand to benefit since it could continue to utilize subsidies to gain global market share. The United States urged others to support the Uruguay Round Draft Final Act, and to pledge to move the Round forward. While it was ready to consult with any contracting party on how best to move forward on the reform of export subsidies, it believed that the majority view was presently embodied in the Draft Final Act and that that was where negotiating resources should be concentrated. The United States was always open to informal consultations; however, one had to be realistic as to the prospects for resolving this matter in the absence of an early resolution of the remaining issues in the Uruguay Round.

The representative of the European Communities said that, in essence, the statements by Australia and the United States had involved a repetition of the same elements all over again. The problem underlying this issue was, of course, a serious one. Indeed, this had been the origin of the Uruguay Round negotiations on agriculture. He recalled that the General Agreement, in Article XVI:3, did not prohibit subsidization of basic commodities, although certain conditions were attached to their use. While it was true that there had been some difficulties with this provision that had never been overcome, the Uruguay Round negotiations were aiming to resolve this. The Community could understand that Australia had been motivated in bringing this issue before the Council following the recent US decision on the EEP. However, it could not understand why it was being brought into this debate, which could prove to be counterproductive. After all, it was the Community that had taken the most concrete steps from the very outset in the Uruguay Round agriculture negotiations and Australia's action risked undermining all that had been agreed to by the Community therein. Australia had shown no appreciation for the Community's actions by throwing it into the same basket as some others. The Community's subsidies scheme involved the rebalancing of the internal prices guaranteed to its agricultural producers vis-à-vis world prices, which had fallen sharply as a result of US actions. While the Community could understand that Australia's somewhat desperate step had been motivated by the recent US decision, it wondered what Australia was really seeking to achieve. In a somewhat hasty reaction, Australia was waving the GATT as a panacea. However, it had to be recognized that the GATT was not in its final form yet; it was in the process of being modernized and strengthened, but was not as yet equipped to resolve this type of problem. This was quite clear, because if Australia could have drawn on a litigation process under the GATT, it obviously would have done so. All were guilty to varying degrees when it came to the question of direct and indirect subsidies. However, in the present state of affairs in the GATT, the Community knew of no existing mechanism that could resolve this matter in a way that would dispel
Australia's and others' fears. There could be no solution until the Uruguay Round had been completed; the Community rejected, in the present situation, any innovation as regards a mechanism in the GATT on this question.

The representative of Argentina said his delegation fully shared Australia's concerns over the increased subsidization of wheat by the United States and the Community. The distortion produced in the international wheat market by such practices was well known and had been affecting trade for many years. Like Australia, Argentina was convinced that the time had come for the Council to take up this subject and to examine ways that would lead to a solution to the wheat subsidies problem, which had reached almost inconceivable levels. Clearly, a stop had to be put to this distortion; one could not accept the pretext that an increase in subsidies was the only response to aggressive competition by other countries' treasuries. Such practices caused injury to exporters that did not subsidize, and to producers in importing countries that continuously lost market share and experienced a serious deterioration in their incomes. Under different conditions, many importing countries could well increase their self-sufficiency and even become wheat exporters. Such unfair practices by some countries were aimed only at increasing trade in their products and at channelling the surplus production that resulted from protectionism and internal support prices which did not take account of world market signals. If contracting parties did not consider the consequences of these actions on the economies of non-subsidizing exporting and importing countries, this could seriously affect efforts to liberalize agricultural trade and also the credibility of the multilateral trading system.

He quoted figures to provide an idea of the evolution of wheat and flour exports from the United States and the Community from 1970 to 1989. In 1970, net US exports -- i.e. exports minus imports -- had amounted to 19.1 million tonnes, and had increased to 38.2 million tonnes in 1989. Corresponding figures for the Community were minus 3.1 million tonnes in 1970, and 17.9 million tonnes in 1989. Furthermore, US and Community wheat and flour exports as a share of world exports had nearly doubled from 27.8 per cent in 1970 to 52.3 per cent in 1989. These developments had taken place at the expense of countries, such as Argentina, that did not subsidize either production or exports. Such subsidies on wheat production and export had been one of the main reasons for the destruction of infant agriculture in many developing countries and for the deterioration of the share in, and income from, foreign trade for non-subsidized exporters. At the same time, the transformation of a great part of the market into a forward market had reduced the traditional spot operations which had characterized cereal trade and had caused a further decline in international prices. The recent US decision to expand the EEP constituted a new aggression in this unfair competition, and was contrary to the basic rules of trade co-existence as well as the United States' commitments under Article XVI. That decision was also inconsistent with the standstill commitment undertaken in Punta del Este, and with the objectives of the Uruguay Round Mid-Term Review mandate on agriculture, which sought to correct and prevent distortions in the world agriculture market. Argentina believed this matter should be pursued in the Council, and that
consultations as suggested by Australia should be held with the aim of reaching a conclusion, if possible, at the next meeting. The time was not one for reproaches, but rather for joint reflection, so that an answer could be found to this problem.

The representative of Canada said that his Government, too, condemned the on-going subsidy war between the Community and the United States because of the devastating effect this was having on Canada's farmers and on their survival in the grains business, its very adverse impact on efforts by governments to reduce fiscal deficits, and its chilling effect on the current negotiations in the Uruguay Round. At the very time that all were trying to negotiate disciplines on the use of subsidies, the Community and the United States were going in an opposite direction and expanding their use. The latest volley, of course, was the United States' decision to expand the EEP. For Canada, this meant that there were virtually no commercial markets left that were not distorted by the corrosive effects of US or Community subsidies. Such practices not only distorted international markets, but also wreaked havoc in many developing countries' internal markets, thus hampering their ability to develop agriculture on the basis of sound market principles. It was these effects that were important, and not, for example, whether the EEP programme was pre-packaged or announced country-by-country. For competitive exporters like Canada, the problems raised by these subsidies were extremely serious. The continuation and escalation of this subsidy war could only exacerbate the difficulties that everyone faced in coming to an agreement in the Uruguay Round agricultural negotiations, and once again highlighted the pressing need for clear rules and disciplines on export subsidies. The timing of the United States' most recent initiative could not have been worse, coming as it did at a crucial moment in the Round. It represented a clear escalation of the subsidy war, and was contrary to the aims and objectives of all countries in the negotiations. It also appeared to violate the standstill provisions of the Punta del Este Declaration. Despite claims from both the United States and the Community that their use of subsidies was intended only to combat the unfair trading practices of their partners, there was no evidence that this was having any such effect. On the contrary, it had led to an escalation of these practices. The subsidy war had lowered returns to farmers, such as those in Canada, who relied on world market prices for their livelihood and not on the largesse of their countries' treasuries. In the past few years, such subsidy programmes had cost Canadian farmers billions of dollars in lost revenues.

The recent EEP initiative and the on-going indiscriminate use of subsidies by the Community could only depress world market prices further and leave other exporters with no choice but to lower prices to compete. Canada was particularly concerned that both the United States and the Community had targeted what had been excellent commercial markets for Canada. Indeed, they had even targeted markets previously free of subsidized competition. Although the Community had taken some steps in the right direction through a reform of its Common Agricultural Policy, and the United States had claimed to have taken into account the interests of non-subsidizing exporters, this was cold comfort to those that were seeing prices for their produce continually eroded by such injurious subsidies.
Canada agreed that this situation could best be resolved through the early and successful conclusion of the Uruguay Round; it stood ready to do its part in the coming weeks to make the resumed negotiations successful, and expected its trading partners to do the same. Meanwhile, Canada supported Australia's proposal that the Council -- following informal consultations by its Chairman -- consider what action might be taken to mitigate the adverse affects of US and Community export subsidies.

The representative of Chile said that the United States' decision to extend the EEP was not, as the US President had stated, "an administrative adjustment in the programme", but rather a substantial change in US agricultural policy. That decision was contrary to the United States' declarations of adherence to the objectives of the Uruguay Round, to the standstill and rollback commitment, and to specific commitments in the General Agreement, such as Article XVI:3. The United States had justified its decision by saying it was a reply to the Community's agricultural subsidy policies. All were indeed aware of the harmful nature of the Community's subsidies and of its protectionist policies. However, the fact that the Community maintained a market-distorting agricultural policy did not justify the United States' distorting the international market further by increasing agricultural subsidies with consequent repercussions for the economies of many countries, in particular developing countries. Chile supported Australia's and Argentina's statements. It firmly rejected the US measures and urged the latter to terminate its decision to extend the EEP so as to abide both by its GATT commitments and those undertaken in Punta del Este on standstill and rollback. Chile also supported Australia's proposal that the Chairman initiate consultations to try to find an adequate and pragmatic solution to this problem. It was within the Council's competence to monitor contracting parties' implementation of their GATT commitments.

The representative of Colombia said he had listened with attention to Australia's statement and that actions of the type mentioned therein, in particular by major trading entities, jeopardized the credibility of the multilateral trading system. Although the Uruguay Round was in suspense, this did not mean that the standstill and rollback commitments undertaken thereunder should be set aside. Colombia believed this would not be in the interests of the GATT and, as it had indicated under Item 5 of the Agenda, attached great importance to this point. Australia's exposition of the issue at hand clearly sent a dangerous message to the international community, namely that trade competitiveness depended on the budgetary possibilities of all States. Against this background, countries such as Colombia would have to hold an internal debate on the appropriateness of endogenous economic growth models in the face of trade openings in a world that did not respect the precepts of free competition and market signals. Colombia supported Australia's request that the Chairman initiate consultations to clarify the GATT's role in regard to these practices, and suggested that a report be made to the CONTRACTING PARTIES at the latest at their Session in December. It would also be worthwhile to reflect on the possibility of convening the Uruguay Round Surveillance Body.

The representative of Pakistan said that in bringing the issue of competitive subsidization by major agricultural traders before the Council,
Australia had highlighted a festering problem. Unarguably, such competition constituted a direct threat to the interests of many contracting parties. Equally, it continued to undermine the multilateral trading system based on the GATT. However, the most damaging effect of this competition was on the very process of growth and development for a large number of developing countries, including Pakistan. His Government remained convinced that problems in agriculture and agricultural markets called for a quick reversal through a speedy conclusion of the Uruguay Round. Agriculture had remained a major focus in the Round and had defied resolution because of differing approaches to the problems as a result of different socio-economic perceptions, and differing emphases on various elements in the debate. Acknowledging the many differences in the negotiations, Pakistan had consistently pleaded for equity in finding balanced solutions. Indeed, in the interests of equity, Pakistan had continued to express its concern over suggestions which would effectively lead to the creation of a series of market-sharing arrangements in agriculture. On the question of agricultural export subsidies, Pakistan had voiced concerns regarding suggestions that such subsidies might not be extended to new products or to new markets. It had done so because it did not believe that freezing lower-priced products into their current patterns -- more precisely, into the patterns that might have developed by sheer coincidence with the choice of a particular base period for a partial phase-out of export subsidies -- would be equitable. It made little sense to legitimize the sale of subsidized food to developed countries because they happened not to be importing it during an arbitrarily-chosen base period, and to deny poor developing countries the same advantage merely because they happened to fall in the category of importers in that same base period. Pakistan did not condone the kind of competitive subsidization that had been highlighted by Australia, but wished nonetheless to stress that there were many facets of the problem of agricultural trade. Such problems needed a solution through the quick conclusion of the Uruguay Round, and the main responsibility therefor lay with the major players. While not opposed to Australia's proposal that the Council consider this issue further, Pakistan would caution against initiating a process that would parallel the Uruguay Round.

The representative of India said that his Government regarded this issue as one of systemic significance and that its views thereon were well known. There was little doubt that competitive subsidization, which had shown an increasing trend lately, tended to distort markets and was detrimental to those that did not have the means to subsidize. India was sympathetic to Australia's concerns, particularly on the trade-damaging effects of competitive subsidization and the danger it posed to the stability of the international trading system. Such policies and practices not only undermined fundamental GATT principles and objectives, but also violated the standstill commitment undertaken at Punta del Este. While several speakers had spoken of a solution to this problem through an early conclusion of the Uruguay Round, India could not speculate on this possibility given the current state of the negotiations. The problem of competitive subsidization required the urgent attention of all contracting parties, and the issue raised at the present meeting merited careful consideration. India agreed that a solution needed to be found very soon.
The representative of Mexico said that his Government had always been in favour of trade free from distortions. It believed that export subsidies had the greatest effect on agricultural trade since they caused the misallocation of resources and were injurious to efficient producers, particularly those in developing countries that were unable to afford such support. The adverse affects of such subsidies were often felt not only in developing country markets, but also in the domestic markets of the efficient producers themselves, thus affecting prices and the profitability of production. Mexico did not provide export subsidies in any sector and had proposed the complete elimination of all export subsidies in the Uruguay Round. Given the objection of many participants, this proposal had not actually led to any binding provisions in the text of the Uruguay Round Draft Final Act. The question of reductions in export subsidies was now at the very heart of the debate in the Round. In this context, the recent US decision to expand the EEP constituted one more element that hampered trade in international agricultural commodity markets, and was a violation of the standstill commitment. Mexico welcomed the discussion that Australia had initiated, and hoped that a prompt conclusion of the Round would prevent such actions in the future.

The representative of New Zealand said that while his country was not a wheat exporter, it considered the matter before the Council to be crucial, and fully shared the concerns of Australia and other wheat producers. New Zealand had always believed that export subsidies were pernicious in their effects and should be brought to an end. As a non-subsidizing producer of agricultural products, it had long been exposed to the harmful effects of subsidies, and continued to find itself caught in the cross-fire of intense competition for markets among the major users of export subsidies. Most contracting parties simply did not have the financial resources to compete with such practices. The distortions produced in international trade patterns by these subsidies were a serious problem, and one that GATT had to address.

The recent US action expanding the EEP had highlighted this problem, and was very unhelpful at the present critical juncture in the Uruguay Round negotiations. Indeed, it contravened an important element of the agriculture negotiations by extending subsidies to new markets. There was no comfort in the knowledge that subsidy programmes were sometimes designed as a response to subsidy practices of one’s competitors in the market. This merely produced a downward spiral and intensified the problem, both globally and for unsubsidized producers of the product concerned. The United States was not alone in sinning in this way against the spirit and objectives of the GATT and in causing distortions in normal commercial markets; the Community’s subsidy programmes were just as harmful. New Zealand believed that in the Uruguay Round Draft Final Act one had the means for tackling these problems and to begin introducing some discipline and much needed sanity into export subsidy practices. The US action, or other similar actions, should not distract from the imperative to bring the Round to a successful conclusion. It was essential that the negotiations succeeded and that the GATT finally brought agriculture fully under its disciplines. No one wanted to see these subsidy practices intensify and distract from that goal. For this reason, New Zealand agreed with
Australia that the GATT should debate this issue now, and supported a process of consultations -- conducted by the Council Chairman -- to address this specific issue. New Zealand hoped these consultations would not only address concerns over recent US moves, but also serve as a reminder to all contracting parties of the threat posed by export subsidies generally, which should not be allowed to escalate. At the same time, New Zealand looked to both the United States and the Community to provide the leadership in the Round that was so urgently needed to bring about an end to these debilitating practices. The interim, as this case demonstrated anew, was very painful.

The representative of Brazil expressed his Government's support for Australia's position. Brazil's stand against increases in agricultural subsidies -- especially export subsidies, which were one of the main sources of trade distortion in agriculture -- was well known. The trade-distorting effects of the EEP programme, as of other export subsidy régimes presently in place in several developed countries, had affected many competitive producers, mainly in developing countries. Brazil was not beyond the reach of such negative effects, and its trade in some important products such as poultry and oilseeds had already suffered. In this context, Brazil could not but deplore the recent US action, and believed it to be an additional blow to the trade liberalization objectives of the Uruguay Round, which the United States itself had so actively engaged in.

As a result of such concerns, Brazil had publicly stated its position -- in an announcement dated 8 September -- that it did not intend to import any subsidized wheat, irrespective of its origin. Brazil had also made clear to domestic producers that they could have recourse to legislation on countervailing measures should subsidized wheat imports cause or threaten to cause them damage. This had been no easy decision for a net wheat-importing country that was ridden by inflation and was therefore greatly tempted to buy cheap foreign products. However, Brazil's commitment to the principle that export subsidies were very detrimental, and to the objectives of the Round, had led it to this decision. Substantial reduction in the export subsidies granted by the two major trading partners was fundamental for ensuring a balanced result in the Round. Brazil could not see how the US measures could in any way improve the prospects for such a result, and therefore supported Australia's proposal in the hope that it would help find a solution to this problem.

The representative of Hungary said that this issue was also of grave concern to his Government. The experiences of Hungary's exporters of wheat and other agricultural products had confirmed the often very disastrous effects of subsidization. Small and not necessarily inefficient producer countries had always been the first victims of such policies, and there was a risk that this might happen once again. Hungary's agricultural product exporters had already suffered in the past from sharply depressed world prices resulting from competitive subsidization. In many cases, they had been displaced from previously important export markets or had failed to enter new ones because of their continuous inability to participate on equal terms in subsidy competition.
During the course of its economic transformation, and after the collapse of the so-called Eastern trading system, Hungary had been encouraged by political statements that its previously important economic and trade ties with neighbouring countries would be restored. In fact, however, Hungary's firms had been faced with even more constraints and barriers than before in their endeavour to get back into these markets. This unfortunate situation had largely been due to the assistance and export policies followed by major OECD countries vis-à-vis some others, and which relied, inter alia, on the heavy subsidization of export products. Such policies could not be regarded as a responsible attitude towards potential suppliers from smaller nations, and towards the international trading system itself. Beyond the present problems in the wheat sector, Hungary was concerned about the risk of the future intensification of such policies in regard to other important agricultural products. The recent US decision on the EEP would have immediate and future adverse consequences on the trading interests of smaller exporting nations. It was difficult to accept that the best way of combating others' trade-distorting policies was a substantial increase and extension of already-available export subsidies. It was questionable whether such initiatives could be carefully limited in a way that would allow smaller competitors to continue their previous sales levels. Hungary doubted whether potential importing nations could really give assurances that such trade would not be affected.

It believed that a number of conclusions should be drawn from this debate. First, the recent developments underscored the very urgent need to halt the competitive subsidy war through an early and successful conclusion of the Uruguay Round. However, it was clear that even in the best-case scenario, no immediate or drastic improvement could be expected, but rather a slow, progressive one. Second, the international trading community should invite major subsidizers to exercise a policy of self-restraint in the actual use of their respective subsidy schemes. Finally, the Council should keep the situation under close review, and explore ways in which it could address problems of this kind. Hungary supported Australia's request that the Chairman should hold informal consultations with interested parties.

The representative of the Philippines, speaking on behalf of the ASEAN contracting parties, said they fully supported Australia's concerns and urged the United States and the Community to put a stop to the unbridled use of direct export subsidies as the vehicle for competition in the world wheat markets, as well as in other commodities. The US action was inconsistent with the standstill and rollback provisions of the Punta del Este Declaration, and with the provisions of the Uruguay Round Draft Final Act, which stated that no new export subsidies should be given and that no new markets should be targeted. At this late stage of the Round, the ASEAN contracting parties called on the United States and the Community to display the leadership required to bring the Round to a successful and timely conclusion, and to contribute to the strengthening of the multilateral trading system. They supported Australia's proposal that the Chairman conduct follow-up consultations on this issue as a matter of urgency.
The representative of Uruguay said that his Government deplored the US decision on the EEP, which distorted international competition and violated the standstill commitment undertaken at Punta del Este. At a time when participants in the Uruguay Round were making maximum efforts to conclude those negotiations, thus seeking to assure greater trade liberalization, and to strengthen GATT rules to reduce and eliminate all unfair trade practices, such as export subsidies which distorted international markets to the detriment of efficient producers, the US measures, together with those of the Community, negatively affected the Round and jeopardized its success. Uruguay supported Australia's proposal, and believed that the GATT should resolve this problem and thereby reduce its adverse effects on trade.

The representative of El Salvador, speaking also on behalf of Guatemala, Nicaragua and Honduras, said that while they were not wheat exporters they nonetheless wished to join others that had expressed concern over the wheat export subsidy policies and practices applied by the United States and the Community. Such measures contradicted the objectives of agricultural trade liberalization in the Uruguay Round and also violated the standstill commitment accepted in Punta del Este. They were concerned by the consequences of such practices, in particular for developing country wheat exporters, and supported Australia's suggestion that the Chairman undertake consultations.

