GENERAL AGREEMENT ON

TARIFFS AND TRADE

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Forty-Fourth Session

SUMMARY RECORD OF THE SECOND MEETING

Held at the International Conference Centre, Geneva
on Monday, 7 November 1988, at 3.30 p.m.

Chairman: Mr. Alan Oxley (Australia)

Report of the Council (L/6419 and Add.1)

The CHAIRMAN referred to the report of the Council of Representatives on its work since the Forty-Third Session. He proposed that the CONTRACTING PARTIES first deal with the points in the report on which they would be expected to take action of some kind. A list of such matters had been circulated in L/6419/Add.1. He stressed that the report was not intended to reflect detailed positions of delegations, since the Council Minutes contained such information and remained the record of the Council's work.

Point 1. Work Program resulting from the Ministerial meeting

Sub-point 1(a). Dispute settlement procedures

The CHAIRMAN drew attention to document W.44/7 entitled "Roster of Non-Governmental Panelists", and recalled that the Roster had been renewed twice by the Council -- in November 1986 and November 1987. Since the Council would not be meeting in November 1988, he proposed that the CONTRACTING PARTIES decide at the present session to continue the Roster for an additional year.

The CONTRACTING PARTIES agreed to extend the Roster of Non-Governmental Panelists (W.44/7) for an additional year.

The CHAIRMAN then drew attention to document C/W/569 containing a proposed nomination to the Roster put forward by the European Communities.

Mr. Bail (European Communities) gave additional information on the nominee proposed by his delegation.

The CONTRACTING PARTIES approved the proposed nomination in C/W/569.

Sub-point 1(d). Export of Domestically Prohibited Goods

The CHAIRMAN recalled that at the regular Council meeting on 19-20 October, the Council Chairman had announced that a consultation on this matter would be held on 24 October, and again at a later date if desirable, and that the Secretariat would report on the results of those consultations at the present Session.

Mr. Carlisle, Deputy Director-General, recalled that at their Session in November 1987, the CONTRACTING PARTIES had decided that the Secretariat should arrange for informal consultations on the nature and type of action that might be taken in GATT on the subject of the Export of Domestically Prohibited Goods, taking into account the work that was being done by other international organizations. In accordance with this decision, two rounds of consultations had been held on 24 October and 2 November 1988. A number of delegations from both developing and developed countries had participated in these consultations. To provide a basis for discussion, Nigeria had circulated a technical note (W.44/14) explaining the type of action that it proposed be taken in this area to control trade in such products. During the consultations, delegations had been requested to address the following points in their remarks: (1) What prevents developing countries from taking action to prohibit imports of domestically prohibited goods or of hazardous waste? (2) What are the countries exporting such products doing to control those exports? (3) How well are the arrangements working in other international organizations? Both developing and developed countries had been asked to address the latter question.

On the first point, some developing countries had explained that in most cases they were unable to prohibit imports of hazardous products because their governments did not know that the products were prohibited or restricted for sale in the domestic markets of the exporting countries. It was also common, they said, particularly in the case of hazardous substances and wastes, for exporters to make false declarations. Further, the customs authorities in a large number of developing countries did not have adequate testing facilities to check the truthfulness of declarations made by exporters. According to developing country representatives, the absence of consumer protection regulations in many developing countries also enabled other countries to market in those developing countries pharmaceuticals, food and other products, beyond the dates specified on the manufacturers' labels.

Regarding the measures taken by developed countries to control trade in such products, most delegations had replied that their governments considered the problem to be serious, and had referred to measures requiring firms to notify the authorities if any product prohibited for sale was being exported to other countries. Some developed countries stated that further measures were under consideration to make information exchange systems more effective.

On the third point, both developed and developing countries, had considered that international organizations like WHO, FAO and the UN Environmental Program, as well as regional organizations like the OECD, had developed useful guidelines and procedures for notification and exchange of information. Some delegations, however, had considered that it would be necessary to examine the operation of these arrangements more closely in order to decide whether further complementary action in the GATT would be necessary and effective. These delegations had also noted that the issues in this area were of a highly technical nature, and had expressed doubt whether it would be possible for the trade policy experts who normally attended GATT meetings to deal with these subjects effectively. Some of these delegations, however, had thought that GATT could, at the present stage, play a useful rôle in monitoring the work being done in other organizations. Other delegations, mainly from developing countries, had explained that one reason the arrangements developed by other international organizations were not fully effective was that these arrangements were of a voluntary nature and did not impose any binding obligations. These delegations believed that the experience with these arrangements had been somewhat mixed. They felt, therefore, that it was necessary to use the GATT to impose binding obligations on both exporting and importing countries. They said that the aim of any action in GATT would not be to duplicate notification and information exchange procedures developed elsewhere, but rather to develop rules which would reinforce the implementation of these schemes.

In conclusion, he added that some delegations had suggested that this subject be included in the Uruguay Round negotiations.

The CHAIRMAN said that it was clear that exports of goods and other hazardous substances which were prohibited or severely restricted from sale in the domestic market, posed problems, particularly to governments of developing countries. There also appeared to be awareness on the part of many countries of the importance and seriousness of the problems posed and of the need to take multilateral action to bring under control trade in such products and substances. The informal consultations arranged by the Deputy Director-General had been useful in beginning to identify issues that would need further examination in determining whether action could be taken in GATT to complement the work of other international and regional organizations. He therefore suggested that the CONTRACTING PARTIES ask the Secretariat to hold further informal consultations among interested delegations, with a view to enabling the Council to make, if necessary, appropriate arrangements for pursuing work further in this area.

