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Held in Centre William Rappard
on 19 September 1996

Chairman: Mr. S. Narayanan (India)

The proposed agenda contained in document G/C/W/60 was adopted with the inclusion of items under "Other Business".

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The Chairman welcomed delegations to this meeting convened by WTO/AIR/418.

1. Observer status for International Intergovernmental Organizations
- Statement by the Chairman

1.1 The Chairman recalled that at its meeting of 18 July 1996, the General Council had approved the "Guidelines on Observer Status for International Intergovernmental Organizations" (Annex 3 of document WT/L/61). At the last meeting, he had proposed to hold informal consultations on which international intergovernmental organizations would be granted observer status in the Goods Council. He informed Members that those consultations were continuing. Pending the outcome, he had invited those organizations which had been following the Council's meetings up to now on an ad-hoc basis, to attend also this meeting on an ad-hoc basis, assuming that this would meet with the approval of Council Members. The organizations concerned were the FAO, IMF, ITCB, OECD, UN, UNCTAD, World Bank and the WCO. He proposed that the Council continue to invite those organizations on an ad hoc basis also to its forthcoming meetings until the informal consultations on this matter were finalized.

- 1.2 The Council so agreed.

2. Circulation and Derestriction of Council Documents
- Statement by the Chairman

2.1 The Chairman stated that another pending issue was resolved when the General Council, also at its meeting of 18 July 1996, adopted a Decision on Procedures for the Circulation and Derestriction of WTO documents (WT/L/160/Rev.1). He wished to draw the Council's attention in particular to the following points of the decision: (1) all documents were henceforth to be circulated as unrestricted documents with the exception of those specified in the Appendix to document WT/L/160/Rev.1 for which procedures for derestriction were set out; (2) notwithstanding the exceptions to paragraph 1 set out in the Appendix, any Member might, at the time it submitted any document for circulation, indicate to the Secretariat that the document be issued as unrestricted, and (3) any restricted document might be considered for derestriction by the Ministerial Conference, the General Council, or the body under the auspices of which the document was circulated, or may be considered for derestriction at the request of any Member.

- 2.2 The Council took note of the statement.

3. Letter from the Chairman of the Committee on Trade and Development
- Statement by the Chairman

3.1 The Chairman recalled that at the Council meeting of 22 May 1996, he had informed the Council that he had received a letter from the Chairman of the Committee on Trade and Development requesting information on the implementation of development-related provisions in those Uruguay Round instruments dealt with by the Council for Trade in Goods.

3.2 This information was necessary in order for the Committee on Trade and Development to carry out the task set out in its terms of reference which was "to review periodically, in consultation, as appropriate, with the relevant bodies of the WTO, the application of special provisions in the Multilateral Trade Agreements and related Ministerial Decisions in favour of developing country Members, and in particular least-developed country Members, and report to the General Council for appropriate action.". Such a review was also provided for in the Committee's programme of work for 1996, and represented a priority for the Committee's future work.

3.3 At the same meeting, he had informed the Council that he had sent a letter to the Chairpersons of the various subsidiary bodies of this Council requesting them to provide information on the work done in this area. He had also indicated his intention to take action as appropriate once in receipt of this information so as to enable the Committee on Trade and Development to conduct the review. The responses had now been received and forwarded to the Chairman of the Committee on Trade and Development. The Secretariat had made a compilation of those responses in document WT/COMTD/W/16 dated 27 August 1996 and an Addendum which would be issued shortly. Based on this document, the matter was now under consideration in the Committee on Trade and Development.

3.4 The Council took note of the statement.

4. Requests for extensions of waivers due to expire on 31 December 1996 pursuant to paragraph 2 of the Understanding in respect of Waivers of Obligations under GATT 1994

4.1 The Chairman stated that the following agenda item dealt with a series of waivers which were due to expire at the end of the year unless extended pursuant to paragraph 2 of the Understanding in respect of Waivers of Obligations under the GATT 1994.