The representative of Japan said his Government had always believed export subsidies were a very distorting factor for trade in agricultural products. A central issue in the Uruguay Round negotiations on agriculture involved putting export subsidies under strengthened multilateral disciplines. It was regrettable and unfortunate that export subsidization and competition was about to be intensified when all were exerting their utmost efforts to successfully conclude the Round. In view of the negative effects of export subsidies, a renewed effort should be made towards an early conclusion of the Round. In the meantime, it was clear that some countries were presently being affected by such practices. That being so, Japan supported the idea that the Council should address the problem of wheat export subsidies on an urgent basis.

The representative of Bolivia said that in acceding to the GATT, his Government had placed its full trust in the multilateral trading system, the objectives of which were to achieve stable trading conditions. The US measure was injurious to the international system and might be a serious obstacle to achieving success in the Uruguay Round. Measures of this kind introduced uncertainty and weakened the fundamental principle of multilateralism. For these reasons, Bolivia supported Australia's concern and its request for consultations.

The representative of Korea said his Government sympathized with Australia and others, and disapproved both of the US action to increase its wheat export subsidy and of the Community's practices which had invited that action. Such subsidy practices had been the main cause of trade distortion in agriculture, and had dubious legal grounds in GATT terms. Korea had repeatedly made this point in the Uruguay Round agriculture
negotiations and had emphasized that stricter disciplines were required on export subsidies. The latest US move was not only inconsistent with the standstill and rollback commitment of the Punta del Este Declaration and the pertinent clauses of the Round's Draft Final Act, but also contradicted the United States' negotiating position that called for the liberalization of agricultural trade. It could not have come at a more crucial time for the Round. The subsidy competition between the United States and the Community again convinced Korea of the urgent need to bring the Round to a prompt conclusion.

The representative of Cuba said that while his country did not export wheat, it shared Australia's concerns. Cuba was concerned at the intensification of the export subsidy war, which would affect the credibility of the trading system and, worse, might also affect success in the Uruguay Round. Cuba believed it necessary, as suggested by Australia, that GATT urgently consider this situation and that the Chairman initiate consultations so as to evolve measures that might then be adopted collectively.

The representative of Tanzania said that a rough count of the amount spent on agricultural export subsidies over the past four decades would easily add up to several hundred billion dollars. If one were also to count the cost to purchasers of essential items, and the resulting trade distortions, then the costs in terms not only of money but also of deprivation of opportunity for technological innovation and development were very high. As a result of such measures, a long haul awaited those developing countries, producers of non-processed agricultural products, as they tried to become trade partners of any significance and to link themselves to the world economy through trade. Standards of fairness called for these countries to be given every flexibility because of their relatively low levels of trade leverage. The need for the application of a standard of fairness to such countries would become of greater significance when the Uruguay Round was concluded.

The representative of the European Communities said that in attempting to resolve the agricultural subsidies problem, both the Community and the United States had embarked on a process of a somewhat unhealthy competition. The Community was conscious that its subsidy programme had succeeded beyond its hope but also that it had caused problems for its competitors. As a result, the Community was now in the process of moving in a direction diametrically opposed to what it had done thus far, and was trying to contribute to a resolution of the problem through a reform of its agricultural policy. The Community got the feeling, however, that either this was not enough or that it had been misunderstood. The proof of this lay in the recent US action, which had raised concerns for some, such as Australia, leading to a proposal for consultations in the GATT on a very specific problem, i.e., direct export subsidies. However, Australia knew full well that the real problem lay in the entire range of agricultural support policies, which included export credits, preferential transport policies, and so on, all of which were under discussion in the Uruguay Round. For Australia to point to just the tip of the iceberg and overlook what lay underneath was of no use at all. The Community was unable to understand what the purpose of the proposed consultations might be.
Australia had spoken of "measures" without being very specific. The Community wondered whether these consultations were meant to serve as an alternative to the Round on the assumption that the latter would not be successful. However, if one still believed in its success the proposed consultations would simply involve parallel negotiations and would harm the on-going ones. The Community could not accept any mechanisms at this stage that risked weakening the GATT and jeopardizing the Round.

The representative of the United States said one could legitimately question which participants were part of a solution to the Uruguay Round and which participants were part of the problem. Where the United States stood on this point was quite clear. The United States advocated much deeper reductions in export subsidies than were reflected in the Draft Final Act (DFA), but were prepared to accept in full the reductions included therein. Even after the percentage reductions set out in the DFA, the United States would still be at a disadvantage to the Community in terms of the overall value of export subsidies and other forms of agricultural support. This, of course, led to tremendous criticism from US farmers that the United States would lock in a disproportionate subsidy situation. The United States could not tolerate an accelerating trend in export subsidies and would take steps to compete with these subsidy practices. While some participants saw the United States as part of the problem, he hoped they would acknowledge that the United States was also working very vigorously for a solution.

The representative of Australia said that the discussion had clearly underlined that this was a global problem. While the best solution would be to have a Uruguay Round agreement as soon as possible, the question Australia had posed was whether the GATT could, at present, turn its back on an issue of such importance pending the outcome of those negotiations. From the statements made, the answer had been that the GATT could not do so. For those who believed that Australia had reacted hastily, he would recall that the Round had been underway for six years and that farmers had been going under in the meantime. This was therefore a serious matter. He noted that neither the Community nor the United States had obstructed the suggestion that a process of informal consultations, not based on any specific GATT Article and not seeking to set up any specific mechanism, be set in motion. One did not yet know where this process would lead, but the problem certainly could not be ignored.

The Chairman noted the widespread concern over the competitive export subsidization of agricultural commodities, particularly wheat, by the two major trading entities. While there was agreement that the best possible solution to the problem would be an early and successful conclusion of the Uruguay Round leading to a complete change in the policy orientation in this area, there appeared to be a desire to engage in informal consultations on an urgent basis with a view to exploring avenues of addressing these problems. He would be ready to carry out such consultations.

The Council took note of the statements and agreed to revert to this matter at a future meeting.
5. **EEC - Import régime for bananas**  
- Statement by the Latin American banana-exporting countries (DS32/3)

The Chairman recalled that the Council had considered this matter in June, and that in July, Costa Rica had informed the Council, on behalf of several Latin American countries, that, pursuant to their request in document DS32/1, Article XXII:1 consultations had been held with the European Economic Community regarding its banana import régime.

The representative of Costa Rica, speaking also on behalf of Colombia, Guatemala, Nicaragua and Venezuela, recalled that on 19 June, they had requested Article XXII:1 consultations with the Community on the present banana import régime in some of its Member States as well as on a proposal for a unified régime to come into effect as of 1993. These consultations had not resulted in a solution. The Community had replied unsatisfactorily to the concerns on the existing régime, and had refused to consult on the proposed unified régime, arguing that since that régime had not as yet been adopted, there could be no right to Article XXII:1 consultations. However, Article XXII:1 provided for consultations on "any matter affecting the operation of the General Agreement" and did not indicate that only existing measures could be the object of consultations. It was not the letter of Article XXII:1 that had prevented consultations on the Community's proposed legislation, but rather the latter's limited interpretation of it. Furthermore, during the period of the consultations, the European Commission had drawn up, for adoption by the Council of Ministers, a draft regulation on the common organization of the banana market which was much more restrictive than the existing régime. The Commission had not taken account of any concerns that had been raised in the consultations, thereby showing a lack of willingness to reach a mutually satisfactory solution. The Commission's proposal was unacceptable and represented a negation of commitments under the Uruguay Round. Although the Round should not be part of the present discussion, its direct link with the subject at hand was such that reference needed to be made to it. The proposal also ignored the principles in the agricultural text of the Uruguay Round Draft Final Act (DFA) (MTN.TNC/W/FA), and could be a serious threat to the negotiations.

These countries had now referred this matter to the Director-General (DS32/3), in accordance with paragraph 1 of the 1966 Decision on Procedures under Article XXIII (BISD 14S/18), so that he might use his good offices with a view to facilitating a solution. They had had recourse to these procedures in their capacity as developing contracting parties against whom the Community was applying highly restrictive measures contrary to the General Agreement. Under these circumstances, and in light of the spirit and letter of that Decision and of the General Agreement, they trusted that the Director-General's intervention would help in resolving this matter. Should this not be possible after a period of two months from the commencement of the Director-General's consultations, the 1966 Decision provided that the issue could be brought to the attention of the CONTRACTING PARTIES or the Council, which would appoint a panel to examine the matter with a view to making appropriate recommendations.
The representative of the United States said his Government was deeply concerned by the Commission's proposal to establish a quota régime on bananas, since that would clearly be contrary to the principle of comprehensive tariffication contained in the DFA text on agriculture. Comprehensive tariffication had been one of the corner-stones of the agriculture negotiations, and allowing exceptions thereto would unravel the agriculture agreement and have negative consequences for the Uruguay Round as a whole. The United States strongly believed that the Community could structure a banana import régime honouring commitments to traditional suppliers within the framework of tariffication as contained in the DFA, and urged the Community to give consideration to such a concept.

The representative of Mexico said he had listened carefully to Costa Rica's statement. Mexico, too, was concerned that the consultations between these countries and the Community had not resulted in a satisfactory solution. The Latin American banana-exporting countries had every reason to believe that the Community's measures were incompatible with the spirit and letter of the General Agreement. The measures were also contrary to the standstill commitment undertaken in the Uruguay Round, and to the basic principle embodied in GATT, as well as in the Round, that the developing countries' needs should be duly taken into consideration. For these reasons, Mexico supported the Latin American banana-exporting countries' action, and hoped that the Director-General's good offices, in accordance with the 1966 Decision, would lead to a satisfactory solution as soon as possible.

The representative of Argentina supported the Latin American banana-exporting countries' concerns and their decision to seek the Director-General's good offices to resolve this matter. Argentina had noted with concern the European Commission's proposals for a new banana import régime. This régime would be inconsistent with current GATT rules -- in particular Articles I, II, III, XI and XIII -- and with the commitments agreed to in the DFA text on agriculture, particularly as regards comprehensive tariffication. The proposed measures were expressly prohibited by Article XI and could not be justified by any of the exceptions provided therein for agricultural and fisheries products. In the framework of the Uruguay Round, the Commission's proposal constituted a backward step and seriously impeded any prospect of reaching an agreement on agriculture.

The representative of Jamaica, speaking also on behalf of the African Caribbean and Pacific (ACP) Group of States, said that the ACP banana-exporting countries also had an interest in the Community's market for bananas. Many developing countries had a fairly narrow range of agricultural exports, and bananas fell into this category for Jamaica and some of the other ACP countries. In Jamaica, bananas were grown by small independent farmers, each with plots of roughly five acres. Anything which threatened Jamaica's export markets therefore threatened the livelihood of a significant section of its peasantry and in turn affected its foreign exchange earnings. He recalled that under voluntary and legally binding agreements between the ACP countries and the Community, there were clear obligations to be fulfilled in the interests of ACP banana exporters. The recognition and acceptance of such special arrangements was not foreign to
the GATT. Surely, also, development considerations could not totally be ignored. The quantities involved in the ACP arrangement for bananas was by no means a significant portion of the international banana trade. It was even less significant -- indeed negligible -- when viewed in terms of the world's total trade in goods. The Community's proposed régime should therefore not be seen as a menacing threat to the Uruguay Round. Apart from being only a proposal at this stage, it was an honest attempt by the Commission to make clear the legal and moral obligations undertaken by it towards the ACP countries.

The representative of Brazil said that although Brazil was not an important banana exporter it was one of the biggest producers, and that it shared the Latin American banana-exporting countries' concern over the proposed modification to the Community's banana import régime. Apart from its adverse effects on these countries' trade, the proposed régime would run counter to one of the main objectives of the Uruguay Round, namely, the liberalization of agricultural trade. It would also be contrary to the concept of tariffication, one of the pillars of the draft agricultural agreement, as well as the standstill and rollback commitment. Brazil regretted that the Article XXII consultations had not been successful, and urged that a solution to the matter which met the concerns of the Latin American banana exporters be found quickly. It hoped that the Director-General's good offices would contribute thereto.

The representative of Bolivia said that his Government also shared the legitimate concerns of the Latin American banana-exporting countries, and believed that a negative precedent was being established before the conclusion of the Uruguay Round. While this was a complex and sensitive problem, Bolivia believed that political will, the spirit and letter of the Punta del Este Declaration, and the commitments already negotiated in the DFA text on agriculture, should guide all towards a satisfactory agreement on the matter at hand. Bolivia supported the Latin American banana-exporting countries, and hoped that, through dialogue, a satisfactory solution would be found soon.

The representative of Peru expressed her Government's concern that the Community planned to introduce a common import régime that would limit imports from Latin American countries even further. Not only was this contrary to GATT provisions, but was a violation of commitments entered into at Punta del Este and the Uruguay Round Mid-Term Review, particularly as regards tropical products. Peru associated itself with the concerns voiced by the Latin American banana-exporting countries and hoped that the Director-General's good offices would make it possible to resolve this dispute. Given the tremendous creative capacity in the Community, it surely should be possible for it to define multilateral measures that took account not only of the Latin American countries' interests, but also those of other developing countries such as the ACP countries.

The representative of the Philippines, speaking on behalf of the ASEAN contracting parties, said that the Community's existing and proposed banana import régime could not be justified under the GATT. The proposed régime showed a lack of creativity in developing a GATT-consistent formula to
correct, once and for all, the present régime, while at the same time achieving legitimate policy objectives in relation to the ACP countries. The proposed régime not only restricted further an already restrictive market for bananas, but, like the existing régime, had serious ramifications for the important objective of comprehensive tariffication on which the DFA text on agriculture firmly rested. While the Community might argue that the proposal was not yet law, its mere existence already bolstered resistance to comprehensive tariffication, threatening the unravelling of the agriculture package and endangering the Uruguay Round. They urged the Community to engage in discussing this issue with a more forthcoming attitude and to seize the chance offered by the Round to correct the highly distorted situation of trade in bananas. In so doing, it might even realize that important policy objectives concerning the ACP countries need not be compromised.

The representative of Chile expressed support for the interests of the Latin American banana-exporting countries, and exhorted the Community to meet their request. Chile hoped that the Director-General's good offices would make a solution possible.

The representative of New Zealand stressed the importance to the Uruguay Round of a solution to this problem in a way that respected the provisions of the DFA, for reasons stated by the United States and a number of others. New Zealand hoped that conciliation would provide an appropriate solution.

The representative of Australia said his Government, too, was concerned over the Community's proposals for introducing a single market régime for bananas which appeared to be inconsistent with a wide range of GATT obligations. While Australia was sympathetic to the interests and concerns of the ACP countries, the Community's proposal sought to accommodate these in a very complex and awkward way that would have unfortunate and important trade policy consequences in relation to both the GATT and the Uruguay Round. Australia therefore encouraged the Community to approach this issue in a way that was consistent with its GATT obligations and with the objective of comprehensive tariffication in the DFA text on agriculture.

The representative of Uruguay shared the concerns of the Latin American banana-exporting countries. The proposed new régime would be considerably more restrictive and contrary to the Community's GATT obligations as also to the principle of tariffication agreed in the DFA text on agriculture. It would encourage others to request exceptions to this principle for themselves and lead to the dismantling of one of the basic pillars of the DFA. The Community's proposed régime would also be one further element working against the successful conclusion of the Round. Uruguay exhorted the Community to reconsider its proposed régime and to make every effort to resolve the matter in an equitable manner. It hoped that the Director-General's good offices would contribute to a solution.

The representative of Côte d'Ivoire associated her delegation with Jamaica's statement, which fully reflected the concerns of all banana-exporting countries signatories of the Lomé Convention. She
recalled that the latter, which brought together more than 60 countries of Africa, the Caribbean and the Pacific, and the Community's twelve member States, had in fact been presented, analysed and endorsed in the GATT. The Community, therefore, had done nothing more than abide by its commitments in implementing the Protocol regarding bananas. One could not ignore the different provisions of the Convention, particularly those which related to economic and trade cooperation between the Community and the ACP countries with a view to enabling the latter, particularly the least-developed among them, to export on a stable, predictable and lasting basis. Furthermore, the ACP countries' banana exports did not really threaten exports from other areas. The Convention should continue to be the main impetus for trade cooperation between the Community and the ACP countries, and in particular Article 1 of Protocol 5 of that Convention relating to bananas, which stated that no ACP country, as regards its access to traditional markets and its advantages therein, should ever be put in a less-favourable position than that which it enjoyed earlier or at present. The trade measures contemplated by the Community were fully in conformity with the letter and spirit of the Convention, which had never been declared to be GATT inconsistent, and which, in keeping with the oft-expressed statements by the CONTRACTING PARTIES in this regard, protected and promoted the interests of developing countries more than three-quarters of which were ACP members. Côte d'Ivoire wished to be involved in any future GATT work on this important subject.

The representative of Cameroon said that as an ACP member and as a banana-exporting country, it supported Jamaica's statement. In the context of the economic crisis and the devastating structural adjustment problems which Cameroon was facing, the banana sector was one of the few that had been modernized. This effort had been made in light of the market outlook, given Cameroon's position as an ACP country and the Protocol on bananas in the Lomé Convention. Cameroon called on the Community to respect its commitments, and wished to be involved in all future negotiations involving this problem within the GATT.

The representative of Senegal said his delegation, too, associated itself with Jamaica's statement. Senegal was not a banana-producing country, but as a signatory of the Lomé Convention was concerned that the Community should respect its commitments in the framework of that Convention. The banana-producing countries had every reason to be alarmed at the situation that had evolved in the course of the discussions between the Community and certain Latin American exporting countries. Senegal voiced its solidarity with the ACP banana-producing countries, and hoped that their interests would be taken into consideration in all future discussions. The Uruguay Round negotiations should not lead to a loss of the advantages that certain countries had enjoyed when they had entered them. In this regard, it was only natural for the Community to take into consideration the interests of these countries, and Senegal reiterated its hope that the Community would abide by its commitments.

The representative of Trinidad and Tobago expressed confidence that, when approved, the Community's new régime would function in a manner satisfactory to all. Trinidad and Tobago fully supported the views expressed by Jamaica and other ACP countries. It believed that if the
Community's new régime was not satisfactory to all when it was put into effect in 1993, then the Council could be asked to consider this issue again, and that that would perhaps be a more appropriate time to do so.

The representative of Madagascar recalled that her delegation had stated its position on this issue on an earlier occasion. As a small producer and exporter of bananas, Madagascar shared Jamaica's concerns. The GATT, should ensure an equitable and well-balanced trading system that benefited all members. Madagascar wished that its concerns on this subject, which were similar to those described by Jamaica, be taken into account in all consultations that might be held on this subject, as well as in any decision to be taken thereon.

The representative of the Dominican Republic expressed support for Jamaica's statement. Although the Dominican Republic was not a major banana exporter, it was nevertheless a member of the ACP Group, and hoped that the Community would fulfil its commitments towards these countries in future negotiations on this subject. It also shared the concerns of the Latin American banana-exporting countries, and hoped that in future consultations a satisfactory agreement would be reached for all.

The representative of Tanzania hoped that the Community would carefully weigh the political implications of eroding the Lomé Convention selectively. This would be a precedent that would produce problems for all, not least in the framework of the Convention itself. He hoped that the Community would reflect on this matter.

The representative of Cuba considered the Community’s proposed banana import régime to be incompatible with GATT provisions as well as with the commitments adopted in the framework of the Uruguay Round. Cuba recognized the complexity of the matter, but believed that account should be taken of the concerns of the Latin American banana-exporting countries. It hoped that the Director-General's good offices would successfully resolve this issue.

The representative of the European Communities said it was clear from the debate that this was not a black and white case. Concerns had been expressed equally by the Latin American banana-exporting countries and the ACP countries. There was great concern in the Community too, because this was a complex and difficult issue on which the Community had to strike the best balance among its different obligations. The Community simply could not set aside certain obligations, which he believed were fully recognized in GATT, for example to the Lomé countries, many of which were least-developed countries that deserved special consideration. The Article XXII:1 consultations with the Latin American banana-exporting countries had not resolved differences. The Community had been accused of not wanting to discuss its future régime in those consultations. However, the Community was under no obligation to do so, and believed that holding such discussions on draft legislation would set a bad precedent. The Community stood ready to discuss its existing régime, but was not, at this stage, prepared to discuss what would happen in the future. With regard to the good offices that had been requested of the Director-General, the
Community had not yet seen the relevant communication from the Latin American banana-exporting countries, and could therefore not take a final position on whether this was the best way to proceed at the present time.