Mr. Ndzengue (Cameroon) said that the Deputy Director-General's report accurately reflected the views expressed in the consultations on this matter. His delegation wanted to stress the following points. The question of the export of domestically prohibited goods had been in GATT since 1982, but unfortunately nothing concrete had been done, in spite of the importance of this subject for the developing countries. Recently, the European Communities had expressed their concern over this question for the member States. Thus, considering this concern and, in particular, the

nefarious influence of this situation on the health of the developing countries' populations, it would be advisable that this question continue to be a subject of informal consultations in GATT. The technical note prepared by Nigeria could provide a good basis for examination of this matter. In his delegation's view, this question should be included in the Uruguay Round negotiations.

Mr. Pemasiri (Sri Lanka) recalled that in 1982, Nigeria and Sri Lanka had taken the initiative to have this subject included in the GATT Work Program. This issue was of crucial importance not only to human beings, but also to animal life and the environment in general. Very little positive action had been taken since the subject had been first raised in GATT six years earlier, and very little action was currently being taken to see that this issue was taken up in a more encouraging manner. Nigeria's technical note had suggested two possible courses of action, and Sri Lanka proposed that this be taken up at the highest possible level, perhaps not just in the Group of Negotiations on Goods, but even at the Montreal meeting of the Trade Negotiations Committee.

Mr. Baraya (Nigeria) said that his country shared the views expressed by Cameroon and Sri Lanka. His delegation remained undaunted that this subject should be discussed within the context of the Uruguay Round negotiations without prejudice to the ongoing consultations.

Mrs. Gosset (Côte d'Ivoire) said that her country fully agreed with the Chairman's proposal, as well as with the statements by Cameroon, Sri Lanka and Nigeria. Consultations should be continued in order to find a solution to this very serious problem.

Mr. Jamal (Tanzania) said that his delegation fully shared the concerns expressed by the previous speakers. Although Tanzania had no difficulty in having this question discussed at the Montreal meeting, it should be understood that this was not a matter for negotiation in the same way that other issues were being negotiated. This was a straightforward matter of protecting the interests of the health of all countries, big and small, which should never be taken as a matter for give-and-take in negotiations.

The CHAIRMAN suggested that the CONTRACTING PARTIES take note that some delegations had suggested that the subject should be included in the program for the Uruguay Round of Negotiations and that a decision to this effect should be taken at the Ministerial meeting of the Trade Negotiations Committee.

The CONTRACTING PARTIES agreed to the Chairman's suggestion.

Mr. Tran (European Communities) said that he understood that this was a delicate issue of particular interest to most of the developing countries, and that it should therefore be handled very carefully. The work carried out on this subject in GATT had highlighted the need to go into greater detail in the consideration of these issues, particularly in deciding what could be the best and most appropriate forum for such consideration. A lot of work on this subject was being done in fora such

as WHO, FAO, the UN Environment Program, and it would be unwise to duplicate that work. In the Communities' view, it was absolutely excluded that the CONTRACTING PARTIES decide what should be included in the Uruguay Round negotiations. He wanted to make this clarification, because this was an extremely important issue and a solution satisfactory to all contracting parties had to be found.

Mr. Samuels (United States) said that he understood that the CONTRACTING PARTIES had taken note of a suggestion by certain delegations but had not taken a decision to send this particular matter to the Trade Negotiations Committee. The United States shared the seriousness with which the European Communities had addressed this important issue and hoped that this matter, through the appropriate fora -- particularly those whose mandates gave them direct responsibility regarding the problems of hazardous substances -- would be monitored with great care, and that consultations within GATT would continue to address this subject.

Mr. Anell (Sweden), speaking on behalf of the Nordic countries, said that they recognized the seriousness of this subject. Protecting the population and the environment against exposure to toxic and dangerous products was a matter of utmost importance to any government, as had been clearly recognized in the General Agreement itself. The Nordic countries also recognized that for various reasons, exports of dangerous goods might pose particular problems for many developing countries. The importance of the problems in the Export of Domestically Prohibited Goods had been demonstrated by the fact that a number of international organizations such as UNEP, OECD and others were active in this field and had taken various actions, inter alia, to spread information on dangerous goods. The subject had been on GATT's agenda since 1982. Information on individual contracting parties' policies and actions as well as the activities of other international organizations in respect of this subject had been assembled in the GATT under the present Work Program. The Nordic countries were willing to participate in further efforts to explore to what extent GATT itself could contribute to promoting further international cooperation in this area. However, given the technical complexities involved and the already existing involvement of other organizations in this field, they believed that further analytical work was necessary in GATT in order to put contracting parties in a better position to judge the potential rôle for GATT in this field, and thus also to determine any more precise work program on this subject in GATT. Therefore, the Nordic countries wanted the consultations in GATT on this subject to proceed and would participate actively in them.

Mr. Baraya (Nigeria) said that his delegation was not unaware of the work being done in other international organizations with a competence in the area of domestically prohibited goods. The work being carried out by these organizations had been duly noted by Nigeria in its technical note. As his delegation could not accept the European Communities', the United States' and the Nordic countries' interpretation of the action just taken on this matter, he had to ask the Chairman again for clarification. Nigeria's understanding was that the CONTRACTING PARTIES had decided that this matter should be referred to Ministers at the Montreal meeting for a final decision.

Mr. Kor Eng Hee (Malaysia) also asked for clarification on this matter. Malaysia's understanding was that a decision on it would be taken by the Ministers in Montreal.

Mr. Shukla (India) said that his delegation's understanding was that the matter had been discussed and that a kind of decision had already been taken, which India understood to mean that contracting parties wishing to pursue this matter in Montreal should be in a position to do so, irrespective of what some other contracting parties' views might be. India had taken note of the statement by the European Communities and the Nordic countries regarding the involvement of other international organizations, the complexity of the work and the need not to jump into this area in GATT.