4.2 The representative of Norway noted with some concern the important number of requests for extensions of waivers from the obligations under paragraph 1 of Article I of GATT 1994. It should be recalled, as was previously done at last year's consideration of the request by the US to extend the waiver covering the Caribbean Basin Initiative, that stricter conditions applied under the WTO than under GATT 1947 for the granting of waivers or their possible extensions. His delegation noted in particular the obligation of the requesting Members to duly describe the measures covered by the waiver, the policy objectives and the reasons which prevented the objectives being achieved in a GATT-consistent way. From the point of view of the political and economic objectives of the requests for extensions of waivers having regard in particular to those concerning the CARIBCAN, the Lomé Convention, the Andean Trade Preference Act and the Former Trust Territory of the Pacific islands - Norway did not have any substantial objections. However, for transparency purposes, his delegation would support a proposal that a regular reporting mechanism be established allowing for an annual examination/review of the developments under each of the agreements.

4.3 The Council took note of the statement.

A. Cuba - Paragraph 6 of Article XV of GATT 1994 (G/L/89, G/C/W/51/Rev.1)

4.4 The Chairman drew the Council's attention to the communication from Cuba contained in document G/L/89 requesting a waiver from its obligations under paragraph 6 of Article XV of GATT 1994. A draft decision was circulated in document G/C/W/51/Rev.1. He recalled that this request had been before the Council at its meeting of 5 July 1996, but the Council had decided to revert to this request in the light of the outcome of consultations which were in progress in a wider context on a number of waivers falling under paragraph 2 of the Understanding in respect of Waivers of Obligations under the GATT 1994. The consultations had led to an understanding that these waivers should follow

the procedure set out in paragraph 3 of Article IX of the WTO Agreement, i.e. such requests should be submitted initially to the Council for Trade in Goods for consideration during a time period which shall not exceed 90 days. At the end of the time period, the Council was to submit a report to the General Council.

4.5 The representative of Cuba stated that the request from Cuba for an extension of the waiver granted in 1964 was circulated in June 1996. A draft decision submitted by his delegation was circulated in document G/C/W/51. In subsequent consultations guided by the Secretariat, attention was drawn to the fact that the draft decision should reflect an expiry date for the waiver, and for annual reporting to the General Council to bring it into line with the provisions of the WTO. The draft decision was revised in light of these comments and circulated in document G/C/W/51/Rev.1.

4.6 The Council approved the draft decision contained in document G/C/W/51/Rev.1, and recommended that it be forwarded to the General Council for adoption.

B. United States - Former Trust Territory of the Pacific Islands (G/L/101, G/C/W/53)

4.7 The Chairman drew the Council's attention to the communication from the United States contained in document G/L/101 requesting a waiver from its obligations under paragraph 1 of Article I of GATT 1994. A draft decision was circulated in document G/C/W/53.

4.8 The representative of the United States stated that in 1947, the United States had become the Administering Authority of the Trust Territory of the Pacific Islands. The Trust Territory was terminated in 1994 and the former territories were now the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau, each of which was self-governing. Since 1947, the United States had extended historical preferences first to the Trust Territory and now to its successor states in the same way as preferences were provided to U.S. possessions covered by Article I.2 and Annex D. The preferential treatment covered by the waiver ordinarily would have been covered by Article I.2 and Annex D but for the timing of the UN decision placing the islands under trusteeship. Details on the provisions and coverage of this agreement, as well as the exceptional circumstances which justified the need for the waiver, was provided in the renewal request submitted by his delegation. His authorities had requested that this waiver be extended for ten years.

4.9 The Council took note of the statement, approved the draft decision contained in document G/C/W/53 and recommended that it be forwarded to the General Council for adoption.

C. United States - Imports of Automotive Products (G/L/103 and Corr.1, G/C/W/55)

4.10 The Chairman drew the Council's attention to the communication from the United States contained in document G/L/103 and its corrigendum requesting a waiver from its obligations under paragraph 1 of Article I of GATT 1994. A draft decision was circulated in document G/C/W/55.

4.11 The representative of the United States sought a one-year renewal of the waiver for the tariffs preferences contained in the United States-Canada Automotive Products Trade Agreement. This agreement, signed in 1965, allowed the economic integration of the US and Canadian auto manufacturing industry, which was joined geographically, but arbitrarily and uneconomically divided at the border. U.S. tariffs on all products covered by this waiver would be eliminated as of 1 January 1998 as part of the implementation of the tariff elimination schedule of the US-Canada free trade agreement, which has been incorporated into the NAFTA. Details on the provisions and coverage of this agreement, as well as the exceptional circumstances which justified the need for each waiver, was provided in the renewal request submitted by his delegation.