The representative of Honduras, speaking as an observer also on behalf of Ecuador and Panama, said that as countries with substantial interests, in terms of both volume and value of exports, in the dismantling of protectionism in the Community's member States, they fully supported Costa Rica's statement. Their position was based on the conviction that it was the obligation of all to contribute effectively to the strengthening of GATT rules in a way that would help promote the expansion of world trade on a clear and predictable basis. It was also of interest to the international community to make the best effort to conclude the Uruguay Round as soon as possible. The position of these countries was not limited to trying to protect themselves from the serious injury that would occur through the Community's proposed banana régime, but was concerned with the broader objectives of contributing to and strengthening the historical role of GATT in achieving full liberalization of world trade, making tariff and non-tariff treatment in favour of developing countries a permanent legal element of that system, with the aim of contributing to the recovery and expansion of the world economy. In view of the above, they had no doubt that the Director-General, upon accepting the request to lend his good offices, would make his best efforts to search for a prompt, equitable and efficient solution to this matter. He added that the Latin American banana-exporting countries had shown a high degree of realism, equanimity, cooperation and good faith in strictly following GATT dispute settlement procedures in this issue.

The Chairman noted that the Latin American banana-exporting countries were not seeking the Council's approval of their request for the good offices of the Director-General on this dispute, and that they had already approached the latter in accordance with the procedures outlined in the 1966 Decision.

The Council took note of the statements.

6. Canada - Import, distribution and sale of certain alcoholic drinks by provincial marketing agencies
   - Follow-up on the Panel report
   - Communication from Canada (DS17/7)
   - Communication from the United States (DS17/8)

The Chairman recalled that the Council had considered this matter at its meetings in June and July, and that in July it had agreed to revert to it at a future meeting. It was on the Agenda of the present meeting at Canada's request.

The representative of Canada recalled that at the July Council meeting, the United States had requested the CONTRACTING PARTIES' authority to suspend concessions from Canada under Article XXIII:2. The United States' request was based on allegations that this Panel report was not being implemented in a GATT-consistent manner in respect of several
measures maintained by Ontario and one measure maintained by Quebec. At that meeting, Canada had informed the Council that it did not agree with the request, both because it did not accept the allegations and because the United States had given the Council neither proper notice nor sufficient information on which to judge the request. At the same time, Canada had offered to have the United States' concerns examined by a panel on an expedited basis as provided for in paragraph 19:5 of the Uruguay Round text on dispute settlement. Regrettably, the United States had declined this offer.

The Council had not approved the United States' request. Canada had informed the Council that if the latter proceeded to take unilateral action on this issue, it reserved the right to respond in kind. On 24 July, pursuant to Section 301 of its Omnibus Trade and Competitiveness Act of 1988, the United States had imposed a surtax of 50 per cent, ad valorem, on Canadian beer imports originating in Ontario, affecting exports of more than CAN$99 million in 1991. While the United States was aware of the CONTRACTING PARTIES' views regarding its use of Section 301, it had disregarded GATT rules and had used Section 301 even when the Council had deferred a decision on whether to authorize a suspension of concessions. Its action had been plainly contrary to its GATT obligations and unwarranted, and had impaired GATT benefits accruing to Canada. Since the United States had been unwilling to pursue this issue through the GATT and had instead taken unilateral action, Canada had been left with no choice but to respond accordingly. On 27 July, Canada had informed the CONTRACTING PARTIES (DS17/7) that it was imposing a surtax of 50 per cent ad valorem on certain US beers destined for Ontario valued at some CAN$9 million. Canada's action was a legitimate counter measure, a reprisal under international law, against an unauthorized and therefore GATT-inconsistent measure. Canada had made clear its willingness to remove its measure immediately upon the United States' removal of its GATT-inconsistent measure. It had also made clear that it would not stand in the way of a proper Council decision on the suspension of concessions.

Canada did not accept the United States' characterization of the Ontario measures as described in its communication dated 14 August (DS17/7). Ontario had taken measures to comply with all the relevant findings of the Panel report, including the introduction of a single, uniform pricing system for all beer, both imported and domestic, and of a minimum retail price that was not set in relation to the price of domestic beer, the removal of the general and administrative differential component of the cost-of-service charges, the provision of the same internal delivery opportunities to foreign brewers as to domestic ones and the allowance of larger package sizes of imported beer in Ontario's Liquor Control Board stores, where such package sizes were available for domestic beer. In addition, legislation was to be introduced during the current parliamentary session to provide foreign brewers access to the Brewers Retail Inc.'s network of stores.

Clear differences of view existed between Canada and the United States as to the consistency of Ontario's measures to implement the Panel recommendations. Neither country could be allowed to be judge and jury in this case. Accordingly, Canada had offered, an equitable solution for
resolving these outstanding differences by proposing an expedited examination under the GATT, and stood by that offer. The United States had claimed that obtaining an expedited ruling from a Panel would "only serve to further delay resolution of the dispute" (DS17/8), and that the United States desired a speedy resolution of the issue. Canada had, in fact, offered an expedited examination on 9 July, during bilateral consultations. It had been prepared to agree to such a decision at the July Council meeting, and had the United States agreed at that time, it was likely that a decision would have been available by mid-October. Since there had been no progress in the dispute since 24 July, the United States' refusal of an expedited examination had itself resulted in further delaying a resolution of this issue. The United States had also argued that it saw "no merit in putting issues which have already been adjudicated twice in the GATT dispute settlement process, and found inconsistent with the GATT, back to the GATT for re-examination." Canada would submit, however, that the issues now being complained of had not been subject to adjudication by the GATT. Two examples could be given. First, given the full recognition of the provincial import monopolies by the two Panels on this case (BISD 35S/37, DS17/R), was the requirement by an import monopoly for taking actual delivery of imported products, but not domestic products, prior to their internal distribution, and charging a cost-of-service fee for doing so, contrary to Article III? Second, did the application of the higher of a flat tax or an ad valorem tax to both imported and domestic products afford protection to domestic production contrary to Article III?

Canada sought the United States' agreement at the present meeting to its offer of an expedited examination of the specific issues it had previously raised. Canada, and specifically Ontario, agreed to be bound by the decisions resulting from this examination. This request demonstrated Canada's consistent desire to abide by its GATT obligations. With the United States' agreement, Canada would support a Council decision at the present meeting to conduct such an examination.

The representative of the United States said that the measures recently taken by both Canada and the United States had led to a situation where neither country was enjoying full GATT rights in the market of the other. Canada had argued that Ontario had recently taken measures to comply with all of Canada's obligations under the Panel report and under the GATT. It also appeared willing to agree to some kind of procedure for litigating the measures complained of by the United States in the GATT dispute settlement process, although it was still unclear what type of examination it had in mind, the specific terms of reference, the time frame, and what kind of binding effect such examination would have on the two parties.

One could perhaps continue to discuss this to see if there were a possibility in the future of a properly constituted proceeding. However, as the United States had previously stated, it saw no purpose in relitigating the GATT issues that had already been adjudicated by two previous Panels. His delegation had already recounted at an earlier meeting all the measures taken by Ontario which, taken together, had served to price US beer out of Canada's market, and which, in the United States' view, were contrary both to the findings in the second Panel report and to
Canada's GATT obligations. Canada was now asking the United States to agree to a whole new panel procedure to re-litigate all of these issues, and was aggrieved by the United States' unwillingness to enter into such a process. In essence, it was saying that there was a simple way to avoid one's GATT obligations. Once a Panel had ruled against a contracting party, the latter had only to implement a whole new series of laws and regulations which afforded the same level of protection as before, or even increased it, and then to say that these issues would have to be re-litigated, and that until then, the complaining party had no right to act because it would be doing so in violation of principles of international law. This was not a very encouraging way for the GATT process to be conducted. That being said, the United States was willing to look at the ideas put forward by Canada at the present meeting, if specific written proposals would be submitted on the exact nature of the process that might be instituted. However, the United States was not willing to withdraw the measures it had imposed, and doubted whether Canada would do so either. The resulting situation was one in which neither party was observing GATT obligations in respect of the other in the beer sector; that situation would not be corrected by a panel procedure until Ontario was willing to recognize the United States' legitimate rights and change its practices.

The representative of Brazil said that while this dispute involved the United States and Canada, there was a danger therein for the multilateral trading system because GATT rules were not being observed. Brazil could not approve of a recourse to unilateral retaliatory measures without previous authorization from the CONTRACTING PARTIES, and viewed Canada's and the United States' actions with great concern. It urged the removal of the unilateral measures by both parties, and asked that they limit themselves to GATT means.

The representative of Argentina shared Brazil's concerns on the adoption of unilateral retaliatory measures. Argentina had stated on other occasions that a speedy solution should be found so as not to block the adoption of retaliatory measures or the withdrawal of concessions on a bilateral basis in the enforcement of recommendations of panels adopted by the CONTRACTING PARTIES. This was important from the point of view of the credibility of the dispute settlement system. Indeed, in the Uruguay Round text on dispute settlement, provision had been made for the automatic withdrawal of concessions should the Council not decide otherwise. Argentina believed that once panel recommendations had been adopted, it should not be possible for a contracting party to continue to delay a solution or to worsen the situation through new measures, such as in the case at hand. This needed to be considered also to ensure the credibility of the dispute settlement mechanism.

The representative of Japan echoed others' concerns over the recent measures taken by both Canada and the United States. Japan hoped that a mutually satisfactory solution within the GATT framework would be found soon. It was clear from Canada's and the United States' statements that there was no GATT basis for their actions. When a contracting party was willing not to observe its GATT obligations, and to admit this freely, it was clear that the situation was serious and had to be addressed collectively in the months ahead.
The representative of the European Communities said that this case gave rise to very serious concerns on several aspects. Although the Community, too, believed that Canada should more fully implement the Panel's recommendations, it could not accept recourse to unilateral measures in order to force the issue. When two large trading partners resorted to unilateral measures that led to the closing of their respective markets, it was of grave concern to the GATT system and put its credibility at stake. The Community was concerned at the United States' arguments which appeared to suggest that if a contracting party lost a panel case, it had to hand over its market in absolute terms and without any alternative. That was certainly not the Community's understanding of panel findings. A panel addressed specific measures and made findings on those measures; it did nothing else, and if there were other measures that a contracting party believed were not in conformity with GATT obligations, then the GATT procedures should be followed to address those concerns. It was important that in seeking to resolve disputes, all parties remained within GATT procedures.

The representative of Canada reiterated the point that Ontario's contested practices had not in fact been subject to adjudication before a panel, and recalled that he had provided two explicit examples. Canada was obviously disappointed that the United States could not agree to its proposal for adjudication at the present meeting, although it appeared that the United States would not rule out the proposal, based upon further clarification of the terms of reference or other details that Canada might want to put forward. If that understanding was correct, Canada proposed that the two parties continue their bilateral discussions on the issue, and revert to it at a later date, hopefully with a solution but, if not, with Canada's renewed proposal for adjudication.

The representative of Australia said that his Government could not support the use of unilateral measures by either party in this case. Obviously, the urgent and full implementation of the Panel's recommendations by Canada was the most desirable outcome to the dispute. Australia hoped that a solution could be found within the GATT framework, and expressed its interest as a third party in any such settlement.

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

7. Negotiations under Article XXVIII:4 concerning the modification of certain concessions included in the European Communities' Schedule LXXX-EC
and
8. European Economic Community - Payments and subsidies paid to processors and producers of oilseeds and related animal-feed proteins - Follow-up on the Panel report (DS28/R) and status of related negotiations authorized by the CONTRACTING PARTIES pursuant to Article XXVIII:4 - Communication from the United States (DS28/3)

The Chairman said that in his understanding, these two items, requested by the European Communities and the United States respectively,
were so linked that if taken up separately, a wide duplication of discussions would ensue. He, therefore, proposed that these items be taken together. While item 9, requested by Argentina, was in some ways also related to the same issue, he believed it could be taken up separately.

The representative of the European Communities, introducing item 7, noted that the Community had officially requested the CONTRACTING PARTIES to examine this issue promptly and to submit their views to the interested contracting parties in order to reach a settlement, in accordance with Article XXVIII:4(d) (SECRET 336/Add.1 of 16 August 1992). The Community wished to inform them of the difficulties it had encountered during its bilateral consultations with various contracting parties in connection with the very technique to be used for the negotiations. The absence of a reply from the CONTRACTING PARTIES would hamper the continuation and, of course, the conclusion of the negotiations which they had authorized.

In the course of three negotiating rounds with nine contracting parties and three series of consultations with two others, the Community had been confronted with a series of technical questions which had arisen from the Article XXVIII negotiations proper. While technical, these questions were at the same time extremely important from the point of view of a negotiated solution and, in particular, in order to allow the Community to formulate a final compensation offer. The three series of questions were as follows: The first consisted of questions of a purely technical nature under Article XXVIII. As was the rule in any Article XXVIII negotiation, was it necessary to renegotiate separately each of the tariff concessions or -- exceptionally and leaving aside the provisions or rules contained in Article XXVIII and the usual practice -- could the six tariff concessions be renegotiated globally by regrouping them, with all the consequences which would arise from the points of view of the method of globalization, the determination of market shares and the relative importance of the initial negotiating rights in the framework of a negotiation? As to globalization, two series of questions arose: was it necessary to globalize the value of concessions concerned by adding the values of the imports involved, or by adding the quantities of imports concerned by using a common denominator or appropriate coefficients to be determined -- a country might very well be the principal supplier if one added up the values while another might be principal supplier if one added up the quantities? Closely linked to that was the determination of market shares of the various contracting parties in the case of a globalization of the six tariff concessions, on which depended the condition of principal supplier, and the determination of substantial interest. These terms were extremely important in order to determine negotiating rights. What then was to be the status of initial negotiating rights when one globalized a series of tariff concessions?

The second series of questions, together with the first, was the key to this negotiation: how could one estimate the impairment of a tariff concession arising from the subsequent granting of a subsidy as compared to

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1 This portion of the Community's statement was subsequently circulated as L/7096.
the initial expectations on the part of a contracting party which had negotiated the concession. One might ask -- in fact the question had been asked by the United States (DS28/3) -- if the impact had to be evaluated from the point of view of the evolution of production, actual trade consumption, or, as the Panel had indicated, from that of the competition between domestic products and imported products, or through a combination of all or part of these elements. A second question arose in this context: could those countries which had not initially negotiated the concession with the Community be considered as having legitimate expectations from the point of view of the subsidy granted after the negotiation had taken place? This was of utmost importance because all previous Panels that had been confronted with non-violation impairment claims had dealt only with countries having legitimate expectations. A third question related to the legitimate expectation in the case of a concession granted previously for a country that had acquired rights to a concession much later, e.g., upon its accession to the GATT which had taken place after the subsidy had been granted. Another question was how, in the case of a globalization of the six concessions, should the case arise, could one give the exact figures for each one of the six tariff concessions.

The third series of questions related to the negotiating rights and also in some way to Argentina’s concerns in DS34/1: what were the exceptional conditions which might allow the CONTRACTING PARTIES to declare in application of Note 5 to Article XXVIII:1 that a contracting party’s trade on the concession at stake represented an important share of total exports, and from which percentage of exports might one consider that there was an important share, and could one regroup in a single share the total of this contracting party’s exports under the six concessions concerned? The CONTRACTING PARTIES should tell the parties concerned which reference period should be used in order to calculate the market share of each party participating in the negotiations. For the Community, it was the average of the last three years for which statistics were available. It so happened that some countries had chosen a more favourable period to them. Another problem was whether it was necessary to compensate -- and, should this be the case, how far should one compensate -- those countries which had initially negotiated the concession with the Community but no longer exported, or had exported only very little during recent years or even over the previous 20 years.

These were the questions that the Community wanted to put to the CONTRACTING PARTIES, and, of course, the list was not exhaustive. Some countries or negotiating partners might wish to flag additional questions. The reply to all these would be essential so that the Community could make a final offer in these negotiations. No-one should underestimate the importance of these questions and, above all, the answers thereto which had to be given by the CONTRACTING PARTIES, in order to allow the negotiations to progress and reach a conclusion. It was quite clear that the answers given would set a precedent and constitute jurisprudence. He recalled the statement he had made at the very outset that the Community was formally requesting the CONTRACTING PARTIES to examine promptly this issue and to submit their views to the contracting parties primarily concerned with the aim of achieving a settlement.
The representative of the United States, introducing item 8, said that the United States requested the establishment of an arbitral body to determine the total value to be ascribed to the impairment of tariff concessions in the area of oilseeds by the Community's subsidy programme (DS28/3). As the Community had itself indicated, three months of Article XXVIII consultations had thus far not revealed any discernible narrowing of the differences between the key participants in the dispute. For obvious reasons, the question which lay behind all of the disputes between the parties related directly to the value of the concession which had been found by the Panel to be impaired. The United States' proposal called merely for thirty-days' "binding" arbitration to determine the total value to be ascribed to that impairment, which would serve as the basis for concluding the negotiations and offering compensation, or as the basis for the withdrawal of concessions by the aggrieved parties. The United States asked whether the Community, as well as others, were prepared to agree to this procedure at the present meeting.

The representative of the European Communities said he had reflected on the consequences of following the United States' reasoning and accepting its seemingly simple and attractive proposal to the CONTRACTING PARTIES for an expeditious solution. It was quite clear that if one followed the proposed procedure, the first consequence would be that the Article XXVIII process which had been authorized by the CONTRACTING PARTIES would become useless and de facto be halted. Normally, when a procedure was instituted, the very least to be expected was that it was carried out to its final conclusion and that one exhausted the process up to the very end. One had to be consistent; otherwise one would come up against difficulties.

The second consequence would be that the determination by the arbitral body would in fact offer a basis for the possible withdrawal of concessions. The Community presumed that the United States wished to retaliate without the CONTRACTING PARTIES' formal authorization, and this through a roundabout process. The United States was actually asking for a blank cheque to calculate the global injury due to it, which would enable it to determine the date at which it would apply retaliation, without taking into consideration the Article XXVIII process agreed by the CONTRACTING PARTIES. This blank cheque would enable a choice of commodities to be subject to retaliation and suggest the measures to be used therefor. This was indeed a way of seeking multilateral cover for unilateral action which in fact had already been initiated. If, therefore, one was to accept the US proposal, one would in fact be accepting a dual implication: first, a non-respect for one of the obligations incumbent on a contracting party to shoulder its Article XXVIII:4(d) obligations, and second, that the CONTRACTING PARTIES would thereby in a way encourage the United States to lean on a vaguely multilateral evaluation of an injury, and would give up their responsibility to exert a certain control over the use of retaliation measures. The United States would feel encouraged to take retaliatory measures at its convenience and completely beyond any form of multilateral control. It would be difficult, if not impossible, for the Community to accept that the United States exploit so clearly its position of strength, because the Community had agreed to implement the recommendation of the Panel in this case and could not agree that the United States should receive a multilateral blessing from the CONTRACTING
PARTIES for an apparently innocent step which in fact introduced into the process the virus of unilateralism. One had to react now with the proper vaccination by rejecting the illness which the virus was beginning to propagate in the multilateral system.

He also wished to make clear that arbitration could only be voluntary, i.e., it required first and foremost that the two parties involved voluntarily agree to it. There was no obligation to accept such a procedure even though an attempt might have been made in the Uruguay Round Mid-Term Review to strengthen the present dispute settlement mechanism in that direction. It was true that in the future when the Uruguay Round had been concluded, new rules and new procedures concerning dispute settlement might include a binding form of arbitration, but only in certain specific situations and occasions. Even under those procedures, there would be, nonetheless, a counterpart obligation for the complainant that wished to resort to unilateral retaliation. Retaliation could only take place at a specific moment in the overall procedures, i.e., when the condemned party had not brought the disputed measures into conformity over a specific period of time which had been granted to it. Clearly, therefore, the arbitration procedure which might evolve in the future was there to ensure the correct application and respect of the rules which would in fact have to govern cross-retaliation. It would be absurd, in fact dangerous not to say irresponsible, to try and disassociate that particular part of the new procedures from the overall balanced package. This would be tantamount to breaking up the package and would be extremely dangerous, and he warned all contracting parties in this respect. Quite clearly, the conditions required in order to allow for retaliation were not present in the case at hand, since the condemned party had continued to implement the Panel's recommendations, and was now engaged in an authorized negotiating procedure that had not yet concluded because of the difficulties that had been explained earlier. For these reasons, the Community could not accept the proposed arbitration procedure, not only in the oilseeds case, but also more generally because of the GATT precedent it would create.