Mr. Ndzengue (Cameroon) said that his delegation understood the decision to include two aspects: to continue informal consultations on this subject in GATT, and to inform Ministers in Montreal of the foregoing. Cameroon shared Nigeria's concerns regarding procedure; a question which had already been dealt with should not be re-opened. If the European Communities were dealing with this matter, it was because this was an alarming problem. Solutions found by one body might not be satisfactory to another. Therefore, it did not seem duplicative to ask the GATT to continue to consider this question.

Mr. Jamal (Tanzania) said he had taken note of the Chairman's summing up on this item, which was that the CONTRACTING PARTIES had taken note of the statements made. This matter had been before the GATT since 1982, and it would be very unnatural for the Ministers at Montreal not to take into account the record of performance of important matters which had been in the pipeline for some time, including this very important subject. He suggested that one way or another, this matter should be brought to the notice of Ministers because of its importance to many other aspects of the trading system. His delegation had taken careful note of the statements by the European Communities, the United States and Sweden, that other bodies were looking at this matter. Tanzania would remain consistent regarding its approach to similar matters in other areas as these were taken up.

The CHAIRMAN said that there did not appear to be disagreement concerning the substantive position of this matter in the present deliberations. He recalled that the proceedings of the GATT and of the CONTRACTING PARTIES were formally on a different track than those of the Uruguay Round. It was not within the competence of the CONTRACTING PARTIES to make a recommendation to the Trade Negotiations Committee of the Uruguay Round. Therefore, he had clearly understood that the expressions of concern on this issue were something which delegations participating in the Uruguay Round would have to carry into the Round themselves. He reiterated that there would be further consultations on this matter in order to see how it might be further considered within GATT, and that among the statements which the CONTRACTING PARTIES had taken note of, was the view that this matter should be referred to, and a decision taken by, the Trade Negotiations Committee.

Mr. Owoeye (Nigeria) reiterated that this was a very important issue and that recent developments made it both essential and urgent that it be taken up seriously in GATT in order to build up rules and disciplines in this area. While this subject might not seem to be directly related to GATT's work, it did affect world trade, particularly regarding the harmful effect on the market of the importing country. Nigeria remained convinced that the issue should be addressed at the Montreal meeting of the Trade Negotiations Committee.

Point 2. Reviews of developments in the trading system (special meetings on Notification, Consultation, Dispute Settlement and Surveillance

Mr. Bail (European Communities) said that since the CONTRACTING PARTIES' Forty-Third Session, recourse to dispute settlement procedures had been such that a number of general tendencies might be worth highlighting. Recourse to dispute settlement procedures in order to bring about a solution to trade disputes in the multilateral framework should be seen generally as a sign of health and of strengthening the GATT. However, there were also dangers which arose from a bad utilization of these procedures. In particular, where they were used in the context of a negotiating strategy or, even worse, in the context of a tactic to improve the bargaining position of a particular contracting party, problems of a political nature inevitably arose which put considerable strain on the proper functioning of the dispute settlement mechanism. On the other hand, his delegation had the impression that in those cases where dispute settlement procedures had been used properly, major problems in handling the cases in accordance with established principles and procedures had arisen in only very few instances.

The Community was seriously concerned about a tendency to establish political linkages between distinct disputes; this was inconsistent with the dispute settlement procedures adopted in 1979 (BISD 26S/211, paragraph 9). This had not only blocked the proper functioning of dispute settlement in the framework of the Subsidies Committee, where practically all panel reports were blocked at present, but was now also threatening to block the proper functioning of the dispute settlement mechanism at the level of the Council.

Perhaps the most serious problems which had arisen during the period under consideration concerned the lack of implementation of panel reports and recommendations adopted by the Council. Problems regarding implementation had been raised with respect to a considerable number of Council recommendations, and satisfactory replies had hardly ever been given.

In the Communities' view, these problems should be dealt with primarily by CONTRACTING PARTIES because they concerned in the first instance the effective operation of existing procedures, and should not simply be left to the negotiating process of the Uruguay Round.

Mr. Hill (Jamaica) agreed that the questions raised by the European Communities should be dealt with by the CONTRACTING PARTIES. He drew attention to paragraph 12 of the Report of the Committee on Anti-Dumping Practices (L/6423), in which the Community had rejected a request for a panel in the Committee. Jamaica also noted in paragraph 12 of the Report of the Committee on Subsidies and Countervailing Duties (L/6422) that four of the five panels established by that Committee had not been adopted by it. Jamaica also noted in paragraph 14 of the Report of the Committee on Technical Barriers to Trade (L/6403), the United States' concern over the procedures for dispute settlement under that Agreement regarding its dispute with the Community on the latter's animal-hormone directive. It was clear that the dispute settlement procedures had been fractured in GATT, which was precisely what the CONTRACTING PARTIES had wished to avoid by their Decision of 28 November 1979 to reaffirm the unity and consistency of the General Agreement (BISD 26S/201). Jamaica believed that the Community had a responsibility, as did other trading partners, for that fracturing of the dispute settlement procedures. His delegation hoped that this matter would not be left to be dealt with merely in the course of the Uruguay Round negotiations, but that contracting parties would take up the European Communities' challenge that it be dealt with by the CONTRACTING PARTIES.

Point 3. Consultative Group of Eighteen

The CHAIRMAN recalled that at the Council's regular meeting on 19-20 October, the Director-General had made a report and had indicated his wish to speak on this matter at the present Session.

The Director-General recalled that he had proposed that in principle, the Consultative Group of Eighteen should remain in suspense during 1989. Should it appear for any reason that a meeting of the Group in 1989 would be desirable, he would convene it and would request the Council to take the necessary decision on its composition. He emphasized that the decision to allow the Group to remain in suspense according to this proposal would have no implications for its future activities; it would remain, in his view, a very important and necessary part of the present GATT structure.