4.12 The representative of Japan stated that his delegation could not, at this stage, support this request for an extension of the waiver due to insufficient information. His delegation intended to request the United States for more information in order to determine its position.

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

D. United States - Andean Trade Preference Act (G/L/102, G/C/W/54)

4.14 The Chairman drew attention to the communication from the United States contained in document G/L/102 requesting a waiver from its obligations under paragraph 1 of Article I of GATT 1994. A draft decision was circulated in document G/C/W/54.

4.15 The representative of the United States stated that the Andean Trade Preferences Act (ATPA), enacted in 1992, was one of his government's major trade initiatives to help the Andean beneficiary countries reduce the production and trafficking of illicit drugs by offering opportunities to expand trade in legitimate products. Details on the provisions and coverage of this agreement, as well as the exceptional circumstances which justified the need for each waiver, was provided in the renewal request submitted by his delegation. The ATPA was authorized by Congress for a period of ten years, ending on 4 December 2001. His authorities had requested an extension of the waiver for this program for the same period.

4.16 The representatives of Peru and Colombia supported this waiver request. The representative of Colombia added that the ATPA adopted by the United States Congress was of great importance to not only his country, but also to Bolivia, Ecuador and Peru. The creation of opportunities in many of these countries had helped fight against trafficking of illicit narcotics. Colombia was making great efforts to ensure the substitution of these illegal crops with other crops. This request, should therefore, also be assessed on humanitarian grounds.

4.17 The Council took note of the statements, approved the draft decision contained in document G/C/W/54, and recommended that it be forwarded to the General Council for adoption.

E. Canada - CARIBCAN (G/L/100, G/C/W/52)

4.18 The Chairman drew the Council's attention to the communication from Canada contained in document G/L/100 requesting a waiver from its obligations under paragraph 1 of Article I of GATT 1994. A draft decision was circulated in document G/C/W/52.

4.19 The representative of Canada stated that CARIBCAN was an economic and trade development assistance program for the Commonwealth Caribbean countries and territories established as a result of a commitment by Canada at the Commonwealth meeting in Nassau in October 1985. Her delegation referred to document G/L/100 of 4 September for the details regarding Canada's CARIBCAN initiative. Although this waiver was initially granted for the period starting from 15 June 1986 until 15 June 1998, the waiver would expire on 31 December 1996 pursuant to the Understanding in respect of Waivers of Obligations under the GATT 1994. In the light of the continuing relevance of the considerations raised in the above-mentioned documents and taking into account the information pertaining to the initiative, her delegation requested that WTO Members approve Canada's application for the extension of this waiver.

4.20 The Council took note of statement, approved the draft decision contained in document G/C/W/52, and recommended that it be forwarded to the General Council for adoption.

F. Communication from the European Communities (G/L/107)

- European Communities - Fourth ACP-EEC Convention of Lomé (G/L/108, G/C/W/58/Rev.1)

4.21 The Chairman drew the Council's attention to the communication from the European Communities contained in document G/L/108 in which the European Communities and the Governments of the ACP States which were also Members of the WTO had requested an extension of the waiver from the obligations under paragraph 1 of Article I of GATT 1994 for the European Communities. A draft decision was circulated in document G/C/W/58/Rev.1.

4.22 The representative of the European Communities referred to paragraph 2 of document G/L/108 and stated that the main features of the Convention, as described in the original request for a waiver had not changed with regard to the subject matter covered by the waiver. The provisions of the Convention continued to require preferential treatment by the Community including duty free access to products originating from ACP countries. The Convention also continued "to provide for a system to guarantee the stabilisation of ACP earnings from their exports, either to the Community or to other destinations, of agricultural and mining products on which their economies are dependent and which are affected by fluctuations in prices and/or supply." He added that the aim of the Convention was to improve the standard of living of the ACP states including the least developed amongst them.