The representative of the United States regretted that he had to once again come before the Council to seek redress against the Community's oilseeds policy and its accompanying impairment of the latter's GATT obligations. No meaningful solution had been offered by it in the three years since the Panel had first made a finding in the United States' favour. This situation had now reached the point of crisis for the multilateral trading system. The time had come for all parties to this dispute -- the Community as well as other exporting countries -- to agree to a solution that respected and honoured that system.

The Community was asking the Council to consider some vague process of further debate and deliberations which could only serve to delay the search for a solution. Oilseed exporting countries, on the other hand, were recommending the only effective means of solving the problem within the GATT process, i.e., a binding arbitration to determine, once and for all, what level of damages the Community owed to the rest of the world for its subsidy scheme. This solution was fair and reasonable to all parties, and the Community's rationale for rejecting it was unconvincing. If the Council could not persuade the Community to stop suggesting further
non-solutions which would render the GATT impotent, he feared for the future of the GATT. One was now facing a test of the GATT's credibility, and the question for the Community was simple, i.e., was it prepared to let the GATT work in an effective manner in order to solve this long running and increasingly bitter dispute?

Recalling the long history of this dispute, he said that the introduction in the early 1980s of massive Community production subsidies for oilseeds had led to a sharp increase in production and immediate harm to US oilseed exporters. With the effects of the subsidies growing more and more damaging to those that had negotiated and paid for a duty-free binding on oilseeds, the United States had repeatedly attempted to gain the Community's agreement to moderate its harmful use of subsidies in this sector. It had been rebuffed in every attempt to secure relief. In late 1987, US industry had filed a formal complaint under Section 301 of the Trade Act of 1974, as amended. At that point, the United States had not used Section 301 to act unilaterally and had tried to bring the dispute to the GATT. But the Community had refused until June 1988 to allow a panel to be established. One could see that this had established a pattern of delay that persisted until the present day. In November 1989, the Panel had submitted its report to the parties to the dispute, and had upheld the United States' view on impairment.

At the time of adoption of the report in January 1990, the Community had said it would comply with the Panel's recommendations in full by the time of the 1991 crop year. Nearly two years later, in October 1991, the Community's Council of Ministers had approved a new programme for oilseed subsidies. This had fallen so far short of eliminating the impairment, however, that the United States had felt compelled to request that the original Panel rule on whether the Community's new oilseeds régime continued to impair concessions owed the United States. In its report, circulated in March 1992 (DS28/R), the reconvened members of the Panel had found "that there is no reason... to continue to defer consideration of further action in relation to the impairment of the tariff concessions.", "that the Community should act expeditiously to eliminate the impairment...", and that "In the event that the dispute is not resolved expeditiously... the CONTRACTING PARTIES should, if so requested by the United States, consider further action...". However, the Panel's findings had been publicly rejected by the Community's Council of Ministers. When the United States had told the Council in May 1992 that the Community's stance had forced it to conclude that only a withdrawal of concessions by it could remedy the situation, it had been admonished by the Community to stay within the system. Since then, the United States had tried everything in an effort to stay within the GATT rules.

On 19 June, the Community had asked for and received authorization to conduct negotiations pursuant to Article XXVIII:4 -- negotiations which offered an implied promise of a solution within 60 days. Despite its misgivings about the chance of resolving this matter under Article XXVIII, the United States had agreed to such a procedure. The Community had then squandered the first month of the negotiations through a tactical tabling of a patently unacceptable proposal -- later withdrawn -- for a tariff-rate quota which would actually have increased the impairment and damage
suffered by oilseed exporters. Its ensuing behaviour under Article XXVIII had, however, offered little promise of a real solution, and the compensation offers it had put forward had fallen so far short of its negotiating partners' expectations that not one country had been persuaded to settle.

Six months after the circulation of the second Panel report, there was still no credible proposal from the Community to settle this matter. The Commission itself had circulated a communication on 19 August requesting the CONTRACTING PARTIES to take up the matter, even though at that time one was still five weeks away from the present Council meeting. The Community was now requesting further, unfocused and indeterminate deliberations by the CONTRACTING PARTIES, a solution without a solution that would only prolong this dispute.

In sharp contrast to the pattern of delay established by the Community, the United States was asking the Council to approve the establishment of an arbitral body to determine the total value to be ascribed to the impairment caused by the Community's oilseed subsidies. This was a clean and simple procedure reflecting a desire to act wholly in accord with GATT rules and procedures, and designed to speed up the amicable resolution of the dispute. The United States proposed that the arbitral body be established subject to the following parameters and conditions: the sole issue to be arbitrated by the body was the total value to be ascribed to the impairment caused by the subsidies; the determination of the body was to be rendered within thirty days of its establishment; the body should be composed, if possible, of the two surviving members of the original oilseeds Panel, with the third member to be selected by the Director-General; and the body's determination would be binding on both parties and would become the basis for either a negotiated solution or the withdrawal of concessions, if any. The United States had come to the point of requesting binding arbitration only after having shown extraordinary patience with the Community and its tactics. It was prepared to agree to binding arbitration, and wondered whether the Community was afraid to allow the multilateral system to work.

The Community's own proposal, on closer examination, seemed designed first, to produce no result; and second, to take a long time in getting there. The Community had proposed to stifle the GATT dispute process with further deliberations. All present were aware that the Community was rejecting a neutral arbitration because it might lead to an assessment of damages higher than the paltry sum being offered by the Community. A neutral arbitration might actually force the latter to acknowledge that its subsidy régime was badly out of alignment with the GATT and had to be reformed. It was one thing to know that reforms were needed, another altogether to agree to effect them.

The United States contended -- and believed this would be supported by others involved in the dispute -- that it was not technical issues which had stood in the way of a negotiated solution. The central issue preventing an early negotiated solution, and on which the United States sought arbitration without delay, was the vast difference in the calculated value of the impairment -- US$2 billion against US$400 million.
The United States believed a relatively simple and straightforward exercise was needed to arrive at the total value of impairment, and that this was a question of the production-related effects of the Community subsidies found to be the cause of the impairment. In 1962, when the Community had agreed to the duty-free tariff bindings, total Community oilseeds production had amounted to some 300,000 tonnes per year. The United States did not contend that Community production would have remained at that level in the absence of subsidies; indeed, between 1964 and 1980, when Community subsidies had been relatively low, production had increased by about 160,000 tonnes per year. The annual rate of increase, however, had jumped sharply when the Community had introduced generous oilseed subsidies in the early 1980s. On the basis of production growth in the 1964-1980 period, the United States had concluded that, in the absence of the subsidies, Community oilseed production would be nearly seven million tonnes less than current levels. At world prices, which would have been earned by exporters to the Community, this volume of production was worth roughly US$2 billion, and this was the value of the impairment to be eliminated.

The Community's offer of US$400 million globally would, if taken in subsidy reform, only reduce Community oilseed production by less than 2 million tonnes. But the Community had not even offered this in the form of subsidy reform, choosing instead to offer the United States piecemeal concessions on various products, the total value of which was just over half of the Community's damages figure. The Community had also adopted a "divide and conquer" policy, attempting to buy off exporting countries one at a time. While others would speak for themselves, the United States found these offers almost insulting, and believed they did not go beyond the Community's minimum-access commitments in the Uruguay Round. If the Community itself had more faith in the credibility of its offers, it would not feel so threatened by the ruling of a neutral arbitral body.

The ultimate question was whether the GATT was a means of solving this serious problem or merely a means of insulating the Community from further pressure to act. The Community could not admonish the United States for threatening to act outside the system while at the same time doing everything possible to ensure that the system did not work. He asked whether it was prepared to agree to an effective means of resolving this dispute under GATT auspices, namely through a binding arbitration body, or whether it wanted to use the GATT only as a shield against any real decisions.

The representative of Argentina said that the Community's proposal was not pertinent for resolving this matter and would deviate from the fundamental issue to be settled, i.e., the level of injury caused to the others as a consequence of its subsidies on oilseeds production. Another issue that had to be settled was Argentina's status as principal supplier in certain products, which his delegation would address under the next Agenda item. The Community's proposal, apart from overlooking the problem of compensation, was not proper in that it short-circuited the problem of nullification or impairment. In view of the time elapsed since this dispute had first been brought to the GATT, Argentina considered that the Council should now adopt an expeditious procedure so as to definitively conclude this matter. In this regard, the United States' proposal to set
up an arbitration body to determine the full amount of injury and impairment caused to all concerned seemed a proper procedure. Of course, all arbitration was voluntary, but it was also clear that if arbitration was accepted, the result, i.e., the legal opinion, should be binding. The binding nature of arbitration in this case would mean that the amount of the compensation would be accepted by all and would facilitate the corresponding negotiations, since the parties concerned had not been able to reach a negotiated agreement thereon. The fact that there was no agreement yet on the mechanism for determining the overall amount for compensation had a negative impact on the credibility of the dispute settlement mechanism and, in particular, on its effectiveness for settling disputes when a mutually satisfactory agreement had not been possible through negotiations and consultations. For this reason, Argentina reiterated its support for the US proposal and hoped that the Community would adopt a positive attitude so as to permit the resolution of this problem within the legal mechanisms under the GATT. The acceptance of this expeditious procedure would confirm that there was a will to conclude these negotiations as soon as possible.

Any negotiation for the withdrawal of concessions involved difficulties and problems. Argentina believed that the mechanism proposed by the United States would be the most objective and the least hostile, because one would be seeking an opinion from a group separate from the parties directly concerned.

The representative of Brazil recalled that when the Community had proposed recourse to Article XXVIII:4 as a means of resolving this dispute, his delegation had been sceptical and had expressed concern that this would entail a long process the outcome of which no-one could ensure. However, once that decision had been taken, Brazil had engaged with a constructive spirit in the negotiation of possible compensation for the impairment. Time had elapsed, however, without any solution, and in the present situation one was faced with two proposals. One was the Community's, which more or less consisted of a fuzzy discussion on many technical aspects of the case, but in which he did not perceive any political will to solve the matter. However much one discussed technical details, it would do no good as long as the political will to solve the matter was absent. The other proposal, by the United States, called for the creation of an arbitration panel, although the juridical grounds on which it was making this proposal were not clear. Brazil did not agree with the Community that if one took up the proposal for an arbitration panel, the Article XXVIII proceedings would be immediately stopped. Nothing prevented a contracting party in its efforts to find a solution to suggest an arbitration panel as the only way which might bring the parties together. If there was good will on both sides, one could perhaps take up the US proposal and examine it in the light of Article XXVIII, thus giving a further impetus to this discussion that had been stalled for so long. Of course, if the findings of the arbitration body were used for other purposes that were spurious from a GATT point of view, his delegation would be the first to condemn it.

The representative of Canada said that as his delegation had stated on a number of occasions, Canada, as a major exporter of oilseeds, had a very strong interest in this issue. It strongly supported an early resolution
of this longstanding dispute within the GATT’s rules and procedures. Canada had engaged in Article XXVIII negotiations with the Community but had also been disappointed that agreement had not yet been possible on adequate compensation. The parties to this dispute remained far apart on the level of compensation. The Community had raised some technical questions, but had proposed no concrete methodology for resolving these concerns, while the United States had proposed a clear course of action, -- binding arbitration -- which could allow all interested parties to present their views. Canada strongly supported the US proposal and believed that further progress in the negotiations would be greatly assisted by a quick and clear determination of the level of compensation owed. At this late stage, one needed the extra certainty and predictable time-table which the arbitral process provided. Any process that resulted in further delay would be contrary to the letter and spirit of the recommendations of the reconvened members of the original Panel. Canada urged the Community to accept the establishment of an arbitration body; if such a body were established, Canada wished to be a full party to its proceedings. Finally, he reiterated Canada's desire that this dispute be resolved within the GATT process as quickly as possible.

The representative of Austria recalled that at previous Council meetings, his delegation had expressed its strong preference for a negotiated solution to the dispute at hand under multilateral guidance by the CONTRACTING PARTIES. The Council’s decision in June authorizing Article XXVIII:4 negotiations had been a good and valid one, and Austria encouraged all parties to the dispute to continue negotiations in the framework authorized by the CONTRACTING PARTIES. Austria was sceptical about proposals that would take certain aspects of the problem out of true multilateral guidance. It therefore could not support the establishment of an arbitral body to determine the value to be attributed to the impairment caused by Community oilseed subsidies. The April 1989 Decision on improvements to the GATT dispute settlement rules and procedures (BISD 36S/61) did provide, on a trial basis, for arbitration as an alternative means of dispute settlement, provided the issues were clearly defined by both parties and provided the parties had mutually agreed to have recourse to arbitration. Needless to say that these two conditions were not met in the present case.

Austria believed it would not be wise for the CONTRACTING PARTIES to delegate their right of multilateral supervision of negotiations under Article XXVIII to a small arbitration body in the far-reaching manner proposed by the United States. The number of interested parties, the importance of the economic interests involved and the difficult legal questions raised spoke in favour of the continuous and close involvement of the CONTRACTING PARTIES. Great care had to be taken not to prejudge future negotiations under Article XXVIII:4, or the results of the Uruguay Round, as far as the relation between tariff concessions and other obligations were concerned, in particularly those relating to internal support. Austria could certainly not support an arbitration body finding being used as a basis for unilateral withdrawal of concessions.

Austria’s experience with Article XXVIII negotiations had been that the question of adequate compensation could be solved only towards the end
of such negotiations. Before this, important technical questions, such as those enumerated by the Community, had to be tackled and could best be solved in the usual GATT manner by a working party acting on behalf of the CONTRACTING PARTIES and open to all. Austria urged the parties to the dispute to find a settlement, bearing in mind the far-reaching consequences which a failure would have for the Uruguay Round and for the global system. A rapid solution was not necessarily the best solution. Unilateral retaliation would not only hurt the system but might directly hurt importers and consumers in the United States without effectively redressing the oilseed producers' concerns. There was no viable alternative to a negotiated settlement.

The representative of India noted that this dispute had been before the GATT since 1988, and that in spite of having been considered by two Panels, it had eluded a solution acceptable to all parties concerned. As a consequence, the efficacy of the GATT's dispute settlement mechanism had been put to a severe test. The resulting frustration over the lack of progress in the resolution of the dispute had led to threats of unilateral measures. While there was no doubt, in India's view, that unilateral measures by contracting parties could not contribute in any manner to the resolution of disputes, it had to be underlined that unilateralism could be countered only by a smooth and credible functioning of the dispute settlement mechanism. India had noted the procedure suggested by the Community that a list of questions be submitted to the CONTRACTING PARTIES for their views and recommendations. In this context, he recalled that the reconvened Panel members had recommended an expeditious course of action by the Community, and was not sure that the latter's suggestion would lead to a quick resolution of the issue. As to the United States' proposal for an arbitral body, India's view was that the Council might set up the arbitral body pursuant to Article XXVIII:4(d). However, it should be clear that any arbitral body would be established without prejudice to the possibility of bilateral discussions continuing between the parties concerned for a mutually acceptable solution. In the final analysis, his delegation would favour a proposal designed to resolve the dispute within a finite time-frame.

The representative of Switzerland, addressing the US proposal, said that arbitration was an interesting, sure and rapid tool for settling disputes. Switzerland had been in favour of arbitration in the Uruguay Round text on dispute settlement. However, arbitration had certain specific limitations which meant it could not be used very frequently; it presupposed agreement between the parties concerned to subject the dispute to arbitration. However, as one had heard at the beginning of this discussion, this was not the case in the present situation. Switzerland was also unclear as to the legal basis for the United States' request. If the request did fit within the framework of Article XXIII:2, as had been suggested by the United States, then, in conformity with the procedures stipulated, the United States would need to submit a request for the application of retaliatory measures to the CONTRACTING PARTIES; one would then have a very specific legal framework for such action. If that were not the case, however, then one was in a far more vague situation in which there would be no guarantees, and which would require greater clarification.
As regards the Community's proposal calling for a working group open to all interested contracting parties to deal with technical matters of mutual interest, he recalled that on an earlier occasion, his delegation had voiced several material concerns with the Panel's report, particularly with the interpretation of "legitimate expectations". His delegation had expressed very precise views on this point and would be interested in taking active part in the work of such a group if it were established. He wondered, however, if the Community had envisaged a specific time-frame for the completion of this group's work. He would suppose it had in mind the deadline in Article XXVIII:4 itself, i.e., thirty days. If that were so, it would give a slightly different focus to the proposal, which had not been obvious initially. He added that, whether one liked it or not, one had to place this dispute in the overall perspective of the Uruguay Round negotiations. He appealed to the parties concerned to try and resolve this matter as soon as possible, not only in the interests of the GATT, but also in the interests of a rapid conclusion to the Uruguay Round to which all were committed.

The representative of Norway, speaking on behalf of the Nordic countries, said that they had noted with interest the United States' proposal, and had hoped that the Community would agree to pursue that course of action. As had been stated, under present GATT rules, expeditious arbitration was indeed an option. In the April 1989 Decision on dispute settlement rules and procedures, arbitration had been outlined as an alternative means for resolving disputes that were clearly defined by both parties. While the issue at hand appeared to be clearly defined, it was equally clear that there was no mutual agreement to resort to arbitration at the present time. The Nordic countries believed that binding arbitration might be a useful tool in certain circumstances, although, under present rules, there was a clearcut pre-requisite for mutual agreement. In the absence of such mutual agreement in the present case, the Nordic countries could only conclude that the procedure to follow was that outlined in Article XXVIII:4 (c) and (d). Assuming that no settlement was within reach at the present meeting, the question was how the CONTRACTING PARTIES, within a reasonably short time -- indeed within thirty days according to Note 4 to Article XXVIII:4(d) -- could determine the adequacy of the compensation. The Article XXVIII route gave other interested parties a possibility to follow more closely the issue at hand as it might have wider implications for the future interpretation of GATT obligations. While the Nordic countries saw certain merits in the procedure suggested by the Community, they had an open mind on how to proceed. They urged the parties primarily concerned to continue to strive for a quick settlement, and believed this would also contribute positively to the Uruguay Round process. If the parties were not able to agree, however, it was clear that the CONTRACTING PARTIES would have to assume their responsibility.

The representative of Uruguay said that the United States' proposal was an appropriate procedure to settle this dispute which had lasted far longer than necessary. In Uruguay's view, this issue should be resolved between the parties principally concerned. The possible establishment of an arbitral body could be taken as a step on the part of the CONTRACTING PARTIES to enable the parties concerned to reach a mutually satisfactory
solution. Uruguay also believed it was indispensable that the Article XXVIII negotiations be resumed without further delay, not only for the parties involved, but for the credibility of the GATT itself. If an arbitral body were established, its mandate should be very precise and limited in scope. This would make it possible to arrive at an appropriate calculation of the total value of the impairment of the trade in the products concerned within specific limits.

The representative of Hungary said that his Government continued to be guided on this issue by two equally important and basic considerations: first, that commercial interests of Hungarian exporters to the Community should be safeguarded; and second, that a negotiated solution should be found between the parties to the dispute which would also best serve the short- and the long-term interests of the multilateral trading system. As regards the first consideration, Hungary recognized that it was not a key actor in this process. However, in one particular oilseeds product, his country had a substantial interest as supported by statistical evidence. In addition, trade interests of Hungarian exporters might be significantly, and in certain cases adversely, affected as a result of compensation offered by the Community in Article XXVIII negotiations to the interested parties on products other than oilseeds. Hungary noted with regret that it had not thus far received any clear indication or reaction from the Community to the concerns it had expressed in this respect.

As to the other consideration, it was Hungary's strong hope and belief that the settlement of this complex issue should remain within the framework of GATT rules and procedures and should in no way compromise the prospect of an early and successful conclusion of the Uruguay Round. Hungary had noted that the Community's approach would fit into the logic of the already-started Article XXVIII negotiations, and would address a number of certain important aspects which had arisen in the course of those negotiations. At the same time, there might be a risk that the proposed procedure would be time-consuming and that agreement on some issues -- each important on its own -- might be made dependent on the solution of others. The US proposal for binding arbitration might be justified on the grounds that it would concentrate on one of the key issues, the lack of agreement on which had most prevented a negotiated solution to the dispute. His delegation noted the United States' re-affirmation that regardless of the outcome of the deliberations of the proposed arbitration body, and even during its work, the United States would continue negotiations with the Community to arrive at a mutually satisfactory solution. He re-emphasized Hungary's interest in an early and mutually acceptable solution to the dispute which also took account of its concerns. His delegation was willing to cooperate with others in finding the best possible procedural steps to be taken.