Point 14. Recourse to Articles XXII and XXIII

Point 14(a)(i). Canada - Import, distribution and sale of alcoholic drinks by provincial marketing agencies

Mr. Bail (European Communities) recalled that the Panel report on this matter (L/6304) had been adopted in March of 1988 and that the Council had adopted a recommendation, on the implementation of which Canada was to report back to the Council and to the CONTRACTING PARTIES. The Community expected full implementation of the Panel report by January 1989.

Mr. Samuels (United States) said that his country also had an interest in the implementation of this Panel report. Access to Canada's market for a number of US products was currently limited by the policies which were

the subject of this report. The United States was also interested to learn of the actions taken or proposed by Canada and the provincial authorities to bring their policies into conformity with the Panel's findings.

Mr. Weekes (Canada) informed the CONTRACTING PARTIES that Canada was working with the Provinces on bringing their practices into conformity with the GATT on the basis of the Panel's recommendations, keeping in mind the adjustment requirements of the industry. Canada intended to meet the obligation established by the Council's decision adopting this report to report back to the CONTRACTING PARTIES by the end of 1988 on action taken.

Sub-point 14(d)(vi). Japan - Trade in semi-conductors

Mr. Bail (European Communities) recalled that at the Council's regular meeting in October, his delegation had raised the question of the implementation of this Panel report (L/6309). He asked Japan for information about what the Japanese Government had done to implement the report and the Council's recommendations.

Mr. Ikeda (Japan) said that as Japan had stated at the Council's regular meeting in October 1988, his Government was engaged in the necessary examination of what concrete measures should be taken in order to implement the Panel's recommendations. He had taken note of the Community's statement and would refer the matter to his authorities.

Sub-point 14(d)(vii). Japan - Customs duties, taxes and labelling practices on imported wines and alcoholic beverages

Mr. Bail (European Communities) said that the Community appreciated the serious efforts made by Japan to comply with the Council's recommendation on this matter and hoped that the tax reform legislation would be approved shortly by the Japanese Diet and would be implemented soon. The Community noted that the draft legislation did not cover all aspects of the Panel's findings and recommendations, and expected that Japan would take additional measures in due course to implement fully the Panel report and the recommendations (L/6216).

Mr. Ikeda (Japan) said that his Government had reviewed the liquor tax system in the context of its overall tax reform, and in July 1988, had submitted to the Diet a tax reform bill which included the revision of the liquor tax Law. This bill was in accordance with the Panel's recommendation, and the revision of the liquor tax was scheduled to be implemented from 1 April 1989, which was the date of the introduction of the consumption tax, should the bill be approved by the Diet.

Mr. Huhtaniemi (Finland), speaking on behalf of Finland and Sweden, reaffirmed the thrust of their statements made in the Council when this Panel report had been discussed. They wanted to underline their keen interest in this matter and hoped that early steps would be taken by Japan to bring its domestic tax system into conformity with the General Agreement.

Sub-point 14(h)(ii). United States - Customs user fee

Mr. Bail (European Communities) recalled that the Panel report on this matter (L/6264) had been adopted some nine months earlier and requested information from the United States regarding the implementation of the report.

Mr. Samuels (United States) said that the US Administration had been working with the Congress to bring the customs user fee into conformity with the United States' GATT obligations as interpreted by the Panel. The United States had hoped to have such a proposal passed in 1988, but had been unable to do so. A proposal would be submitted to the Congress in 1989. He added that his delegation was aware of a number of contracting parties which applied customs charges in the same manner as the US fee, and would expect them to work towards bringing those charges into conformity with the General Agreement as well.

Mr. Weekes (Canada) expressed his authorities' concern over the United States' failure to implement this Panel report, and drew attention to the Panel's calculations that the United States would have collected funds in excess of what was required in their estimation by the end of fiscal year 1987-88. Canada would be interested to learn what the US Government's intentions were regarding these excess funds.

Mr. Bravo Aguilera (Mexico) supported Canada's statement and asked the United States for information as to the amount collected in excess of the actual customs user fee, so that Mexico could then request compensation accordingly. Furthermore, regarding the United States' statement that other countries maintained such fees, he said that if all contracting parties were to act in relation to what had been ill-done by other countries, mistakes would be made all along the way and would finally destroy the entire General Agreement. Contracting parties should work on the basis of law. If the US Administration had recognized that it was at fault, then compensation should be granted and the appropriate basis set out for such compensation.

Sub-point 14(h)(iv). United States - Imports of sugar

Mrs. Pereira (Nicaragua) referred to Paragraph 4.2 of the Panel report on the United States' imports of sugar from Nicaragua (BISD 31S/67) adopted by the Council in March 1984, in which her country had claimed that the United States' sugar quota system was contrary to Article XI of the General Agreement and not covered by the CONTRACTING PARTIES' decision of 5 March 1955 (BISD 3S/32) which waived the United States' obligations under this Article to permit actions under Section 22 of the Agricultural Adjustment Act. The Panel had concluded that its task was to examine not the sugar quota system as such, but the reduction in the quota allocated to Nicaragua within that system, and that any examination of the system itself in the light of Article XI fell outside its terms of reference. Paragraph 4.5 stated that as the Panel had found the reduction of the quota to be inconsistent with Article XIII, it had not deemed it necessary to examine whether the action was also inconsistent with any other obligations the

United States might have under Article XI. Nicaragua was raising these points in order to point out that when the dispute settlement mechanism was examined in the context of the Uruguay Round, it would be appropriate that Panels examine the complaints brought to them in the light of all the provisions of the General Agreement, and that they not choose those which seemed the most relevant, to the exclusion of others which could also apply. Had the aforementioned Panel examined the complaint in the context of Article XI, it was clear that many other contracting parties -- of which, unfortunately, many were Latin American countries -- would have benefitted from the conclusions.