4.23 The representatives of Zimbabwe and Mauritius supported the request for an extension of this waiver.

4.24 The representative of Japan stated that while his delegation was prepared to join the consensus he wished to point out that paragraph 8 of the Preamble of the draft decision stated that "*Noting* that the request for an extension of Lomé IV has been made by the Parties to the Convention without prejudice to their position that the Convention is entirely compatible with their obligations under Article XXIV of GATT 1994 in the light of Part IV of GATT 1994;" His delegation noted that the measures in question namely duty free imports from ACP countries were inconsistent with the obligations of paragraph 1 of Article I of GATT 1994 and that they would become consistent only once the waiver had been obtained.

4.25 The Council took note of the statements, approved the draft decision contained in document G/C/W/58/Rev.1, and recommended that it be forwarded to the General Council for adoption.

- France - Trading Arrangements with Morocco (G/L/109, G/C/W/59/Rev.1)

4.26 The Chairman drew the Council's attention to the communication from the European Communities contained in document G/L/109 requesting a waiver from its obligations under paragraph 1 of Article I of GATT 1994. A draft decision was circulated in document G/C/W/59/Rev.1.

4.27 The representative of the European Communities stated that originally this waiver was requested to ensure a uniformity in the relationship between France and the Kingdom of Morocco. Part of Morocco was covered by paragraphs 2 and 4 of Article I of the GATT and thereby a beneficiary of preferences. France sought a waiver in order to extend these preferences to other parts of the territory of Morocco. The advantages that Morocco derived from these trading arrangements had been absorbed in the Euro-Mediterranean Agreement between the Community and Morocco and the extension of the waiver was sought until such a date that the Euro-Mediterranean Agreement would enter into force or until 31 December 1997, whichever was earlier. A request for a renewal of the waiver was also possible should this be necessary.

4.28 The representative of Morocco stated that this waiver was aimed at making uniform the treatment given to products originating from the former French zone of Morocco and products originating from other parts of the territory of Morocco, particularly the Spanish territories in the north. To be in conformity with multilateral agreements, an extension of the waiver had been requested until such a time when the Euro-Mediterranean Agreement entered into force or until 31 December 1997, whichever was earlier. A request for a renewal of the waiver was also possible should this be necessary.

4.29 The Council took note of the statements, approved the draft decision contained in document G/C/W/59/Rev.1, and recommended that it be forwarded to the General Council for adoption.

G. South Africa - Base Dates under Article I.4 (G/L/104, G/C/W/56/Rev.1)

4.30 The Chairman drew the Council's attention to the communication from South Africa contained in document G/L/104 requesting a waiver from its obligations under paragraph 4 of Article I of GATT 1994. A draft decision was circulated in document G/C/W/56/Rev.1.

4.31 The representative of South Africa stated that the CONTRACTING PARTIES of GATT had given successive waivers to South Africa and the then Federation of Northern and Southern Rhodesia and Nyassaland since 1947 to retain in place certain preferential arrangements. Until 1960 when it was decided to modify the requirements under Article I.4 and also in Annex G to the extent that the South African base dates of 1 July 1938 be moved forward to 30 June 1960 in respect of the treaties with the Federation and Nyassaland at that time. There was no specific time-limit to the original waiver until the inception of the WTO. South Africa was asking for a one-year extension of this waiver. The Trade Protocol recently initialled by the governments of the Southern African Customs Union (SACU) countries, provided *inter alia* for the creation of a free trade zone amongst the twelve SACU Members. It could be envisaged that all existing bilateral agreements between the SACU Members would be eventually incorporated into a single treaty once that instrument had been ratified by the member governments. This would be reported to Members at the appropriate time. This waiver request was in keeping with the objectives of the WTO namely regional integration to stimulate economic growth.

4.32 The Council took note of the statement, approved the draft decision contained in document G/C/W/56/Rev.1, and recommended that it be forwarded to the General Council for adoption.

H. Zimbabwe - Base Dates under Article I.4 (G/L/106, G/C/W/57/Rev.1)

4.33 The Chairman drew the Council's attention to the communication from Zimbabwe contained in document G/L/106 requesting a waiver from its obligations under paragraph 4 of Article I of GATT 1994. A draft decision was circulated in document G/C/W/57/Rev.1.