The representative of Pakistan recalled that at the June Council meeting, his delegation had stated that there appeared to be a ray of hope that this dispute, which had continued to create friction in the multilateral trading system and had threatened to impact negatively on the prospects of the Uruguay Round, would at last be closed. It was with this hope that his delegation had viewed the Community's request for authorization to hold Article XXVIII:4 negotiations in a positive light.
Unfortunately, that hope had not been fulfilled. As a contracting party with initial negotiating rights for some of the concessions proposed for modification, Pakistan approached the three rounds of negotiations with the Community in a constructive manner and in the spirit of reaching a mutually satisfactory solution within the time-frame stipulated for Article XXVIII:4 negotiations. Regrettably, however, Pakistan did not receive a constructive or satisfactory response to its endeavours. The Community's last offer for compensatory adjustments did not contain a single item of interest to Pakistan, and no response had been offered either to its own proposal which, he emphasized, had been made in a very constructive spirit. This had, in fact, led to questions about the utility of initial negotiating rights.

In this connection, he wished to draw attention to a problem that continued to affect the GATT system in such a manner as to shake the confidence of the weaker partners in its efficacy. Without a doubt, the bargaining process in the GATT was based on an implicit recognition of the capacity of the parties to retaliate or to reciprocate concessions. The developing countries' bargaining, let alone retaliatory, power was admittedly limited. However, their continued faith in the credibility of the trading system and its ability to respond to their requirements was essential to its maintenance and harmonious development. From that point of view, a major trading entity like the Community had a special responsibility. Pakistan hoped that the Community would live up to its responsibility and fully take into account the interests of the weaker partners in any compensatory adjustments. Pakistan recognized the magnitude of the problem between the Community and the contracting parties primarily concerned, and continued to hope that, through mutual understanding and constructive discussions, a solution could be found.

One of the problems besetting these negotiations had been the wide divergence of views on the extent of nullification and impairment. Pakistan had hoped that at the present meeting this central issue would have been addressed by the CONTRACTING PARTIES and a pragmatic, effective and expeditious procedure found to address it. Unfortunately, the proposals made by the Community did not go far in that direction. Pakistan found the US proposal to be pragmatic. It believed that if the terms of reference for the proposed body could be so formulated as to protect the interests of all the concerned parties including those contracting parties which had initially negotiated the concessions but had now found their trade completely deflected mainly due to the problems created by the Community's policies, it could be acceptable. Unfortunately, that did not seem to be possible. Therefore, one would have to rely on the collective wisdom and judgement of the CONTRACTING PARTIES to come to a common view on a mechanism that would be pragmatic, effective and expeditious.

The representative of Japan said that his delegation was disappointed over the apparent lack of progress to date in the XXVIII:4 negotiations authorized by the CONTRACTING PARTIES at the June Council meeting. This issue involved both the rights and obligations of the contracting parties directly concerned, and the credibility of the multilateral trading system. For this reason Japan believed it important that an amicable solution be found within the GATT as early as possible. In order to expedite the
process and to maintain the GATT's credibility, if the parties directly concerned were unable to arrive at a solution quickly, it would be useful for them to seek the views of an impartial body. In this context, Japan had noted with interest the US proposal for arbitration. At the same time, Japan recognized that the oilseeds question was a very complex one, and could understand the difficulties faced by the Community.

With regard to the reference in the United States' proposal that the arbitral process could provide a "basis for the withdrawal of concessions, if any" Japan believed that this was a different issue because under Article XXIII, the withdrawal of concessions required separate authorization by the CONTRACTING PARTIES. He wondered whether the US proposal could be made more interesting from the Community's point of view if the Article XXIII aspect thereof was somehow separated. With regard to the technical questions raised by the Community, Japan wished to reflect further on them, but wondered at this stage whether questions of that sort could not be addressed in an impartial body. With regard to concerns over the US proposal to include two persons from the Panel on this dispute in the arbitral body, Japan wondered if such arbitration would be more acceptable to the Community if other qualified people were to be found. Japan also had some doubts about picking and choosing certain elements of the Uruguay Round Draft Final Act; it was probably useful to have a fixed time-frame for resolving this issue, but it should be possible to find a time-frame that was not too long, but not necessarily fixed to thirty days in this context. With regard to compensation, although the United States' suggestion seemed to concentrate on the compensation due to it, Japan believed that the amount of multilateral compensation and not only bilateral compensation should be looked at. In conclusion, Japan believed that arbitration required the prior consent of the parties immediately involved; however, with certain modifications and improvements, the proposals presently on the table might make it possible for the parties involved to come to some arrangement through which they would be able to seek the views of an impartial body to expedite the solution.

The representative of Chile said that his delegation shared the concerns of the United States and of other oilseed exporters affected by the Community subsidies. Chile supported the United States' request for setting up a binding arbitration body which would determine the amount of compensation to be offered by the Community to the countries affected, and hoped that the matter could be resolved as soon as possible.

The representative of Poland recalled that his Government had consistently emphasized its vital interest in the matter as a result of its position as a principal supplier of two oilseed items, namely colza and rapeseed cake. Poland had entered into bilateral consultations with the Community with the objective of agreeing on a fair compensation for the prejudice caused by the Community subsidies to Poland's oilseeds sector. His delegation noted with concern that the results of the negotiations thus far had been disappointing. Under the circumstances, Poland would oppose any option which could lead directly to retaliatory measures by one of the parties involved because this presented a risk of further counter-retaliatory measures in response. Poland also urged the Community to make more efforts to resolve this dispute in a manner satisfactory to all, and to bring its domestic regulations into line with GATT rules.
The representative of Korea said that while Korea had no direct interest in this dispute, it had some concerns. The issues involved -- namely, the non-implementation of panel reports and the possibility of unilateral action -- were all typical symptoms of the present-day GATT. Korea was concerned also that the dispute would affect the Uruguay Round negotiations. It had noted that the results of the Article XXVIII:4 negotiations had been short of what had been hoped for. However, given the importance of this issue to all contracting parties and its possible adverse effect on the Uruguay Round, Korea continued to strongly favour a negotiated solution within the GATT. In this context, it supported the US request for the establishment of an arbitral body. In so doing, Korea was pleased to note the United States' willingness to continue bilateral negotiations with the Community with a view to reaching a solution regardless of the outcome of the arbitration, and even while that body was in progress. Korea noted that the major issue in the Article XXVIII negotiations was related to the value of nullification and impairment; that being so, the proposal for an arbitral body seemed reasonable and in line with what was being agreed to in the Uruguay Round text on dispute settlement.

The representative of the Philippines, speaking on behalf of the ASEAN contracting parties, said that they had an interest in finding a satisfactory solution to this issue. They had noted the US request for the establishment of an arbitration panel and, while there were legal implications therein insofar as binding arbitration was concerned, believed nonetheless that it warranted urgent consideration. They believed that contracting parties should be able to expect relief in connection with justifiable complaints they raised in GATT. In this regard, they commended the United States for its decision to abide by the multilateral dispute settlement process, despite the latter's view that the Community had employed delaying tactics. The ASEAN contracting parties believed that this was the only viable alternative to unilateral action and hoped that the United States would continue to take this approach not only on the present issue but on others as well.

The representative of New Zealand said that, like others, New Zealand was deeply concerned that this issue remained unresolved despite the negotiations that had continued during the summer break. While New Zealand was not an oilseed producer, its interest in this question was systemic, and reflected its concern over the credibility of the GATT's dispute settlement mechanism, and that a dispute of such magnitude that it could affect the outcome of the Uruguay Round. New Zealand considered that a satisfactory resolution of the dispute was urgently required and was pleased that the dispute had been managed with restraint at the present meeting; it hoped that it would continue to be managed in that way. But restraint in this context meant two things: on the one hand, it meant refraining from unilateral action outside the GATT rules and showing a certain degree of patience; on the other, it meant responding to GATT decisions with due speed so as to deliver an effective result. It had to be recalled that there had already been two panel findings on this case which had run for several years. The US proposal for binding arbitration seemed a sensible one, and New Zealand would have liked to have heard more forthcoming responses. No-one wanted to see this issue being escalated and
time was running out to resolve it. New Zealand recognized the great political difficulties involved, but urged all parties to intensify their efforts over the coming days to reach a mutually acceptable solution. Failure to do so could have adverse consequences for all.

The representative of the European Communities said he could understand the disappointment and frustration that had been expressed. He noted that some representatives had said that the Community had proposed a working group. However, the Community had not proposed such a group, because in the present state of the discussions on this issue any suggestions on its part would be immediately looked at with suspicion. While the working group technique might be the right one to adopt, it would involve the participation of the Community and other parties to the dispute, with the risk of paralysing any conclusions because no consensus would be possible. A working group would no doubt be the right solution and one which respected the rights and obligations of all contracting parties, but one had to recognize that it might not be able to match, in the present circumstances, the urgency and importance of finding a solution. However, if such a group could be agreed to, the Community could make some suggestions to speed up its work, such as by requiring it to work towards a solution within thirty days. However, such a group would just be like a Tower of Babel, as one could see from the inconclusive discussion one had had at the present meeting. Therefore, a solution had to be found. The Community had put a proposal to the CONTRACTING PARTIES, but they appeared incapable of providing an answer.

Since all were in an impasse, the Community would try to help out. He confirmed once again that the Community could not accept the US proposal for arbitration. Nevertheless, if the United States was acting in good faith, it would also join in the search for a rapid and expeditious solution. If the working group solution was perhaps not the most effective tool, then the CONTRACTING PARTIES had to exercise their sovereign decision-making authority, because rapid and independent answers to the real questions raised by the Community were needed, including those involving the value of the injury and initial negotiating rights. As to Argentina's question in this respect, if there were to be no working group with all the inherent defects, then some other body might be established, perhaps made up of independent parties, i.e., those that were not involved directly in this dispute, such as for example Secretariat officials. Such a group should be kept small, however, or else it would not work. While the CONTRACTING PARTIES would still retain their sovereign decision-making rights, the independent group might provide a number of answers and clarify certain issues. The Community, he stressed, was not at all trying to use delaying tactics. While it could understand the US position, it believed the latter's proposal was wrong and might even work against itself. He proposed that the Council suspend discussion on this matter to permit informal consultations among the parties concerned in order to try to arrive at a solution.

The representative of the United States, responding to the Community's statement that the CONTRACTING PARTIES appeared incapable of formulating a response to its request, said that his delegation had found very clear answers in many statements on this item. For example, Argentina had said
that it fully supported a proposal for arbitration, one which would provide a speedy solution within the GATT rules and procedures; Hungary, that the US proposal had the benefit of concentrating on the core issues in the dispute; Pakistan, that the Community had offered nothing of value to it and that the proposal for arbitration was a sensible proposal, pragmatic and effective; Canada, that it strongly supported binding arbitration; India, that this would allow a smooth and effective functioning of the GATT process. Statements of such support had been heard also from numerous other delegations, including Korea, ASEAN, New Zealand and Japan. A few had also expressed reservations, the main one being that arbitration had to be agreed upon by the two parties. He did not disagree with them and recognized that this process could only work if the Community agreed to it. The problem, however, was precisely whether the Community would agree to it. If it did, he assumed that those that had expressed reservations would also agree to it. His delegation suggested to the Community, therefore, that the issue was whether it could or could not agree to a reasonable and binding process. The Community's own proposal was something that was even more vague, and nebulous and fuzzy than a working party, which would simply tie the contracting parties down in even more technicalities and disagreements than the ones in the current bilateral discussions. In conclusion, he would point out that at every step of this dispute the United States' efforts to find an appropriate solution had been frustrated. Under those circumstances, the United States could not see how one could ever arrive at a negotiated solution to the problem, when one party refused to give its consent to any means of resolving it. His delegation was unable to tell its authorities that the GATT’s dispute settlement process had shown the way to a final resolution of this problem. It did not expect the Council to authorize the United States to take counter-measures, since this would require the Community’s consent, and that was not going to happen. He asked what the United States and other exporting countries were expected to do to finally remedy the problem, if matters were left as they currently stood.

The representative of the European Communities recalled that he had not proposed a working group because even if it had been an attractive proposal to his authorities, it might not necessarily have been so to others in the Council. Others were probably right in that a working group in this instance would not respond to the sense of urgency of the situation. His delegation had proposed something much more flexible, because agreement had to be reached amongst the parties concerned, and one could not continue to discuss this matter endlessly in the Council with so many participants. He had therefore proposed that, in order to avoid the inconvenience of a working group, moderate the debate and provide a more serene atmosphere, the parties directly concerned -- such as, for example, the United States, Argentina, the Community -- should not be members of any such group. That group should not be open-ended, in order that things worked smoothly. And one did not need to fall into the trap of selecting the members of such a group. He had himself suggested that some Secretariat officials could serve on the group, and also that the group be given thirty days to come up with answers to all the questions raised, i.e., the assessment of damage, Argentina’s and Pakistan’s questions, and those of the Community raised at the outset of the meeting. He felt that
if the right persons with experience and with no direct interest in the matter were in that group, it should be possible to find a solution.

The Chairman, in reply to the United States' question about what it and other exporting countries could do in the circumstances, said that the CONTRACTING PARTIES did not appear to be in a position to provide an answer at the present meeting. The Community had asked the CONTRACTING PARTIES, under Article XXVIII:4(d), to promptly examine the matter referred to them and submit their views to the contracting parties concerned. The Community's proposal for an examination by the CONTRACTING PARTIES that would lead toward a solution for the concerned parties obviously did not seem, on the basis of the present discussion, a very feasible proposition. It had, however, been suggested by some that it should be on the basis of a working party, but some reservations had been expressed in that regard. Nevertheless, it seemed to him that there was an obligation for the CONTRACTING PARTIES to respond. The issue was whether the CONTRACTING PARTIES would put themselves in a position to discharge this obligation. That would depend on what kind of an attitude was adopted by the CONTRACTING PARTIES. Given the way business was conducted in the Council, it was quite possible that this would lead to no result. Some representatives had expressed concern that this dispute put the entire multilateral trading system at risk because, if the dispute settlement system did not work it would bring the system itself into disrepute, leading to its possible breakdown and failure. There was thus an obligation on the CONTRACTING PARTIES to ensure that the multilateral trading system was not adversely affected as a result of the working of the dispute settlement system.

It had not been possible to build consensus over a possible course of action -- namely arbitration -- suggested by the United States. There had been a suggestion by the Community for a group to assist the CONTRACTING PARTIES, although its terms of reference and composition had not been spelled out. It was not clear to him at this stage how the dispute could be resolved. As Council Chairman he believed he had an obligation to see that the Council did not do anything that would lead to a breakdown of the system, and he accordingly suggested that informal consultations be held to see whether the CONTRACTING PARTIES could make recommendations that would result in the resolution of this dispute within a finite period of time. He would be available for this purpose if it would help.

The representative of the United States said that his delegation was always ready to seek a means of resolving this problem, and would not object to any form of urgent consultations. He wished to make clear, however, that there were no pre-conditions attached to its willingness to enter into such consultations. If the Chairman wished to hold urgent consultations that same evening, his delegation would be agreeable to it. His delegation was willing to look at the Community's proposal and meet with whomever the Chairman wanted to invite to see if before the end of the Council meeting some broadly acceptable solution could be worked out.

The Chairman said he would be willing to hold such a meeting, although he did not know whether it would be fruitful. While the Council could revert to this item at the end of its meeting on the following day, he was
not sure whether the Community wished to pursue the issue it had put before the CONTRACTING PARTIES, or whether it had taken it that the CONTRACTING PARTIES had not been able to give it a response at the present meeting.

The representative of the European Communities said the Community was at the Chairman's disposal. The Community would have been happy to have been able to find a solution at the present meeting, but it recognized that consensus was required for an agreement.

The representative of Brazil recalled that although his country was not the main contending party in this matter, it had a substantial interest therein. From the present discussion, it appeared that apart from the individual interests involved a lot more was also at stake. Many representatives had addressed this subject from the systemic point of view. All had also expressed concern with the future of the Uruguay Round, which apparently hinged a lot on the outcome of this discussion. His delegation supported the Chairman's suggestion of holding urgent consultations. Some useful ideas had been aired in the discussion, such as those by Japan, which could be explored to see if a satisfactory solution could be reached. He believed there was a consensus that the issue was too important to be left to another merciless duel. He therefore strongly supported the idea of having urgent consultations and, if possible according to the rules of procedure, of having another Council meeting in the next ten or fifteen days.

The representative of Argentina said that if it were not possible to resolve this problem at the present meeting, the Council should meet again to do so, but in less than a week's time.

The Chairman suggested that an attempt be made to find a solution without prejudice to any contracting parties' views on the matter by holding urgent consultations, and that the following day the Council could return to this item and also decide then whether to suspend the present meeting and resume it later when differences had been resolved.

Discussion on this item was then suspended to permit informal consultations aimed at searching for a consensus.

Upon resumption of the discussion, the Chairman said that consultations had been held between the two principal parties since the previous day. He intended to hold further informal consultations to see what was needed to find a solution, if at all possible, and if not, to see how to conclude the debate on these items in an orderly fashion.

The representative of the United States said that since the Council would revert to these items later in its meeting, he wished to make a preliminary comment to clarify his Government's position. He reiterated the United States' insistence upon an effective procedure to determine once and for all whether the Community intended to take measures to implement the Panel report on this matter and, if it failed to do so, whether the aggrieved parties had a right to withdraw or suspend concessions. The United States remained firmly convinced that this was the only way to bring an end to this sorry episode in the GATT's history which had serious
implications for its credibility and the dispute settlement system. The US request for an arbitration procedure remained on the table. Recently circulated Press reports had implied that the United States was willing to compromise and agree only to some more loosely structured working group with no real power to arbitrate the parties' rights and obligations. These allegations were inaccurate. The United States would not agree to a flawed procedure with a weakened mandate; the Community had made certain vague proposals earlier in the debate to establish such a procedure, but thus far his Government found them seriously deficient in generating an ultimate solution to the problem. The United States would not agree to continued suggestions of non-solutions. In the interests of making absolutely clear what it would accept, it had clarified its proposal for a special group to arbitrate the issue of damages and also to resolve any questions relating to various parties negotiating rights. It was clear from its proposal that the United States would only support a process which once and for all advised the Community as to what it had to do to implement the Panel and, if it failed to do so, to grant other parties the right to impose counter-measures. The United States had fully clarified its proposal to the Community and other interested parties, and was willing to wait until the following day at the latest to hear whether the Community would agree to such a procedure which would allow it to abide by its GATT obligations.

The Chairman expressed regret that certain inaccurate reports regarding this issue had made their way into the press and suggested that ways should be found to ensure that this did not happen in future.

The representative of the European Communities reminded the Council that the Community had a formal proposal on the table that the CONTRACTING PARTIES promptly examine the matter referred to them and submit their views to the contracting parties primarily concerned with the aim of achieving a settlement, in accordance with Article XXVIII:4(d). In addition, the Community had made clear that it was prepared to enter into a process to see whether one could deal with the United States' proposal for binding arbitration, which the Community had not been able to accept, in order to address rapidly the issues within a reasonable time scale. The Community had also agreed to revert to this item before the end of the present meeting to see whether there was a basis for proceeding which went beyond the Community's proposal. That proposal had to be the anchor in the sense that one was in an Article XXVIII negotiation which provided a very clear procedure to follow. The Community was willing to see, to the best of its ability and in good faith, whether over and above that one could put together a structure that expedited this process, as all wished.

Discussion on this item was then suspended until the following day.

Upon resumption of the discussion, the Chairman said that he had continued his consultations with a view to seeing whether one could break the impasse and enable the CONTRACTING PARTIES to discharge their obligation under Article XXVIII:4 by submitting their views on the issues placed before them by the Community. He called on the principal parties on this issue to inform the Council of where matters stood.
The representative of the European Communities said that the Community had substantial difficulties with the United States' proposal. It believed that the process of binding arbitration just did not fit into the procedures on which it had embarked. In the informal consultations, the Community had looked again at this issue and at some variants thereof to see whether in one way or another one could explore these ideas while staying within the framework of Article XXVIII:4. Although there was a lot of willingness on the Community's side to see how this could be done, it did not appear at this stage that the ideas the Community had developed were such that they might be acceptable to the United States. For its part, the Community had already made clear that the United States' ideas were not acceptable.