Sub-point 14(h)(vii). United States - Taxes on petroleum and certain imported substances

Mr. Bail (European Communities) recalled that the question of the implementation of this Panel report (L/6175) had been on the agenda of all the Council's meetings in 1988. As the Community had not yet seen any signs of implementation, its request for authorization to withdraw equivalent concessions remained on the table. The Community was aware that the US Administration was prepared to discuss the issue of compensation, and reserved its rights to come back to this issue shortly.

Mr. Samuels (United States) noted that his country had offered to enter into compensation negotiations concerning the outcome of the Panel report, as an interim measure. Such negotiations were being explored with the Community. However, the United States' goal was still to bring the law into conformity with its GATT obligations.

Mr. Weekes (Canada) expressed his country's concern over the lack of implementation of this Panel report.

Mr. Bravo Aguilera (Mexico) said that once it had been established that it was feasible to provide compensation to the European Communities and that the US legislation, which was inconsistent with GATT, might be changed in 1989, Mexico would want there to be a basis for also providing appropriate compensation to Mexico in the interval.

Point 16. Waivers under Article XXV:5

Sub-Point 16(c). Harmonized System

The CHAIRMAN drew attention to the following documents containing either a request for a waiver or an extension of an existing waiver, from the following countries: Brazil (W.44/2), Indonesia (W.44/3), Turkey (W.44/4), Israel (W.44/8), Morocco (W.44/9), Malaysia (W.44/11), Mexico (W.44/12) and Sri Lanka (Annex I of L/6419).

He said that the documentation still to be submitted and any negotiations or consultations that might be required should follow the special procedures relating to the transposition of the current GATT concessions into the Harmonized System, adopted by the Council on 12 July 1983 and contained in document L/5470/Rev.1.

The Decisions were adopted as follows: Brazil (L/6426) by 65 votes in favour and none against; Indonesia (L/6427) by 63 votes in favour and none against; Turkey (L/6428) by 65 votes in favour and none against; Israel (L/6429) by 53 votes in favour and one against; Morocco (L/6430) by 62 votes in favour and none against; Malaysia (L/6431) by 64 votes in favour and none against; Mexico (L/6432) by 65 votes in favour and none against; Sri Lanka (L/6433) by 65 votes in favour and none against.

Point 17. Accession, provisional accession

Sub-point 17(e). Tunisia

The CHAIRMAN recalled that the Declaration of 12 November 1959 on the Provisional Accession of Tunisia, as extended by the Nineteenth Procès-Verbal of 10 November 1987 (BISD 34S/7), and the Decision of the CONTRACTING PARTIES of 3 December 1987 which provided for Tunisia's participation in the work of the CONTRACTING PARTIES (BISD 34S/25), were due to expire on 31 December 1988. In November 1986, Tunisia's application for full accession had been referred for appropriate action to a working party, whose report had been considered by the Council in February 1988. Pending the completion of the accession process, a request by the Government of Tunisia for an extension of the provisional arrangements had been circulated in document L/6417.

He drew attention to the draft of the Twentieth Procès-Verbal Extending the Declaration, and to the draft decision extending the invitation to Tunisia to participate in the work of the CONTRACTING PARTIES contained in Annexes 1 and 2 of W.44/6. The third Annex to this document set out the present status of contracting parties which had accepted the Declaration.

The CONTRACTING PARTIES approved the text of the Twentieth Procès-Verbal Extending the Declaration to 31 December 1989 (W.44/6, Annex 1), and agreed that the Procès-Verbal be opened for acceptance by the parties to the Declaration (L/6434).

The CONTRACTING PARTIES then approved the text of the draft decision (W.44/6, Annex 2) and agreed to extend the invitation to Tunisia to participate in the work of the CONTRACTING PARTIES until the Government of Tunisia acceded to the General Agreement under the provisions of Article XXXIII or until 31 December 1989, whichever date was earlier.

The decision (L/6436) was adopted.

Regarding Tunisia's full accession to GATT, the CHAIRMAN drew attention to the communication from the Director-General in document W.44/5, in which it was suggested that the time limit in paragraph 5 of the draft Protocol of Accession of Tunisia be changed to 30 March 1989.

The CONTRACTING PARTIES took note of this change.

Point 22. Communication from the United States concerning the relationship of internationally-recognized worker rights to trade

Mr. Samuels (United States) said that over the course of the past year, his delegation had reiterated at a number of Council meetings its belief that the time had come for GATT to examine closely the relationship between internationally-recognized labour standards and trade. Regrettably, it had thus far not been possible to achieve consensus on an appropriate mechanism for such an examination. The United States continued to view this as an important issue and strongly believed that a way had to be found, taking into account the sensitivities of all parties concerned, to address this issue within GATT.

The Director-General said that this subject had been on the agenda of the Council on numerous occasions, and a commonly acceptable way of handling it had yet to be found. He intended to discuss some personal ideas with the delegations principally concerned in the coming weeks, with a view to suggesting possible approaches, hopefully at the Council's next meeting.

Point 23. Training activities

Mr. Samuels (United States) drew attention to the report on GATT's training activities in L/6404, and noted that it listed participants in the GATT training program which were neither from contracting parties nor from developing countries. He suggested that in light of this, the CONTRACTING PARTIES consider formally broadening participation in the training courses to include candidates from all contracting parties.