4.34 The representative of Zimbabwe referred to the request submitted by his delegation and hoped that it would be considered favourably.

4.35 The Council took note of the statement, approved the draft decision contained in document G/C/W/57/Rev.1, and recommended that it be forwarded to the General Council for adoption.

5. Free Trade Agreement between the EFTA States and Estonia

- Communication from the Parties to the Agreement (WT/REG28/N/1 and WT/REG28/1)

5.1 The Chairman drew the Council's attention to the notifications from the parties to the Agreement contained in document WT/REG28/N/1. The Free Trade Agreement between the EFTA States on the one side and Estonia on the other side was signed on 7 December 1995 and had been applied on

a provisional basis as of 1 June 1996, pending ratification by the Parties to the Agreement. The text of this Agreement had been circulated in document WT/REG28/1.

5.2 The representative of Iceland recalled that at the Council meeting of 22 May 1996, he had informed the Council of the imminent entry into force of these three Free Trade Agreements and the formal notifications were sent in June 1996. The ratification procedures had been completed with respect to the Free Trade Agreements between the EFTA states on the one side and Estonia and Latvia on the other side. The ratification procedures regarding the Free Trade Agreement between the EFTA states and Lithuania were still underway, and would be completed later this year.

5.3 The Chairman proposed that the Committee on Regional Trade Agreements carry out the examination of this agreement in accordance with the following terms of reference:

"to examine, in light of the relevant provisions of the GATT 1994, the Free Trade Agreement between the EFTA States and Estonia, and to submit a report to the Council for Trade in Goods."

5.4 It was understood that the understanding read out by the Chairman of the Council for Trade in Goods under item 7 of the Agenda of the meeting of the Council for Trade in Goods on 20 February 1995, as contained in document WT/REG3/1, would apply *mutatis mutandis* to this examination. It was also understood that, during the examination, due account would be taken of the intrinsic differences between customs unions and free-trade areas.

5.5 The Council for Trade in Goods so agreed.

6. Free Trade Agreement between the EFTA States and Latvia
- Communication from the Parties to the Agreement (WT/REG29/N/1 and WT/REG29/1)

6.1 The Chairman drew the Council's attention to the notification from the parties to the Agreement contained in document WT/REG29/N/1. The Free Trade Agreement between the EFTA States on the one side and Latvia on the other side was signed on 7 December 1995 and had been applied on a provisional basis as of 1 June 1996, pending ratification by the Parties to the Agreement. The text of this Agreement had been circulated in the document series WT/REG29/1.

6.2 The Chairman proposed that the Committee on Regional Trade Agreements carry out the examination of this agreement in accordance with the following terms of reference:

"to examine, in light of the relevant provisions of the GATT 1994, the Free Trade Agreement between the EFTA States and Latvia, and to submit a report to the Council for Trade in Goods."

6.3 It was understood that the understanding read out by the Chairman of the Council for Trade in Goods under item 7 of the Agenda of the meeting of the Council for Trade in Goods on 20 February 1995, as contained in document WT/REG3/1, would apply *mutatis mutandis* to this examination. It was also understood that, during the examination, due account would be taken of the intrinsic differences between customs unions and free-trade areas.

6.4 The Council for Trade in Goods so agreed.

7. Free Trade Agreement between the EFTA States and Lithuania
- Communication from the Parties to the Agreement (WT/REG30/N/1 and WT/REG30/1)

7.1 The Chairman drew the Council's attention to the notification from the parties to the Agreement contained in document WT/REG30/N/1. The Free Trade Agreement between the EFTA States on the one side and Lithuania on the other side had been applied on a provisional basis as of 1 August 1996, pending ratification by the Parties to the Agreement. The text of this Agreement had been circulated in document WT/REG30/1.

7.2 The Chairman proposed that the Committee on Regional Trade Agreements carry out the examination of this agreement in accordance with the following terms of reference:

"to examine, in light of the relevant provisions of the GATT 1994, the Free Trade Agreement between the EFTA States and Lithuania, and to submit a report to the Council for Trade in Goods."

7.3 It was understood that the understanding read out by the Chairman of the Council for Trade in Goods under item 7 of the Agenda of the meeting of the Council for Trade in Goods on 20 February 1995, as contained in document WT/REG3/1, would apply *mutatis mutandis* to this examination. It was also understood that, during the examination, due account would be taken of the intrinsic differences between customs unions and free-trade areas.