He noted that the Community had brought this matter before the Council under a specific provision, namely Article XXVIII:4, and after it had exhausted the provision in paragraph (a) thereof, and since (b) unfortunately did not apply, it had had to move on to paragraph (c) and refer the matter to the CONTRACTING PARTIES. Under Article XXVIII:4(d), it was incumbent upon the "applicant contracting party" -- the Community in this case -- to refer the matter to the CONTRACTING PARTIES if an agreement had not been reached within sixty days. The Community had done so and was therefore now in a situation where the matter was squarely in the CONTRACTING PARTIES' hands. Surprising though it was, Article XXVIII:4 had had very little currency in the GATT's daily business and it had to be recognized that as of the present moment one had not found an answer to the question of how to assist the CONTRACTING PARTIES in giving the needed advice in order to proceed further. This was not the first time that on a first attempt in the Council it had not been possible to find an answer to a specific problem. The Community had not at this point in time been able to agree with the United States on a mechanism that would allow the CONTRACTING PARTIES to discharge their obligations under Article XXVIII:4(d). The Community was anxious to resolve this dispute and do so quickly, but it could not turn the GATT on its head to try and get there. The Community remained at the Chairman's disposal to seek a solution to this issue. It would be necessary for these points to be inscribed on the agenda of the next Council meeting, although in the interim one would have occasion to see whether the matter could be taken further.

The representative of the United States said that the Community had given its verdict that it was not prepared to accept any concept of binding arbitration. There came a time in a meeting when one was forced to acknowledge that one's proposal would not be accepted, and his delegation realized that the Council was not going to act on its request. He regretted that the Community had taken the position it had. The Community had asked the CONTRACTING PARTIES to act, but it had effectively blocked any such action. The GATT still found itself in a state of crisis over the problem of agriculture and a solution was needed. The United States remained prepared to negotiate with the Community but time was running very short. He asked the Community to come forward with fresh proposals to address the legitimate expectations of its trading partners and to prove to them that it had sought recourse to Article XXVIII as a means of offering solutions rather than as a shield against their rights. Like the Community, the United States was also anxious to solve this terrible
dispute. His delegation agreed that in light of the Council's inability to reach any result at the present meeting, these items should be on the agenda for consideration at the next Council meeting, but wished to re-emphasize that the United States felt this problem had to be addressed by the Community urgently.

The representative of Brazil recalled that his delegation had strongly supported the Chairman's efforts to try to find a solution to this matter within the multilateral system. When the Community had sought authorization to negotiate under Article XXVIII:4, it had been pointed out that recourse to that Article had the advantage that it brought the process under multilateral control. After the impasse at the present meeting, his delegation was very concerned that the whole issue might now be taken out of the multilateral sphere. He expressed regret that it had not been possible to work flexibly and with the system in mind in order to find a solution to this matter. The Community had indicated in August that it intended to pursue negotiations actively with a view to achieving a prompt solution; that solution, however, was still nowhere in sight. He therefore asked the Community to indicate when it intended to renew the negotiations with all the interested parties. He added that although the United States might be the principally interested party, others were also very interested in this matter.

The representative of Argentina said that his Government had interpreted the authorization granted to the Community at the June Council meeting for renegotiating concessions under Article XXVIII:4 in the sense that this would be implementing the recommendations of the follow-up Panel report. Since the time of that authorization, as had already been indicated, more than sixty days -- the period normally allowed for the completion of such negotiations -- had passed. While Argentina would have wished these negotiations to have reached a mutually satisfactory solution, this had not been the case. The multilateral mechanism therefore had to be allowed to come into play now. In Argentina's view, the General Agreement set out clearcut procedures which allowed for settling disputes even under Article XXVIII. It was quite clear that the April 1989 improved rules for dispute settlement provided for the interpretation of the application of these rules by the CONTRACTING PARTIES, whether this was through panels or through arbitral bodies. He emphasized that the utmost effort had to be made to reach a negotiated solution. If that were not possible, then the party concerned had to shoulder its responsibility and allow the multilateral system to function by enabling the CONTRACTING PARTIES to reach the necessary conclusions.

The representative of Uruguay said that his delegation also regretted that it had not been possible to reach an agreement within the multilateral framework. Nonetheless, it believed that every effort continue to be made in order to arrive at a negotiated solution. Having said this, Uruguay had been surprised that the Community, in raising its technical questions at the outset, had expressed doubts as to, or even challenged, a GATT principle such as the right to compensation for a party which held initial negotiating rights. This was tantamount to ignoring the contribution made by a party when it made a concession which constituted the very basis of
the whole system. Compensation had obviously to be provided to such parties in the event of a modification of the concession concerned.

The representative of Canada noted the Community's statement that under Article XXVIII:4(c) it was incumbent on the Community as the "applicant contracting party" to bring this matter to the CONTRACTING PARTIES. It would seem to him that it was also incumbent on the Community to make sure that under paragraph (d) of that Article it allowed and assisted the CONTRACTING PARTIES in reaching the point where views could be expressed to the parties involved to bring about a speedy solution. Those who had been trying to negotiate with the Community on this issue had not been convinced that the Community was interested in moving promptly. Like Brazil, Canada hoped that the major parties involved in this dispute would not forget the other interested parties, and that one would continue to look for a solution to this vexing problem within the GATT framework.

The representative of Hungary said his delegation fully shared Brazil's concerns. It strongly favoured an early negotiated settlement to this dispute and one which would be reached within the GATT's rules and procedures. His delegation urged the parties primarily involved to make every effort to resolve this matter.

The representative of Poland said that his country was directly affected by this dispute, and regretted that no solution seemed to be forthcoming, at least in the short-term. Clearly, the GATT had to search for a compromise that would take into account all the legitimate interests. Meanwhile, he strongly hoped that in the search for a compromise arrangement, the doors would not be shut to bilateral contacts with those primarily affected by the case.

The representative of Pakistan regretted the situation brought about by the present impasse. A large majority of contracting parties found themselves in a helpless situation as a result. He hoped that this helplessness would be matched by an equal sense of responsibility on the part of the major players for the trading system, and that inflexibility would not be allowed to stand in the way of the functioning of the system. He reiterated Pakistan's concern as holder of initial negotiating rights on some of the concessions being proposed for modification, and associated itself with Uruguay's remarks in this respect.

The Council took note of the statements and agreed to revert to these two items at its next meeting.

The Chairman said that he would be available for any consultations that the parties principally involved in this dispute might want to carry out with a view to seeing whether this impasse could be broken.

The Council took note of the statement.
9. Negotiating rights of Argentina in connection with the renegotiation of oilseed concessions by the European Communities

- Recourse to Article XXIII:2
- Communication from Argentina (DS34/1)

The representative of Argentina recalled that at the June Council meeting, his delegation had proposed that the report of the reconvened Panel on the oilseeds question be adopted, that the renegotiation of oilseeds concessions as requested by the Community be carried out so as to provide compensation for the nullification and impairment due to the Community's domestic subsidies, and that the negotiating rights of Argentina as principal supplier in accordance with Note 5 to Article XXVIII:1 in Annex I of the General Agreement be recognized. On this latter point, his delegation had indicated then that it would be making a written presentation to the Community. This had been done on 1 July 1992.

Article XXVIII:1, including Notes 4 and 5 thereon, stipulated that a principal supplying interest could be determined by the CONTRACTING PARTIES. The practice in Article XXVIII negotiations thus far had been that an "applicant contracting party" would recognize the claims of any contracting party that considered it had a principal supplying interest or a substantial interest in the concessions in question, and that such recognition would constitute a determination by the CONTRACTING PARTIES. This practice had been confirmed in paragraph 4 of the Procedures for Negotiations under Article XXVIII adopted by the Council on 10 November 1980 (BISD 27S/26).

His delegation had, therefore, not insisted at the June Council meeting on the recognition of its principal supplying interests in the oilseeds concessions that were to be renegotiated, on the understanding that it would be possible to arrive at an agreement with the Community on this point. However, in consultations held with the Community thus far, it had not been possible to reach such an agreement in respect of soyabean and soyacakes -- tariff items 1201.00.90 and 2304.00.00, respectively. Argentina's exports to the Community of these products constituted a major part of its total exports, and therefore met the condition for the determination of principal supplying interest stipulated in Note 5 to Article XXVIII:1. The Community had only recognized Argentina's interest as principal supplier for sunflower seed cakes. He noted that in the period 1989 to 1991, exports of the products for which concessions were being renegotiated had represented 15 per cent of Argentina's total exports in value terms. The Community had absorbed 62.5 per cent of that total.

Figures for soyabean and soyacakes -- the products for which Argentina had claimed principal supplier rights -- showed that in the case of soyabean, the Community had absorbed 78 per cent of Argentina's total exports of this product in value terms for the period 1989 to 1991; the corresponding figure for soyacakes had been almost 51 per cent. Exports of both these products to the Community had represented on average 8.95 per cent -- 4.30 per cent for soyabean and 4.65 per cent for soyacakes -- of Argentina's total exports in value terms for the same period, while in 1991 alone that figure had been 12.85 per cent.
Argentina believed, therefore, that the conditions for determination of principal supplier interest stipulated in Note 5 to Article XXVIII:1 had been met. At the same time, Argentina had met the requirements established in the understanding negotiated in the Uruguay Round in regard to Article XXVIII (MTN.TNC/W/FA, pages W.1 and W.2). In other words, Argentina was a contracting party that had the highest ratio of exports affected by the renegotiations of the concessions of the two products concerned, in relation to its total exports in the period 1989 to 1991. Argentina would point out that the this understanding on Article XXVIII had been used by the Community, in its attempt to renegotiate the concessions, in its proposal to Argentina for calculating the amount of compensation which, in Argentina's view, corresponded to the withdrawal of the concessions concerned.

Argentina requested the establishment of a panel to examine its claim because it had proved impossible to reach an agreement on this matter in sixty days of Article XXVIII consultations with the Community, taking into account the guidelines adopted in 1980 to which he had referred earlier. Argentina considered, therefore, that a benefit accruing to it directly or indirectly under the General Agreement was being nullified or impaired as a result of the conditions stipulated in Article XXIII:1(c). He noted that the April 1989 Decision on improvements to the GATT dispute settlement rules and procedures (BISD 36S/61) clearly established in Paragraph A:1 that "contracting parties recognize that the dispute settlement of GATT serves to preserve the rights and obligations of contracting parties under the General Agreement and to clarify the existing provisions of the General Agreement...". Since the Community had not recognized Argentina's principal supplier interest for the two items referred to earlier, Argentina felt it necessary that the CONTRACTING PARTIES should determine this interest in conformity with Article XXVIII:1, on the basis of the specific situation set out in document DS34/1. For these reasons, Argentina requested that a panel be established to examine the question referred to in DS34/1, and to make such findings as would assist the CONTRACTING PARTIES to determine Argentina's status as a contracting party with a principal supplier interest in accordance with Article XXVIII:1. Given the delay which the renegotiations of oilseed concessions with the Community had implied, Argentina believed it necessary that the Panel's work should be carried out with urgency, taking into consideration the provisions of Paragraph F(f)(5) of the April 1989 Decision. Argentina hoped that the Community would agree to this request at the present meeting. If this were not the case, Argentina requested that the panel be established at the following meeting, in accordance with Paragraph F(a) of the April 1989 Decision.

The representative of the European Communities said that in the discussion on Items 7 and 8, the Community had alluded to Argentina's proposal. The Community had offered to ensure that Argentina's concern was properly addressed in the context of the solution being sought in the wider context of the oilseeds Panel report. It had also addressed the issue in point 4 of a communication circulated to contracting parties at the beginning of the discussion on Items 7 and 8 (L/7096). The Community had therefore clearly noted the point made by Argentina, and was willing to address it. It was perfectly right and proper for the Community to take
this path, and it did not think, therefore, that there was any merit in further discussing this issue at the present time. In any event, the Community was not willing to accept the establishment of a panel on this matter at the present meeting. The Community was involved in a process which it believed would offer a way of resolving this issue and it wished to continue working along those lines. Given the state of play, he reiterated that there would be little merit at present in pursuing this matter in the Council.

The representative of Argentina said that his delegation had simply raised the question of whether it had the status of principal supplier on the products in question, and whether this status gave it negotiating rights under Article XXVIII:1. While the Community had said that it would address Argentina's concerns in the wider context of the oilseeds Panel report, it had not recognized Argentina's rights on the matter. Argentina did not want this right to be recognized in January or February 1993; the matter was urgent because a negotiation was underway. There was a difference of opinion between the two parties concerned, and it was relevant that a panel should determine whether Argentina had this right or not. This was a matter of interpretation of the rules; it did not in any way involve substance, but rather the status which Argentina had in the renegotiations. For this reason, Argentina believed that this matter should be disassociated from the rest of the discussion on the oilseeds issue, and determined by an impartial group, i.e., a panel. Argentina suggested that the Council revert to this request at its next meeting. If the matter were not resolved until then, Argentina would have a right to the panel, in accordance with the April 1989 Decision. Argentina had no hostility towards the Community, nor did its request involve a matter of substance, but it merely wanted to resolve the question of whether it had the status it claimed, or not.

The representative of the United States said it was clear to his delegation that under the April 1989 Decision, any contracting party had the right to the establishment of a panel on this matter, unless the Council decided otherwise by consensus. In addition to supporting Argentina's request as a matter of principle, it appeared to his delegation that Argentina's claim merited consideration. The United States would support Argentina's request for a panel if the latter maintained that request.

The representative of Mexico said that his delegation fully shared Argentina's concern. Although this matter specifically involved Argentina, his delegation believed that all contracting parties were concerned. This appeared to be the first time that a contracting party had made a request for a determination of principal supplying interest on the basis of the Note 5 to Article XXVIII:1. As Argentina had indicated, this interpretative Note had been further clarified in the course of the Uruguay Round in such a way that the contracting party which had the highest share of exports affected by the concession in relation to its total exports should have its status of principal supplier recognized. It was quite clear that Argentina met not only the requirement which already existed in GATT, but also that which had been negotiated in the Round. Therefore, Mexico hoped that the Community would recognize Argentina's principal
supplier rights for the products concerned. Failing this, in accordance with Note 5 to Article XXVIII:1, the CONTRACTING PARTIES might exceptionally determine that the Community's concessions represented a major part of Argentina's total exports. If the Council decided to set up a panel at its present or following meeting, his delegation would not object thereto, but would state its view that this was not the only procedure through which a contracting party could seek a determination under Article XXVIII:1 in the future. In Mexico's view, such a determination was the responsibility of the CONTRACTING PARTIES, and did not necessarily require a dispute settlement panel.

The representative of Argentina said he wished to make clear that Argentina's request for a panel remained formally on the table and that if there were no other solution in the meantime, it would be granted at the next Council meeting. However, Argentina remained open to any negotiations in the meantime.

The representative of the European Communities said that there was no question of accepting a panel request without first having gone through the necessary requirements included in the April 1989 Decision. If this request were still to be discussed at the next Council meeting -- which might not be the case because the Community was currently looking at ways to address this matter under a different procedure -- the Community's position would remain that there could not be a question of automatic establishment.

The representative of Argentina said that Argentina had the right to request a panel because the matter at hand involved the interpretation of a GATT provision, and because its rights had been impaired.

The representative of Colombia said that his delegation had examined Argentina's request carefully. Article XXVIII guaranteed contracting parties the possibility of protecting contractual rights and creating an order for the renegotiation of concessions when these had been impaired or nullified by the party that had granted them. In the case at hand, one was talking specifically of the recognition of a contracting party as a principal supplier. Argentina had demonstrated its status of principal supplier for the tariff positions 1201.00.90 and 2304.00.00, since its exports thereof represented an important share of its total exports. It was not necessary to discuss figures. The General Agreement and its interpretative notes did not provide a calculation formula, but the language of Article XXVIII was clear in that it conferred on the CONTRACTING PARTIES the function of determining this status. There were two possibilities with regard to the problem of such determination: to adopt a decision by exercising their function in accordance with Article XXVIII:1 and Note 5 thereto, or, alternatively, to clarify and interpret the relevant text of the General Agreement. Colombia favoured the first option, which would be made easier by taking into account the Uruguay Round understanding on Article XXVIII, which might eliminate the ambiguity in the General Agreement by proposing a formula for measuring a principal supplying interest. If a convergence of opinion was not reached, there was still the other possibility of going again through the exercise of interpreting and clarifying the General Agreement, which had already been
done during the Round. His delegation, therefore, believed that the panel procedure suggested by Argentina would be adequate and, consequently, supported the latter's request. He suggested that the panel be set up at the next Council meeting.

The representative of Brazil said that his delegation supported Argentina's request for a panel and reserved Brazil's right to raise similar interests at the appropriate time.

The representative of Uruguay said that recourse to the dispute settlement mechanism in order to resolve any issue was the right of each contracting party. The Community might suggest any particular procedure it deemed convenient, but this could not replace the provisions of the General Agreement. For this reason, his delegation supported Argentina's request for a panel. There was no doubt that Argentina's trade flows were very important and it was therefore necessary to set up a panel which would allow the two parties to resolve this matter speedily and satisfactorily.

The representative of Argentina reiterated that in the absence of an agreement at the present meeting, its request should be placed on the Agenda of the next Council meeting. In accordance with the April 1989 Decision, a panel would be automatically set up at that meeting unless the Council decided otherwise.

The representative of Chile said that his delegation supported Argentina's request.

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

10. **Monitoring of implementation of panel reports under paragraph 1.3 of the April 1989 Decision on improvements to the GATT dispute settlement rules and procedures**

The Chairman recalled that in July, following a request by New Zealand supported by Argentina and Australia, the Council had agreed that he should hold consultations to see whether and how the question of the Council's monitoring of the implementation of panel reports in accordance with paragraph 1.3 of the April 1989 Decision on improvements to the GATT dispute settlement rules and procedures (BISD 36S/61) should be dealt with in Council meetings. Two such consultations had been held and had resulted in this item being placed on the Agenda of the present meeting in its present form. He drew attention to a recently circulated status report by the United States on the implementation of the Panel report on Section 337 of the Tariff Act of 1930 (L/6439/Add.1), and observed that this Panel had pre-dated the April 1989 Decision.

The representative of New Zealand thanked the United States for submitting a status report on an autonomous basis on the implementation of the Section 337 Panel report. He urged others to follow this example in the interests of transparency. An effective dispute settlement system was a function both of transparency and automaticity, and it would be desirable
for contracting parties to be provided regularly with status reports on all outstanding panel recommendations.

The representative of Australia reiterated his Government's concern over delays in the implementation of outstanding panel reports. As it had noted on previous occasions, Australia considered the Panel reports on Japan's restrictions on imports of certain agricultural items (BISD 35S/163), US import restrictions on sugar (BISD 36S/331), and Korea's restrictions on imports of beef (BISD 36S/202, 234 and 268) to be unfinished business, pending progress in achieving GATT-consistent liberalization of the respective import régimes. Australia reserved all its GATT rights with respect to these cases, including the right to revert to them at future Council meetings. Australia also expected these Panel reports to continue to be listed in the Director-General's periodic reports on the status of work in panels and implementation of panel reports. Australia thanked Japan for its communication in document L/7087 regarding further market-opening measures for certain agricultural products. However, the limited scope of this notification confirmed -- as did Article XXII consultations held with Japan the previous week -- that Japan continued to refuse to fully meet its existing GATT obligations resulting from the Panel report on this matter.

The representative of Japan noted that the April 1989 Decision on improvements to the dispute settlement rules and procedures was to be applied "on a trial basis from 1 May 1989 to the end of the Uruguay Round in respect of complaints brought during that period" (BISD 36S/61, paragraph A.3). Accordingly, the Panel report on Japan's restrictions on certain agricultural items was outside the scope of that Decision. However, recognizing that certain contracting parties had an interest in this report, Japan had autonomously provided a notification of measures it intended to implement to improve market access for certain agricultural products (L/7087). The new measures would be implemented on an m.f.n. basis. As had been indicated by Australia, and in the interests of transparency, he confirmed that Japan had held plurilateral consultations on 24 September with interested contracting parties regarding the follow-up to this Panel report.