Point 24. International Trade Centre
- Report of the Joint Advisory Group

Mr. Anell (Sweden), speaking on behalf of the Nordic countries, expressed their strong support for the work of the International Trade Centre (ITC). The crucial rôle of exports in the development of developing countries had perhaps never been more evident than in recent times. In this context, the rôle of the ITC as the focal point in the UN system for technical cooperation in trade promotion was increasingly important. Through the implementation of projects which were closely related to business activities, some of which were even implemented on an enterprise level, the ITC contributed to the ability of developing countries to reap the benefits of the international trading system. Broad-based and continuous multilateral support was essential to enable the Centre to carry out its important task. In 1987, assistance channelled to developing countries through the ITC had amounted to US$21 million, and an ambitious delivery target of US$28 million had been set for 1988. The Nordic countries welcomed the fact that the ITC was able to raise its assistance. However, there was still reason to call for increased contributions from an additional number of countries. The Nordic countries had always strongly supported the ITC and hoped that other countries would be able to do the same in the future.

Mr. Talukdar (Bangladesh) said that his country acknowledged with deep appreciation the contributions of the ITC in promoting the exports of developing countries. In this regard, Bangladesh wanted to make the following suggestions: (1) that the ITC be authorized to arrange buyers-sellers meetings in the exporting countries and more export fairs in the importing countries, and (2) that the ITC be authorized to offer more technical assistance for diversification of export products of developing countries, particularly of the least-developed countries, and to draw up and implement effective projects to help generate income for women through their gainful employment in rural cottage and small-scale industries. Bangladesh appealed to those contracting parties which might be in a position to do so, to contribute generously to the ITC Trust Fund.

Point 25. Administrative and financial matters

Sub-point 25(b)(ii). Reports of the Committee on Budget, Finance and Administration

The CONTRACTING PARTIES adopted the report of the Committee on Budget, Finance and Administration dated 7 October 1988 (L/6408), including the recommendations contained therein, and the Resolution on the expenditure of the CONTRACTING PARTIES in 1989 and the ways and means to meet that expenditure.

Mr. Simoes (Brazil) said that with respect to the GATT budget contained in L/6408, his delegation had made clear in the Council that the recommendation in paragraph 63 regarding a provision of SwF 500,000 for the creation of a Trade Policy Review Mechanism (TPRM) unnecessarily anticipated a decicision that might or might not be taken by Ministers at the Trade Negotiations Committee's meeting in December. Brazil deemed it highly inappropriate that a budgetary device be used to try to pressure Ministers regarding a decision on such a mechanism or on the dimensions and attributions that it might assume. Brazil had not blocked a consensus on the adoption of the Budget Committee's report in the Council -- but neither had it joined such a consensus -- on the understanding that this did not prejudge the outcome of the matter nor Brazil's position on it.

Mr. Shukla (India) recalled his delegation's statement in the Council regarding the TPRM. In India's opinion, it was premature to include such a provision in the GATT budget, and this should in no way prejudge the substantive decision on the TPRM.

Mr. Khor Eng Hee (Malaysia) recalled that when the Council had approved the budget in L/6408, his delegation had stated that its willingness to go along with a consensus to that end did not prejudge its position regarding the proposed TPRM.

Mr. Jamal (Tanzania) recalled that his delegation had also stated its position in the Council that the provision in the budget for the TPRM did not prejudge the outcome of this matter, nor was it intended to do so.

Mr. Weekes (Canada) said that in his delegation's view, the provision in the budget did not prejudge the outcome of this matter. Canada felt that it had been wise to provide for the funds in the 1989 budget, because should the TPRM be established, Canada would not want to see the will to do so thwarted by administrative inadequacies such as a lack of funds. It was easier to provide in advance for funds, even if these were not ultimately needed, than it was to ask for funds half-way through the year.

Point 29. Appointment of presiding officers of standing bodies

Mr. Jamal, Chairman of the Council, recalled that at the Council's regular meeting on 15-16 June, it had been suggested that the Secretariat prepare some information which could serve as the basis for informal consultations on how to regularize the procedure for appointing the presiding officers of standing bodies. At the Council meeting on 22 September, he had informed representatives that he had conducted two informal consultations on this subject in July and September. He had then held further informal consultations on 30 September and 17 October and had remained in touch with delegations thereafter. In these four meetings, which had been open to all delegations, the discussions had focused on several related matters. These had included the following: (a) The procedure for selecting the presiding officers of the standing bodies for which the Council approved the selection; (b) the conditions under which consultations should be conducted for the purpose of selecting those officers, in particular the need to ensure transparency of the selection process by announcing such consultations in advance and having them open to all delegations; and (c) the fact that there were procedures for selecting the presiding officers of the CONTRACTING PARTIES, the Council, the Committee on Trade and Development, the MTN Committees and Councils established by the Tokyo Round instruments and other standing bodies in the GATT system, such procedures being of interest to the delegations with which he had been discussing this matter.

Most of the delegations which had taken part in these consultations had considered that it would not be appropriate for the Council to deal with the selection procedures of standing bodies which were not responsible to it. Another view had been that the Council should draw up a common set of transparent and formalized procedures for all standing bodies in the GATT system, which included the MTN Committees and Councils established by the Tokyo Round instruments. It had also been felt that his report on these consultations might serve to settle procedures by which future Council Chairmen would be guided in carrying out their tasks.

On the basis of those consultations, he made the following suggestion in the form of a statement for the record:

"I suggest that in future, at the first Council meeting each year, on the basis of a consensus which would have emerged from consultations, the Council Chairman should propose the names of the presiding officers of the Committee on Balance-of-Payments Restrictions, the Committee on Budget, Finance and Administration and the Committee on Tariff Concessions for the current year. This would not preclude the re-appointment of an incumbent.

"The Council Chairman would have formally announced beforehand, at a Council meeting or by means of a document, his intention to carry out consultations, open to all delegations, and he would have conducted them so as to ensure the transparency of the process."

He proposed that the CONTRACTING PARTIES take note of his suggestion, which would be reflected in the summary records of the present Session.