7.4 The Council for Trade in Goods so agreed.

8. Issues concerning Market Access and Circumvention as they relate to the implementation of the Agreement on Textiles and Clothing
- Communication from the United States (G/L/95)

8.1 The Chairman recalled that regarding agenda items 8, 9 and 10, which dealt with different aspects of the implementation of the Agreement on Textiles and Clothing (ATC), at the Heads of Delegation meeting of 16 September, the Director-General had stated that amongst the main issues which appeared to stand out for the attention of Ministers and delegates in connection with implementation was the "priority which the developing countries attached to textiles". At the last meeting of the Council, on 25 July 1996, there had been a substantive discussion on the communication regarding the implementation of the ATC from Pakistan also on behalf of a number of WTO Members, as reflected in the records of the meeting (G/C/M/12). Because of time constraints, it had been agreed to discuss the remaining two agenda items of that meeting which related to communications from the United States and the European Communities on the same matter, at the present meeting of the Council. It had also been agreed that delegations should be able to revert to the said communication by Pakistan, if they had additional comments.

8.2 The representative of the United States stated that her delegation felt strongly that the Council would benefit from having the TMB report before it when considering this matter. Her delegation, as mentioned in its communication (G/L/95), had two areas of broad concern concerning the implementation of the ATC, i.e. market access and circumvention of the Agreement through transshipment.

8.3 It had been agreed in the ATC, that as part of the integration process Members would undertake commitments to achieve improved access to their markets for textile and clothing products. The relevant provision was Article 7 of the ATC, and the reference to "Members" included also exporting countries. President Clinton had also made a commitment to Congress that the US "willingness to phase out the

MFA be linked directly to the achievement of effective market access in individual countries by removal of non-tariff barriers and lowering of tariffs".

8.4 The US was suffering from huge trade deficits in textile and apparel trade, and there was also large unemployment in that sector. It had been critical to her Government's commitment to the US industry and its workers, and in line with the spirit and the letter of the Agreement to obtain greater market access during this transitional period. Her delegation had highlighted in the paper that improvements were necessary in various areas. The US remained concerned that exporting countries were falling short of the spirit, and in some cases, the letter of the ATC, in the area of removal of tariff and non-tariff barriers. Concerning tariff barriers, the US had had its market access in third countries significantly hampered by barriers such as the following, some of which might be inconsistent with the countries' WTO commitments.

8.5 One Member, having one of the world's fastest-growing economies and a balance-of-payments surplus of the order of four billion dollars, had increased tariffs on 64 different textile and apparel products, sometimes by 200 and 300 per cent. Another Member had introduced additional duties on top of existing duties of 65 per cent in the textile and clothing sector, and certain other Members had begun to use selective and arbitrary minimum pricing valuations, in addition to the use of specific duties. As example of non-tariff measures, one trading partner continued to use a discretionary import licensing régime for imports in the textile and clothing sector under which licences were issued on a price basis to minimize competition in the domestic market. Another trading partner had recently established, without complying with the notice and comment requirements of the Agreement on Technical Barriers to Trade, onerous labelling requirements for imported textile and apparel products. Certain exporting Members still maintained negative restrictive lists for key products.

8.6 Turning to an assessment of US compliance with the ATC in comparison to other Members, the product integration commitments of the ATC were to integrate in three stages products which amounted to certain percentages of the 1990 imports in volume terms drawn from the four major products: tops and yarns, fabrics, made-up products and clothing. The choice of products had been left to each importing Member. Members which did not apply quantitative restrictions under Article 2, but who wished to reserve their rights to invoke Article 6 safeguards, were subject to the integration commitment.