On the implementation by the United States of the Panel report on Section 337, Japan was not satisfied with the progress made to date. However, it noted that in providing contracting parties with a status report on implementation, the United States was at least acting in the right spirit -- that of providing transparency -- which could not necessarily be said of some other contracting parties that had not yet implemented panel reports.

The representative of New Zealand said that the measures Japan intended to implement, as notified in L/7087, would not fulfil its obligation to implement the Panel's recommendations fully. Japan still maintained GATT-inconsistent measures on, for example, certain dairy products. The plurilateral consultations with Japan had not caused New Zealand to alter its view.
The representative of Korea hoped that the monitoring of the implementation of panel reports pursuant to paragraph 1.3 of the April 1989 Decision would serve to strengthen further the GATT dispute settlement system. The 1989 Decision was, however, quite clear about the scope of its application. The Panel reports on Korea's beef import restrictions, referred to by Australia, had been established prior to 1 May 1989 and were therefore clearly outside the purview of that Decision. However, in view of the keen interest shown by some contracting parties on this matter, Korea wished to inform the Council that, as indicated at the July Council meeting, it was currently engaged in a second round of bilateral consultations with Australia, New Zealand and the United States. Two sets of meetings had been held with these countries thus far. While no agreement had been reached, the consultations had clarified the issues and enhanced the understanding of each party's position. Korea would report to the Council on the outcome of these consultations once they had been concluded.

The representative of Argentina said that, in his Government's interpretation, the monitoring of the implementation of panel recommendations adopted prior to the April 1989 improvements to the GATT dispute settlement rules and procedures should also be reviewed by the Council in accordance with those procedures. Accordingly, Argentina believed that panel reports adopted prior to 1 May 1989 should also be placed on the Council agenda if their recommendations had not been implemented fully. The present agenda item would remain permanently on the Council's agenda, and Argentina believed that the contracting parties concerned should provide information on all panel reports the implementation of which was pending. All such reports should be placed on the agenda, and the contracting parties concerned should make a presentation to the Council on the stage reached in the implementation of their recommendations.

The representative of Australia said it was unfortunate that some contracting parties were adopting a narrow view on the application of the April 1989 Decision. While noting the "chapeau" to that Decision and the emphasis that some were putting on it, one needed to consider the ramifications of a situation where different obligations accrued to different contracting parties in the dispute settlement area. In Australia's view, all outstanding panel reports should be subject to the same open, transparent and rigorous scrutiny of the Council.

The representative of the European Communities said that Argentina's and Australia's statements seemed to propose a wider interpretation of the application of the April 1989 Decision. The Community shared the precise reading of paragraph A.3 of that Decision that had been expressed, among others, by Japan and Korea. The improved dispute settlement rules and procedures were clearly applicable from a specific date onward, and the Community saw no reason to deviate from this position.

The Chairman recalled that it had been decided in informal consultations that this item would be on the Council Agenda in its present form. There had been a suggestion at the present meeting that all the panel reports considered to be covered under paragraph 1.3 of the April
1989 Decision should be listed under this item in future Council meetings. A related issue that had been raised was the interpretation of the applicability of paragraph I.3. Both these matters would need to be resolved in further informal consultations. He added that until these consultations were concluded, this item would appear on the Agenda in its present form.

The Council took note of the statements.

11. **Roster of non-governmental panelists**
   - Proposed nomination by Brazil (C/W/718)

The Chairman drew attention to document C/W/718 containing a proposal by Brazil for nomination to the roster of non-governmental panelists.

The Council approved the proposed nomination.

12. **South Africa - Import surcharges**
   - Communication from the United States (L/7084)

The representative of the United States said that, as noted in its communication (L/7084), the United States believed that South Africa should update its notifications on the extensive tariff surcharges described in document L/5898/Add.1. These surcharges, some originally ranging up to 60 percentage points over applied tariff rates, were damaging US exports to South Africa. If, as was occasionally claimed, South Africa applied these measures to protect its balance of payments, South Africa should consult concerning their rationale, scope and duration under Article XII in the Committee on Balance-of-Payments Restrictions. In addition, there were selective exemptions of some countries from coverage of these measures and, without appropriate justification, such a departure from the MFN principle of Article I appeared to conflict with South Africa's GATT obligations. The United States believed that South Africa should bring the application of these measures into GATT conformity, update its notification concerning the status of these measures, and consult in the Committee on Balance-of-Payments Restrictions concerning their justification and future application.

The representative of South Africa said his Government had noted the United States' communication. For considerable time now, South Africa's economy had been in a state of decline, and continued to be in a negative phase. One of the factors contributing to this adverse economic climate was the continued application of trade and financial sanctions. While sanctions had been lifted in many fields and by several countries, some, unfortunately, were still being enforced. In the absence of certain sanctions, it had been possible to give attention to measures which had unfortunately been reverted to in the past to counter equally negative measures generally or selectively imposed by other countries. South Africa was not in principle against reducing or even doing away with import surcharges or other restrictive measures. In March 1991, and again a year later, import surcharge levels had, in fact, been reduced. A start had
therefore been made in phasing out these surcharges. As trade and financial sanctions against South Africa were further lifted -- and, hopefully, soon removed completely -- and the economy showed positive signs, the reduction or elimination of these measures could be pursued more actively.

The representative of Switzerland said that his country's exporters faced problems similar to those described by the United States, and that this matter had been raised on several occasions with South Africa in bilateral consultations. It appeared that an effort was being made by South Africa to liberalize its economy, and Switzerland acknowledged that this was being done under difficult circumstances. Switzerland would note, however, that the already high customs duties in South Africa were being supplemented by import surcharges that ranged from 10 to 60 per cent. The US suggestion that any such measures be applied in conformity with GATT rules was important, and Switzerland hoped that South Africa would move in this direction.

The representative of Japan said his Government shared the United States' concerns. While his delegation had noted South Africa's statement, it would appreciate a follow-up to the concerns raised.

The representative of the European Communities said the Community, too, shared the United States' concerns. South Africa's statement on this matter was unsatisfactory because it had not indicated any GATT justification for the measures. The Community called on South Africa to provide a GATT justification or to bring itself into GATT conformity with respect to these measures.

The representative of Argentina said his Government, too, believed it was necessary for South Africa to provide a GATT justification for these measures. As others, Argentina had encountered economic difficulties, and wished to point out that there were appropriate procedures for consultations in the GATT, such as in the Committee on Balance-of-Payments Restrictions, for contracting parties that wished to adopt certain measures to resolve such difficulties. South Africa should bring its measures into GATT conformity or initiate a consultation process in the Committee on Balance-of-Payments Restrictions to provide a justification therefor.

The representative of Canada associated his delegation with the US request for South Africa's import surcharges to be brought into GATT conformity, and that South Africa notify the Committee on Balance-of-Payments Restrictions on their current status and justify their continued application.

The Council took note of the statements.
13. **International Trade Centre (UNCTAD/GATT)**

- **Report by the Chairman on his consultations with the Secretary-General of the United Nations**

The Chairman said that since the July Council meeting, he had held several further rounds of consultations on the issue of the appointment of a new Executive Director for the International Trade Centre (ITC). He had appreciated the openness of the discussion and the guidance received from delegations to pursue efforts towards finding a solution to this longstanding problem without too much delay. At the end of July, quite unexpectedly and on very short notice, the United Nations Secretary-General (UNSG) had extended an invitation to the Chairman of the CONTRACTING PARTIES and himself to meet with him in New York. While the former had been unable to attend, the Deputy Director-General and another senior Secretariat official had accompanied him to this meeting, held on 28 July. The UNCTAD Secretary-General had also been present. He himself had explained in some detail to the UNSG the importance that the CONTRACTING PARTIES attached to the ITC and their concern at the present state of affairs in the institution resulting from the vacancy since January 1992 of the post of Executive Director. He had underlined the ITC's unique rôle and the importance of its programmes and activities to developing countries, especially the least-developed countries. He had also brought out the views expressed generally by contracting parties, in particular the donor countries among them, on the rôle they envisaged for the Executive Head of the ITC. In response, the UNSG had explained that his position on this issue was part of the overall reform and restructuring plan for the UN institutions, and that the level of the post and the duration of the appointment had been for him a matter of principle in the framework of this plan.

The GATT delegation had pointed out to the UNSG that the ITC was not a UN institution in the strict legal and juridical sense. It was run on the basis of equal partnership between the UN and GATT, and the nature of its activities was different from any other institution in the UN system. There was no other international institution to their knowledge of the size of the ITC in terms of its annual budget, staff strength and the geographical spread of its activities that had been headed by an official at that level, and it would not be possible to find a suitable person to run the ITC on the terms suggested by the UNSG, particularly in regard to the short-duration appointment of one year. The UNSG's response had been that the restructuring of the UN had been requested by the same governments which did not agree with him in GATT, and that any change in his stand on this issue would compromise the United Nations' restructuring efforts. A subsequent compromise solution on the level of the post had been put forward but not accepted. The UNSG had, however, offered to approve an appointment of two years, which in itself did not solve the problem.

Meanwhile, he himself had been approached by several delegations that were keen on settling the problem without further delay despite the absence of an agreement and the lack of a partnership approach on the part of the UN. In the consultations he had held on this matter, a number of opinions had been expressed, including an option for the takeover of the ITC by GATT. It had been unanimously agreed that the situation in the ITC should
not be allowed to deteriorate further and that no more time should be lost. The question had also been taken up by some New York delegations and capitals, and it had been proposed that governments should limit their consideration to two alternatives: (i) the ITC would continue as a joint GATT/UNCTAD operation with an Executive Director at D2 level; (ii) the ITC would be placed under the exclusive responsibility of GATT, with an Executive Director at the level of Assistant Director-General. He had requested delegations to submit these options to their governments so that a decision might quickly be reached and a solution found. The level of the post was, in fact, not the real problem. What was at stake now was the size, the nature and the importance which governments wished to attribute to the ITC. A political decision was therefore necessary, based on the options which had been outlined. Other operational details would then be examined separately. There had also been a request from several delegations that the Secretariat carry out a study on the options. He had already requested the Secretariat to see what information it could provide in that regard. He suggested that further informal consultations be held on the ITC issue with a view to finding a solution as soon as possible.

The representatives of Switzerland, Sweden on behalf of the Nordic countries and Uruguay, and the observer for Algeria, thanked the Chairman for his efforts in trying to find a solution to this urgent problem.

The representative of Sweden, speaking on behalf of the Nordic countries, said that they looked forward to continued participation in the consultations on this matter, and stressed the importance that they attached to the ITC. The Nordic countries hoped that the Council would revert to this matter in the near future.

The representative of Algeria, speaking as an observer, drew attention to the situation of countries that were not contracting parties and which currently benefited from the ITC's technical assistance activities, and asked what the repercussions would be on them if and when the GATT were to take over exclusive responsibility for the ITC.

The representative of Uruguay said that the process of studying the two options -- in capitals and by way of consultations -- would take many months and that an interim solution needed to be found rapidly since the ITC could not operate effectively in the present conditions.

The Chairman said that the problem raised by Algeria would have to be reflected upon if the ITC became an institution under sole responsibility of the GATT. As to the question of an interim solution, this could be addressed in further informal consultations.

The Council took note of the statements and agreed to revert to this matter at its next meeting.
14. Southern Common Market (MERCOSUR)

- Request by the United States for notification under Article XXIV and for the establishment of a working party (L/7029)

The Chairman recalled that the matter of the Southern Common Market (MERCOSUR) had been discussed at meetings of the Council in February and April 1991, and also at the CONTRACTING PARTIES' Forty-Seventh Session in December 1991, under the heading "Agreements among Argentina, Brazil, Paraguay and Uruguay". The matter had also been raised by the United States at the April and July 1992 Council meetings, and was on the Agenda of the present meeting at the request of that delegation.

The representative of the United States said that, as his delegation had stated on earlier occasions, the GATT had specific rules to address arrangements such as the MERCOSUR agreement. Those rules, which the United States believed were embodied in Article XXIV, contained the only specific criteria and conditions in the GATT with which to evaluate such arrangements. The United States was not ignoring the Enabling Clause. It recognized, as it had indicated on previous occasions, the role this Clause played in reviewing preference arrangements among developing countries. That being said, the United States hoped that upon further reflection, the countries members of the emerging MERCOSUR would realize the value to the international trading community, as well as themselves, of agreeing to the establishment of a traditional working party to review this very ambitious and welcome undertaking towards a fully integrated common market with a common external tariff. For its part, the United States remained willing to work with the MERCOSUR member countries and others in an effort to find a way to move forward on this question.

The representative of Brazil, speaking also on behalf of Argentina and Uruguay, expressed their disagreement with the United States' request in document L/7029. Apart from the fact that these countries had complied with their obligation for notification under the GATT and its relevant instruments by providing contracting parties with all the necessary information, they had also made available in the Committee on Trade and Development (CTD) all that was necessary for an examination of this agreement, in full transparency and in accordance with the Enabling Clause and other relevant GATT provisions. They had shown great flexibility throughout the informal consultation process that had been initiated by the Chairman of the CTD, and had adopted a positive attitude on the request for an examination of the different MERCOSUR instruments. In spite of this, the United States was pressing on with its request before the Council. The MERCOSUR countries, while motivated by the need to defend their legitimate rights under the GATT and its relevant instruments, continued to be prepared to find a solution which would meet the concerns of all parties.

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2Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (BISD 26S/203).
Although they had demonstrated the utmost flexibility in the informal consultations in the context of the CTD, the same could not be said of the United States, as was proved by its inclusion of this item on the Agenda of the present meeting. The MERCOSUR countries continued to be open to negotiations that would result in a satisfactory solution for all concerned.

The representative of Colombia expressed disappointment that the consultations to resolve this matter in the context of the CTD had not resulted in a satisfactory solution. His delegation had already indicated, both in the Council and the CTD discussion on this subject, its disagreement with the United States' interpretation of the application of the Enabling Clause and of the scope of Article XXIV. Colombia was concerned at the United States' proposal to have the MERCOSUR examined under Article XXIV and not under provisions applicable to developing countries, although the previous discussion had shown that an in-depth analysis would be guaranteed under one or the other mechanism. Colombia was concerned at the United States' insistence on this point, which would only result in a sterile confrontation and a major weakening, in practice, of the few provisions providing special and differential treatment to developing countries in the GATT. Furthermore, it sent an additional and wrong signal about the appropriateness of the system for developing countries. It was all the more worrisome because it came at a time when Latin American countries had enthusiastically embarked on the road to integration with a view to fulfilling their development objectives. Colombia failed to understand why this issue was being brought before the Council, and remained to be convinced that this was the appropriate forum. It could not share in any initiatives to examine trade agreements among developing countries under provisions other than those under the Enabling Clause, and hoped that consultations initiated by the Chairman of the CTD would result in a satisfactory solution soon.

The representative of the Philippines, speaking on behalf of the ASEAN contracting parties, reiterated their support, in principle, for the formation of the MERCOSUR as the means towards further assisting regional trade and promoting economic rationalization among developing countries. They considered the Community's compromise proposal at the July meeting of the CTD to be pragmatic. The MERCOSUR countries, with their objective of establishing a free-trade area and their status as developing countries, had the right to raise this matter under the Enabling Clause. As MERCOSUR evolved closer into a common market, only then should contracting parties revert to the issue of the review process.

The representative of the European Communities expressed regret at the United States' selective reading of relevant GATT provisions which continued to prohibit the beginning of an examination in the GATT of this important agreement. The Community hoped that within the near future, the United States would be in a position to work along with other contracting parties to allow a GATT examination of the MERCOSUR agreement.

The Council took note of the statements and agreed to revert to this item at a future meeting.
15. Russian Federation - Ongoing economic reforms

The representative of the Russian Federation, speaking as an observer under "Other Business", said that for more than two years, Russia had been participating in the GATT as an observer, first as part of the former USSR, and now as an independent state. During this short period, Russia had seen many dramatic political and economic changes. The Russian economy had inherited from the former régime a large external debt, obsolescent capital stock, pervasive distortions in the relative price structure, serious structural imbalances and severe ecological problems. Since the beginning of 1992, Russia had been implementing a large-scale programme of transition to a market economy.

The most important achievements included: comprehensive price liberalization; sizeable cuts in state subsidies, military spending and budget-financed investment; privatization of 18,000 retail trade and services enterprises; commencement of intensive privatization of large industrial enterprises; replacement of the multiple exchange-rate system by a single market exchange rate for the rouble for all current-account transactions; substantial reduction of non-tariff measures in foreign trade regulation; gradual introduction of the customs tariff as the single most important instrument of regulation; and, the development of a new taxation system and of measures and legislation to promote direct foreign investment, which would enjoy national treatment.

In parallel, however, industrial production had declined by 15 per cent in the first half of 1992 compared with the corresponding period a year earlier. During the same period, prices had increased nearly ten-fold and the rouble had depreciated five-fold. After the first price shock, inflation had stabilized at the level of 10 per cent a month. By means of a tough monetary and financial policy, Russia was planning to reduce the rate of inflation to 5 per cent a month towards the end of 1992. In the area of foreign trade, the reforms were primarily aimed at encouraging competition rather than erecting defences against foreign suppliers. In order to become internationally competitive, Russia was taking certain measures, which were fully GATT consistent, to protect its domestic producers, but some degree of flexibility would be required before the trade régime took shape as a result of the reforms. It was equally important that foreign trade be perceived in Russia as a major factor of economic growth and job creation.

Russia envisaged substantial autonomous liberalization of its foreign trade. As far as exports were concerned, while large discrepancies between domestic and international prices, as well as critical shortages of certain products did not immediately allow the establishment of an export régime which was totally free of restrictions without the risk of sharpening domestic market imbalances, both the rate and coverage of export tariffs, as well as applications of non-tariff measures such as quotas, were gradually decreasing. At the same time, the import régime in Russia was fairly liberal. As from 1 September 1992, the Provisional Import Tariff had come into effect with a single MFN rate of 15 per cent for the majority of items. Food and medical items were imported duty free. One hundred and twenty developing countries were beneficiaries of the national scheme of
preferences which covered, without exception, all items based on the Harmonized System nomenclature. All imports from least-developed countries were duty free, and quantitative restrictions and licensing were not applied to imports at all. A new and transparent legislation was being drafted in the area of foreign trade: in particular, two major laws -- customs code and customs tariff -- were expected to be adopted by the Parliament in the autumn. Work on a permanent import tariff should be completed by the end of 1992.

Russia had initiated negotiations with all the former USSR republics with a view to establishing a framework governing their trade relations in accordance with basic GATT rules and principles. Given their very high degree of economic interdependence, most of the former republics wished to maintain as much integration as possible. Russia was a strong proponent of such an approach and had offered them bilateral free-trade agreements; by the end of 1992, a free-trade régime was expected to be established with most of the republics, with MFN treatment for the others.

Russia appreciated the opportunity to participate in the GATT as an observer and to have access to the accumulated knowledge and experience in governmental trade regulation and in recent developments in the multilateral trading system. This was of special importance to Russia at the time of its unprecedented economic reforms. Russia reiterated its desire to be integrated into the multilateral trading system and to become a GATT contracting party in due course. Full participation in the GATT was among Russia's current priorities, after it had become a member of the International Monetary Fund, the World Bank, the Customs Cooperation Council and other international organizations. Russia favoured a stable multilateral trading system which, to a large extent, depended on an early and successful conclusion of the Uruguay Round.

The Council took note of the statement.

16. Norway - Subsidy in connection with a tender submitted for a hydro-electric project in Costa Rica

The representative of Argentina, speaking under "Other Business", informed the Council of his Government's intention to request Article XXII:1 consultations with Norway in connection with a hydro-electric project in Costa Rica that involved work in energy materials as well as the supply of related equipment. The offer made in this case by Norwegian firms that were competing with a joint consortium of firms from Argentina, the United States, Switzerland and Colombia had included a donation which implied an implicit subsidy in this operation. Argentina considered this to be inconsistent with Article XVI, the Subsidies Code3 and the Government Procurement Code4.

3 Agreement on Interpretation and Application of Articles VI, XVI and XXIII (BISD 26S/56).
4 Agreement on Government Procurement (BISD 26S/33).
The representative of Norway said he had noted Argentina's statement. While Norway would need to study this matter, it wished to reserve its rights with regard to the relevance of raising this in the Council. Norway was, of course, ready to consult on any trade matter and looked forward to receiving a written communication from Argentina outlining its concerns.