Other standing bodies in the GATT system, including the MTN Committees and Councils established by the Tokyo Round instruments, had developed their own consultation procedures for selecting presiding officers. Therefore, he recommended that delegations take note of the aforementioned suggestion when undertaking consultations related to all other standing bodies.

Mr. Hill (Jamaica) recalled that when this matter had been discussed in the Council, his delegation had made a number of proposals aimed at establishing a common set of transparent and formalized procedures, with a view to ensuring that the election of presiding officers was done on a basis and in a manner satisfactory to all contracting parties. His delegation had participated in the Council Chairman's consultations on this matter. Jamaica wanted it to be clearly understood that in its view, when the CONTRACTING PARTIES had taken action on the results of the Tokyo Round negotiations by their Decision of 28 November 1979 (BISD 26S/201), they had reaffirmed their intention to ensure the unity and consistency of the GATT system, and to this end, would oversee the operation of the system as a whole and take action as appropriate. Furthermore, by that Decision the CONTRACTING PARTIES were to receive adequate information on developments relating to the operation of each of the MTN Agreements and Arrangements, and to this end there were to be regular reports from the concerned Committees or Councils to the CONTRACTING PARTIES, and the CONTRACTING PARTIES could request additional reports on any aspect of these bodies' work. In Jamaica's view, these Committees and Councils were responsible to the Council and to the CONTRACTING PARTIES.

Mr. Jaramillo (Colombia) said that in Colombia's view, the Decision of 28 November 1979 referred to by Jamaica, did not exempt the Council from responsibility for the reports and the functioning of all the MTN bodies. Therefore, Colombia did not believe that in GATT there were committees or councils which were not responsible to the CONTRACTING PARTIES and to the Council.

The CONTRACTING PARTIES took note of the suggestion by the Council Chairman.

At the end of the discussion on this point in the Council's report, the CHAIRMAN invited discussion on the following item on the Agenda.

European Economic Community - Animal-hormone directive

Mr. Samuels (United States) recalled that in January 1987, the United States had activated the dispute settlement procedures of the Agreement on Technical Barriers to Trade (BISD 26S/8) regarding the Community's animal-hormone directive. His delegation felt that it was important to bring this matter to the attention of the CONTRACTING PARTIES. When fully implemented, the directive would cut off over US$115 million in exports from the United States. It was well known that the United States considered the Community's ban on meat produced from animals treated with growth-promoting hormones to be a restriction on trade not justified by scientific evidence. More than a year had passed since the Community had blocked the dispute settlement proceedings under the Agreement. The United States was deeply frustrated by its inability to obtain relief from an unjustified trade barrier through formal proceedings under this Agreement, which it considered to be the only appropriate forum for resolving such technical disputes.

The United States had held extensive bilateral consultations with the Community prior to asking the Committee on Technical Barriers to Trade to establish a technical group to examine the issue in accordance with the United States' rights under that Agreement. That request continued to be blocked by the Community, despite unambiguous language in the Agreement that such a group "shall be established" at the request of a party. The United States had continued bilateral discussions to seek a solution to this matter, including proposals for compromise to unblock the case in the Committee; the latter had been rejected by the Community, which had remained intransigent in not allowing the examination of the scientific evidence which the United States believed was damaging to the Community's defence of its directive.

The United States was deeply disturbed that the Community -- which had insisted that other contracting parties recognize its rights under the GATT dispute settlement mechanism when its own trade interests were at stake -- was preventing the United States from having recourse to its GATT rights. The United States might soon be left with no recourse but to defend its GATT rights in alternative ways. The United States was not asking the CONTRACTING PARTIES to take a decision on a matter for the Committee, but believed it was important to call attention to the fact that this matter has been blocked in the only appropriate GATT forum. The Community's refusal to accept the Agreement's clearly-written dispute settlement procedures called into question the value of its current GATT commitments and its ability to comply with these commitments at a time when Uruguay Round negotiations were underway to extend GATT disciplines. This situation should concern other contracting parties. The future of GATT would be uncertain if signatories could not be depended on to abide by their obligations and to let the GATT process function.

Mr. Weekes (Canada) said that his delegation thought it appropriate that the United States raise this matter at the present time. He recalled that Canada had expressed its concern on this matter a number of times during the course of the past year.

Mr. Tran (European Communities) said that he refuted and rejected out of hand everything that the United States and Canada had said. The US statement contained an extraordinary mixture of naïveté and malice; the Community, however, would answer in good faith.

Firstly, the Community had not blocked anything. The United States had perhaps been rather awkward in its method of approaching this matter. The dispute between the Community and the United States had been pointlessly complicated by the fact that the latter had chosen, among all the channels available within GATT, that under the Agreement on Technical Barriers to Trade, knowing well that there had been a dispute under that Agreement which dated prior to 1980 and which remained unsolved due to the differing views among signatories to the Agreement regarding its applicability to procedures and production methods. The Community had not wished to block any possibility of settling the dispute but had every legitimate right to object to a scientific examination of the legal basis of its position prejudging the Agreement's applicability to the procedures and methods of production. The Community had said on several occasions that it was ready to follow a legal approach which did not prejudge the applicability of the Agreement. The United States was not ready to accept that approach and thus itself had blocked the situation.