The Council took note of the statements.

17. United States - Export subsidies on canned peaches under the Export Enhancement Programme (EEP)

The representative of Chile, speaking under "Other Business", said that the United States, under its Export Enhancement Programme (EEP), had decided to subsidize the exports of canned peaches to promote exports to Japan, Mexico and Korea, involving volumes of 5000, 3000, and 2000 tons, respectively, in each market. In 1990, Chile's exports of canned peaches to Mexico and Japan had amounted to 490.5 and 2,927 tons respectively. When the United States had announced these measures in July, Chile had sent communications both to the US Ambassador to GATT and to the US Secretary of Agriculture, to inform them of the resulting injury to Chile's exports. Chile had emphasized, at the same time, that the United States was not fulfilling either its standstill and rollback commitment undertaken at the beginning of the Uruguay Round, or its GATT obligations such as those under Article XVI:3. The Secretary of Agriculture had responded that the US subsidies would give ample opportunities for suppliers that did not subsidize to continue exporting at their traditional levels to these markets. Unfortunately, this would not be the case. The United States' share of Japan's canned peaches market for 1991 had been 15 per cent, or more than 8,000 tons, while the corresponding figures for Chile had been 9 per cent and 3000 tons. Therefore, with the recently announced subsidies, which would cover 5000 tons, the United States could displace Chile from Japan's market. The same situation would result in respect of Chile's exports to Mexico. Chile had made great efforts to penetrate these markets. As all were aware, it was an important exporter of fresh fruit and had been making considerable efforts to export processed fruit products. As a result, its exports of canned peaches to the two markets concerned had increased by 58 per cent between 1990 and 1991, and by a further 16 per cent until April 1992. Chile was now being affected by the United States' discriminatory measure which constituted unfair competition for a country like Chile that did not subsidize exports. This implied unemployment, greater poverty and lost investments for Chile's companies that had believed in the maintenance of open and competitive markets.

He recalled that in the Punta del Este Declaration each participant had undertaken "commencing immediately and continuing until the formal completion of the negotiations" to respect the standstill and rollback commitments, and that the multilateral surveillance of its implementation had been foreseen. On 21 September, Chile had notified the Uruguay Round Surveillance Body of the illegitimacy of the US action in view of the standstill commitment. Chile requested the United States to withdraw the subsidies on exports of canned peaches, as well as those that affected other products, such as wheat. The subsidies problem should be analysed in
a global context so that any possible solution for wheat might also be applied to canned peaches or any other products that were affected as a result of the EEP. The problem faced by Chile was similar to that raised by Australia at the present meeting under Item 4. In this connection, Chile reiterated its support for the initiative proposed by Australia, because this measure was of deep concern to the majority of the contracting parties.

The representative of the United States said his delegation had not been given prior notice that this matter would be raised by Chile and, accordingly, could not respond fully thereto. His delegation could confirm that the United States had included sales of canned peaches under the EEP. This had been in response to subsidies of roughly US$1 million granted by the Community in the past year to canned peach processors, in a manner contrary to the terms of a bilateral US/EEC agreement. US sales of canned peaches covered by the EEP had an equivalent value, and represented a proportionate response intended to balance the scales with respect to the Community's subsidy programme. This was the very nature of the EEP. In this connection, he referred to his comments under Item 4 about the urgent need for a multilateral agreement on export subsidy reductions as contemplated in the Uruguay Round.

The representative of Brazil said his Government had a legitimate interest in this matter and, in this connection, referred Council members to his delegation's statement under Item 4.

The representative of Argentina shared Chile's concerns and expressed support for its request. The comments made by his delegation under Item 4 also applied in this instance.

The representative of Uruguay said that Chile had outlined its concerns very precisely. Uruguay shared these concerns and supported Chile's request.

The representative of Australia said that, as others had noted already, many of the points made in the discussion under Item 4 were relevant to this particular case. Another commodity of importance to a contracting party was being affected by the subsidy competition undertaken by the dominant trading partners, and by the conduct of trade contrary to GATT principles and those agreed at Punta del Este. As such, this was another instance in which the international climate of confidence in the multilateral trading system was being eroded, and government intervention in the form of export subsidies was becoming increasingly institutionalized in world trade. Australia thanked Chile for bringing this matter before the Council, and fully shared its concerns.

The representative of Colombia supported Chile's concerns. The matter at hand was a typical example of the perverse effects of the EEP referred to under Item 4. The United States' actions under the EEP were not only challengeable under the GATT, but were also contrary to the standstill and rollback commitments undertaken at Punta del Este. Colombia hoped the United States would take account of Chile's request, to which it lent full support.
The Council took note of the statements.

18. United States - Denial of MFN treatment as to imports of non-rubber footwear from Brazil
   - Follow-up on the Panel report (DS18/R)

   The representative of Brazil, speaking under "Other Business", recalled his delegation's statement at the time of adoption of this report in June that mere adoption was not enough and that the United States should take the necessary steps to bring itself into compliance with the Panel's finding. In this, Brazil had been supported by several delegations. At the July Council meeting, his delegation had indicated that the discrimination found by the Panel continued to hamper Brazil's trade with each passing day. The United States continued to demand payment of discriminatory duties, including interest thereon. These charges continued to mount at a rate which exceeded US$1 million a month. At that meeting, the United States had said it would continue to endeavour to obtain a mutually acceptable solution. Brazil was still awaiting positive developments in this regard, and reserved the right to request inclusion of this item on the agenda of a future Council meeting.

   The Council took note of the statement.

19. Turkey - Anti-dumping measures on imports of cotton yarn from Pakistan

   The representative of Pakistan, speaking under "Other Business", said that Turkey had implemented a provisional anti-dumping measure on cotton-yarn imports from Pakistan in September 1991, which had been converted into a definitive anti-dumping duty as from 10 December. Pakistan wished to inform the Council that, at its request, Article XXIII:1 consultations had been held with Turkey and were continuing. Pakistan might revert to this matter at a future Council meeting in the light of these consultations.

   The representative of Turkey said that bilateral consultations on this matter were continuing. Although Turkey believed that its practice in this case was fully consistent with GATT rules, it hoped that a mutually satisfactory solution would be found in the near future which would obviate the need to revert to this matter in the Council.

   The representative of Pakistan expressed appreciation for Turkey's statement, and echoed that delegation's hope that a mutually satisfactory solution would be possible through the ongoing consultations. In the meantime, Pakistan reserved its GATT rights on this matter.

   The Council took note of the statements.

The representative of Japan, speaking under "Other Business", drew attention to the North American Free-Trade Agreement (NAFTA) between Canada, Mexico and the United States, and said that three points needed to be safeguarded in this regard. First, the Agreement should not lead to exclusive and restrictive regionalism. Second, it should be fully in conformity with GATT principles and provisions and should contribute to maintaining and strengthening the multilateral trading system. Third, full consideration should be given to the trade and investment interests of the non-NAFTA countries, including Japan. Given the possible far-reaching effects of the Agreement, its GATT conformity needed to be examined in depth. Japan therefore urged the parties concerned to provide sufficient information without delay.

The representative of Mexico noted that the NAFTA had generated a lot of public interest, and that many contracting parties wished to have the text of the Agreement distributed and examined in detail in the GATT as soon as possible. However, even though negotiations on a text had been concluded in August, a final text of the Agreement was not yet available. The parties thereto were currently in the final phase of legal drafting, which they hoped to conclude shortly. He assured Council members that the signatories firmly intended to follow GATT provisions with regard to the notification and examination of the NAFTA.

The representative of the United States said that on 18 September the US President had notified Congress of his intention to sign the NAFTA. Under terms of the US "fast-track" legislation, the President might sign the Agreement ninety days after such notification. No date had been set at the present time for signing the Agreement, and the text was still undergoing final review. The NAFTA had been negotiated in a manner which would ensure its GATT consistency, and the parties thereto intended to notify it to the GATT in accordance with appropriate procedures as soon as possible.

The representative of Canada said that, as Mexico and the United States had indicated, the NAFTA was still in the final legal drafting stage, and that the parties thereto planned to sign it as soon as possible. They undertook to present the Agreement to the GATT under normal procedures as early as practicable. Canada looked forward to a GATT review of the NAFTA.

The representative of Hong Kong said he was grateful to Japan for bringing this matter to the attention of the Council. NAFTA was important. The trade covered by it was a significant part of the world total, and the parties thereto were among the most influential and active in the GATT and their markets were significant for Hong Kong. His delegation shared Japan's views, and looked forward to the early notification and examination of the Agreement in the GATT under established procedures. The three points suggested by Japan would provide guidance on what all aimed to ensure in that exercise.
The representative of Korea voiced his Government's concern about the NAFTA. Korea had watched the NAFTA negotiating process closely, and believed it was premature to pass judgement -- positive or negative -- on the Agreement at this stage because the text of the treaty was not yet available. Nonetheless, Korea was concerned because the limited piecemeal information it had been able to obtain thus far did not appear to be reassuring. Korea reiterated its hope that the NAFTA would not solely promote regional economic interests, but would also contribute to the development of worldwide free trade in general and to the GATT multilateral trading system in particular. Korea would, of course, study the text carefully when it was made available, and raise matters of particular interest to it during the course of the discussions in a working party, which it hoped would be established soon.

The representative of the Philippines, speaking on behalf of the ASEAN contracting parties, said they were watching closely the trend toward regionalism in yet another part of the world. While regional trading and other arrangements were not discouraged by the GATT, the ASEAN contracting parties hoped that NAFTA would not be closed to the outside world and that it would set the example for open regionalism. Together with others, the ASEAN contracting parties would examine closely the Agreement when it was notified.

The representative of Australia said that close scrutiny of the final text of NAFTA was likely to produce many specific questions about its ramifications for Australia and other contracting parties. While Australia welcomed assurances that NAFTA would not be trade diverting, it remained alert to possible implications not only in terms of its access to the United States' and Canada's markets, but also the potential growth of its agricultural and other exports to Mexico and to the region as a whole. The consistency of NAFTA with GATT rules governing free-trade agreements should be fully explored, and Australia shared Japan's interest in receiving full and early information from the signatories to enable a comprehensive examination of this arrangement by a working party.

The representative of the European Communities said the Community was obviously interested in looking closely in the GATT at the details of the Agreement. The Community also looked forward to the increased trading opportunities that the Agreement would undoubtedly offer to all.

The representative of Pakistan said that his Government shared the interest shown in this Agreement by Japan and other delegations. Some provisions thereof, such as those on rules of origin, were already having an impact on trade. Pakistan therefore looked forward to receiving information on the Agreement from the parties concerned as soon as possible.

The Council took note of the statements.
21. **United States - Proposed legislation on anti-circumvention of anti-dumping actions**

The representative of the Philippines, speaking on behalf of the ASEAN contracting parties under "Other Business", expressed concern over recently introduced bills in the US Congress containing provisions relating to the anti-circumvention of anti-dumping duty actions. Although the bills in question had not yet been enacted into law, the ASEAN contracting parties hoped that their concerns at this stage would be taken into account when the bills were considered in Congress. The proposals ignored the United States' obligations under the GATT and the Anti-Dumping Code by:

- targeting specific corporations rather than acting against specified dumped imports from specified exporting countries;
- disregarding the rules of origin of imported products;
- failing to provide for the determination of dumping of the specified imports from the specified country of origin;
- failing to provide for the determination of material injury that the dumped imports had caused or threatened to cause to the domestic industry producing the "like product";
- failing to provide for the establishment of a causal link between the dumped imports and material injury to the domestic industry producing the "like products";
- and failing to provide for the appropriate means to determine the existence of dumping and material injury when the imports came through an intermediate country.

These proposals, if enacted into law, would deny GATT contracting parties and signatories to the Code their rights under the GATT in anti-dumping investigations. Contracting parties would be denied the right to apply the rules of origin necessary in international trade; the right to an investigation into the existence of dumping; the right to an injury determination that the dumped products had caused to the domestic industry; the right to proof of the causal link between the dumped products and the material injury established; and finally, the right to an equitable investigation being conducted through comparison between "like products".

Anti-circumvention provisions relating to anti-dumping actions were among the many issues being negotiated in the Uruguay Round negotiations on the Anti-Dumping Code. The United States should not unilaterally, at this stage, introduce domestic legislation that was inconsistent with the Code, which would prejudice the outcome of the on-going negotiations and undermine the Round as a whole. Since the United States had committed itself to the Draft Final Act (DFA) (MTN.TNC/W/FA) as the basis for a successful conclusion of the Round, the ASEAN contracting parties strongly urged it to live up to its international obligations.

The representative of the United States said that the ASEAN contracting parties' concerns related to pending legislation in the US Congress which had neither been introduced by his Government nor supported by it. The United States recognized the defects with that legislative proposal, but was unable to prevent individuals from introducing such

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Agreement on the Implementation of Article VI (BISD 26S/71).
legislation in Congress. As his delegation had clearly stated in the past, the United States supported the inclusion of an effective anti-circumvention remedy in the Uruguay Round and would continue to press its interests on this issue in those negotiations.

The representative of Korea associated his delegation with the ASEAN contracting parties' statement. The proposed anti-circumvention provisions were inconsistent with the DFA text on anti-dumping and the current Anti-Dumping Code. If enacted into law, they would undoubtedly have serious adverse effects on the flow of cross-border investment and international trade, which was bad enough already. Worse still, they would undo what had been so painstakingly achieved in the Uruguay Round. Korea hoped, in the best interests of the world trading community, that reason would prevail in the US Congress and this narrow-minded legislative move would be turned down.

The representative of Brazil said his delegation had noted that the pending legislation in the US Congress had not been introduced by the US Administration, which was actually opposed to it. However, Brazil shared the ASEAN contracting parties' concerns on this matter. Although the DFA text on anti-dumping did not entirely allay the misgivings of many interested contracting parties on the question of arbitrary and unfair application of trade laws in certain countries, it did represent a step towards the improvement of the anti-dumping régime in the multilateral trading system. Improvements such as this to the existing GATT rules had led many participants, among them Brazil, to consider the DFA as a balanced basis for the conclusion of the negotiations. To ignore developments in the Round and introduce domestic anti-dumping laws which appeared inconsistent even with the current Anti-Dumping Code would certainly have a negative effect on the hopes for successfully concluding the Round.

The representative of Sweden, speaking on behalf of the Nordic countries, said they shared the ASEAN contracting parties' concerns. The proposed rules were inconsistent both with Article VI and the Anti-Dumping Code, and also with the rules on anti-dumping as formulated in the DFA. If the proposed rules were to be approved, their impact on the Round might be both far-reaching and undesirable. Unilateral implementation of laws that were not in GATT conformity would not enhance the credibility of the already difficult on-going negotiating process. The Nordic countries had noted the United States' statement, and would urge it to take into account the concerns expressed at the present meeting during the continuing legislative process.

The representative of Hong Kong said his delegation appreciated the United States' assurances that it was opposed to the proposed legislation. Hong Kong fully shared the ASEAN contracting parties' concerns regarding the bills in the US Congress which contained provisions inconsistent with the United States' existing obligations under the GATT and the Anti-Dumping Code. Furthermore, these legislative attempts went beyond the scope of the anti-dumping provisions as contained in the DFA. If allowed to pass, such legislation might require the United States to seek substantive changes to the draft Anti-Dumping Agreement, which would be unacceptable to Hong Kong
and other exporting countries. Any such initiatives that amounted to reopening negotiations on the DFA would seriously jeopardize the early and successful conclusion of the Round. He requested the United States' delegation to note the statements at the present meeting and to reflect the strong sentiments therein to its authorities.

The representative of Pakistan associated his delegation with the concerns expressed by the ASEAN contracting parties and others. Pakistan attached importance to resisting protectionist measures which had a tendency to appear in unexpected ways based on particularly narrow definitions or interpretations of the rules.

The representative of Japan said his delegation also shared the ASEAN contracting parties' concerns. The proposed provisions on anti-circumvention would be inconsistent with the relevant provisions of Article VI and the Anti-Dumping Code, and would also be inconsistent with the relevant DFA text. These provisions were also de facto local content requirements which would discourage trade in parts and components and also impede capital flows. While his delegation had noted the United States' assurances that it was opposed to these bills, it nevertheless strongly urged it to continue to ensure that it did not deviate from its international obligations.

The representative of India said that the proposed legislation was of great concern, as had been indicated by several previous speakers. India was concerned that the proposed rules went beyond what was provided for in the GATT and the Anti-dumping Code. Like others, India requested the United States to ensure that this pending legislation did not become law.

The representative of the Philippines, speaking on behalf of the ASEAN contracting parties, expressed their appreciation to the United States for its assurances that it was opposed to the proposed legislation, and hoped that this would not finally be enacted into law.

The Council took note of the statements.

22. United States - Trade embargo against Cuba

The representative of Cuba, speaking under "Other Business", expressed his authorities' concern at the approval, on 18 September, of a bill by the US Senate entitled '1992 Democracy in Cuba Act', as part of an amendment to the Defense Appropriations Bill, which openly proposed the re-enforcement of the United States' extra-territorial application of a blockade on Cuba. The bill had been approved by the US House of Representatives on 24 September, as an independent bill that had the approval of the US Administration, and would probably be approved by Congress as a whole on 3 October. In Cuba's view, the bill violated the principles and objectives of the General Agreement and was contrary to the United States' obligations under it. This measure not only seriously affected Cuba's legitimate trade interests, but also injured the rights of its trading partners, given its extra-territorial repercussions. The United States' unilateral, discriminatory and coercive action was aimed at increasing the more than
thirty-year blockade imposed on Cuba and was clearly in violation of the freedom of trade and navigation to the prejudice of a developing country. At the same time, it was in contradiction with the United States' declaration in favour of greater liberalization of international trade and the elimination of obstacles to trade. His authorities had evaluated the serious consequences of this action for Cuba's economy and reserved their right as a contracting party to request the application of the existing GATT mechanisms in order to correct it.

The Council took note of the statement.


The representative of Bolivia, speaking under "Other Business", informed the Council that in conformity with Bolivia's undertaking in the course of its accession to GATT, it had implemented, in July 1992, the Common Customs Tariff Nomenclature of the Andean Group, which itself had been established on the basis of the Harmonized Commodity Description and Coding System.

The Council took note of the statement.

24. Trade and environment
   - Statement by Council Chairman

The Chairman, speaking under "Other Business", recalled that at the July Council meeting, the Director-General had introduced the Secretariat's note on the United Nations Conference on Environment and Development (UNCED) in document L/6892/Add.3. Since then he himself had initiated informal consultations on what action should be undertaken in GATT by way of a follow-up to the recommendations of the UNCED in the area of trade. Those consultations had confirmed to him the seriousness with which contracting parties were treating the links between trade, the environment and sustainable development, and their determination to ensure that policies in those fields were compatible and mutually reinforcing. There seemed no doubt that concluding the Uruguay Round successfully was the most important contribution that GATT could make in this area at present. The UNCED's call for an early conclusion to the negotiations was to be very much welcomed. Trade liberalization and the maintenance of an open, non-discriminatory trading system were key elements of the UNCED follow-up, and it was clearly the GATT contracting parties' responsibility to ensure that they were in place.

Outside the context of the Round, a great deal of work had been undertaken in GATT on trade and environment issues since the Council's special debate on that subject in May 1991. The Group on Environmental

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6 See C/M/250, item 1.
Measures and International Trade had worked hard and constructively on an agenda that encompassed several of the principal areas which had been flagged by UNCED. The Secretariat had also made a useful contribution, notably through the reports it had submitted in March 1992 to the final UNCED Preparatory Committee meeting.

His consultations had left him in no doubt that the contracting parties were already seized of the issue of trade and environment in GATT, and were fully aware of the need to ensure that a sound framework was in place for multilateral policy cooperation in these areas. As to further work, he had found a wide measure of support for involving the Group on Environmental Measures and International Trade closely in the UNCED follow-up. There appeared to be widespread feeling that its current agenda was broad and flexible and could cover a considerable number of UNCED's recommendations in the area of trade. At the same time it seemed clear that the Group was not equipped to handle all of those recommendations, and he had gathered from his consultations a feeling that other GATT bodies, including possibly the Council, might also have a useful rôle to play. He intended therefore to continue his consultations and hoped to be in a position to present the Council with his proposals on this issue in the near future.

The Council took note of the statement.