Secondly, over and above this specific issue, the Community directive corresponded to a high-level political commitment within the Community, which had been strongly supported -- even demanded -- by consumers in the Community as well as by the European Parliament. The directive of December 1985 had been re-confirmed in March 1988 by virtually all the member States. It prohibited the use of hormonal substances promoting the growth of cattle, and was a fundamental policy of the Community in order to ensure the quality of the meat and to protect the consumers' health. These substances were dangerous to human health, and their utilization for other than therapeutic purposes had always given rise to lively concern throughout the Community. Despite the insistence of scientific findings that these substances were innocuous when used under stringent conditions, it was nonetheless clear that their use entailed a risk for the consumer. The safety of the use of these substances could not be guaranteed when the product was sold freely and used for several million animals. In any case, scientific findings were subject to evolution; for example, even in the United States, a synthetic hormonal substance (Diethylsibestrol), after 30 years of massive use throughout that country, had been prohibited. In these conditions, it was clear that the acceptance or refusal of such a risk was a national sovereign decision, and GATT, particularly in the light of Article XX of the General Agreement, could not in any way affect a decision on such a delicate issue..

Mr. Samuels (United States) said that as the Community had identified this matter as having tremendous political weight in the Community, it was important that it be aired publicly before the CONTRACTING PARTIES. Unfortunately, the Community had made some spurious assertions, in particular that experts within the Community had refuted that these substances were not dangerous to human health. The issue was one of perception, not fact. The United States wanted to correct the perception and return to reality. If the Community's problem was that it had a

directive which lacked a scientific basis, it had to find some way to resolve that issue for all those contracting parties whose trade suffered because of the directive and to keep it from becoming a much broader international problem.

The CONTRACTING PARTIES took note of the statements.

Report of the Council (L/6419 and Add.1) (continued)

Sub-point 14(g). Sweden - Restrictions on imports of apples and pears

Mr. Samuels (United States) referred to his Government's request for a panel pursuant to Article XXIII:2, which had been circulated in L/6330 of 22 April 1988. He recalled that at the Council's regular meeting in October, the United States had announced that it would be compelled to request establishment of a panel at the present Session if a mutually satisfactory settlement of the issue was not reached. The United States had deferred asking the Council to establish a panel in October in order to try once more to find a mutually satisfactory solution. He said that it had appeared during the summer that the United States and Sweden had reached such a mutually acceptable resolution, but Sweden had been unable to carry through with that agreement. Over the past several days, Sweden had made a new proposal, which his delegation was carefully studying, and the two parties had been consulting with each other as recently as the past few hours. In order to allow his delegation to proceed with its review of the Swedish proposal, the United States wanted to defer, for the time being, consideration of its request for a panel.

Mr. Manhusen (Sweden) informed the CONTRACTING PARTIES that intensive consultations with the United States and with Sweden's main suppliers of apples and pears had resulted in an ad referendum agreement to modify the existing Swedish system of border protection for apples and pears, which Sweden believed would satisfy the interests of all parties concerned. This ad referendum agreement implied total elimination of the existing quantitative restrictions in 1989. As a transitional arrangement, earlier opening dates for the importation of apples and pears had been agreed. New bound tariff rates would be implemented, and the duty-free periods would be bound in the GATT. The new tariffs would consist of specific duties. Since the protective effect of such duties risked gradual erosion due to inflation, Sweden had reserved its rights to modify the agreed import price intervals and the differentiated bound duty rates. Any such modifications would, however, be made in full observance of the provisions of Article XXVIII. A Government bill with enabling legislation to put this agreement into effect had recently been submitted to the Swedish Parliament. Sweden expected that this bill would be approved shortly and that the ad referendum agreement would come into effect as planned. It would then, of course, be notified to GATT under existing procedures. In the light of these developments, Sweden saw no remaining reason to pursue the issue and took it for granted that the United States would not come back with a request for a panel.

At the end of the discussion on this sub-point, the CHAIRMAN noted that no contracting party wanted to raise any other matter contained in the Council's report.

The CONTRACTING PARTIES then adopted the Council's report (L/6419 and Add.1) as a whole.

Office of Director-General

The CHAIRMAN referred to his communication in W.44/10 and confirmed that there was a consensus -- he would say unanimity -- in favour of re-appointing Mr. Arthur Dunkel as Director-General for a further period of two years. It had also been clear from his consultations that contracting parties wished to re-affirm that the procedures set out in BISD 33S/55 would be applied when the issue of the appointment to the office of Director-General arose at the expiry of the present extension.

He proposed that:

"the CONTRACTING PARTIES renew Mr. Dunkel's appointment for a further period of two years from 30 September 1989 to 30 September 1991;

"the CONTRACTING PARTIES re-affirm the applicability of the procedures set out in BISD 33S/55; and

"in the case of the application of those procedures when the office of Director-General next becomes vacant, the CONTRACTING PARTIES underline the requirement for consultations to commence at least six months before the vacancy and note that appointment to that office could be made at a special session of the CONTRACTING PARTIES".

The CONTRACTING PARTIES agreed to the Chairman's proposal by acclamation.

The CHAIRMAN, speaking on behalf of contracting parties, said that it was a pleasure to make this appointment, which reflected contracting parties' confidence in the Director-General as well as the enthusiasm and satisfaction with which they looked forward to the Director-General's support and assistance during the difficult period leading to the end of the Uruguay Round.

The Director-General said that contracting parties were aware of the reasons which had led him to request consultations at the present juncture regarding his term of office. He felt deeply honoured by the decision just taken by the CONTRACTING PARTIES and saw it as a vote for continuity, particularly in view of the challenges being faced together. Continuity was, of course, important, but not to a point where it became synonymous with an undue preservation of the status quo. It was with this in mind that he had stressed, on many occasions, the need for forward planning and looking ahead. This forward planning was especially important in respect of organizing and running the Secretariat from the end of 1990 onwards,

when the Uruguay Round would have concluded. He was fully prepared to carry out his duties, counting -- as always -- on the untiring support of the Secretariat, whose expertise and dedication he respected and admired. But the confidence and friendship of contracting party representatives were equally indispensible and would continue to be a great source of strength for him.

The meeting adjourned at 5.45 p.m.