8.7 In addition to the integration obligations which took effect on 1 January 1995, the US, in order to provide certainty to the trading community, had selected and published the list of products that would be integrated in the second and third stage, which was not required by the ATC. With respect to the those Members who wished to reserve their rights to invoke the safeguard mechanism, her authorities had noted that products that were considered "sensitive" in the context of the trading community had not, by and large, been notified by most Members. Also, Members had notified products that included entire product groups that were not even imported into their countries during the ATC reference period. The following were examples of first stage integration of selected exporting Members that her authorities had identified, and which showed the percentage of their 1990 imports integrated in each of the four major product groups. Country A: yarn - 14%; fabric - 1.52%; apparel - 0.01%; made-ups - 0%. Country B: yarn - 6.35%; fabric, apparel and made-ups - 0%. Country C had similar results. Country D: yarn - 0.3%; fabric and apparel - 0%, made-ups - 27%. Country E: yarn - 15%; fabric - 0%; apparel - 0.23%; made-ups - 0.69%.

8.8 The figures demonstrated that, for the most part, exporting Members had not integrated any meaningful or sensitive products in the fabric, apparel or made-up groups.

8.9 In addition to product integration commitments, the US had applied progressively increasing growth rates as required by Articles 2.3 and 2.18 to the eligible quantitative restrictions maintained

under Article 2.1. These restrictions would benefit from the continued growth rate increases provided in Article 2.14 to the extent that they were not integrated in future stages. Particularly compelling was that the quota growth rate acceleration under the ATC would expand access available to Members by an estimated 4 billion square meters by the end of the transition period.

8.10 Regarding the level of overall access into the US compared with access into selected exporting countries, some exporting Members had large consumer markets of their own to which US exporters sought access. Under the ATC, these countries had obtained substantially greater access to the US market, while increased access to their own markets had not been comparable. For example, the US had found that by the end of 1995 a particular trading partner was shipping to the US approximately 87 times more textiles than it imported from the US. In 1995, a Member had exported to the US, 56 times more textiles and apparel than it imported from the US. By the end of 1995, a Member was exporting 35 times more textiles and apparel to the US than it imported from the US.

8.11 She noted that exporting countries had complained that, while following the letter of the ATC, in order for the US to provide more market access, it should accelerate integration of products under quota. She also noted that while some exporting countries had followed the letter of the 10-year tariff reduction commitment, perhaps exporting countries should also consider accelerating tariff reductions, since on average their tariffs were much higher than the US tariff. High tariffs had a worse effect on market access than quotas. High tariffs virtually prohibited imports, while quotas allowed access of a certain quantity that provided certainty of market access. With growth-on-growth, many products under quota would have even greater access to the US market.

8.12 Regarding the second US concern which was circumvention of the Agreement through transshipment, her authorities had made it its top priority. Prevention of circumvention was important to the implementation of the ATC. An agreement was only as good as it was enforced, and this was something that all Members, importers and exporters had to ensure. The US imported over 44 billion dollars of textiles and apparel annually. Such goods had been documented as being imported from over 180 countries, territories and entities. The US had negotiated and maintained quantitative restrictions with 46 countries or territories on the amount of textile and apparel which could be exported to the US.

8.13 The US was one of the world's largest consumer markets for textiles and apparel. Because of the large consumer demand for textiles and apparel in the US, and excess production capacity in some countries, transshipment had become an economically viable option. This resulted in goods entering the US market in circumvention of quota agreements, and therefore in violation of quotas maintained under the ATC. In the past, transshipment had been easier to detect. Exporters had used unsophisticated means to falsify the true country of origin. Such means, which included label changes, alteration of apparel for purposes of mis-classification to evade quotas, and entry document alteration, were often detected by the Customs Service at border ports of entry. After numerous seizures by US customs officials at ports of entry in recent years, transshippers had resorted to more sophisticated means of quota evasion e.g. to the outright smuggling of wearing apparel into the US. Imported textiles had been declared as other commodities. The supporting entry documentation, which included invoices, shipping documents, purchase orders, etc. indicated commodities other than apparel. However, upon extensive examination of containers, hundreds of cartons of apparel had been found to be smuggled, in violation of bilateral textile agreements.

8.14 Transshipment could not be easily identified by simply examining the garments or the accompanying shipping and entry documents. Requesting documentation showing production did not yield results, since transshippers could fabricate the records which were requested. The most effective method to determine production was to have the ability to visit a factory and confirm production capability.

8.15 Tracing documentation to show the originating country could be difficult when fictitious companies were shown on documentation used to make an entry, or where legitimate companies names appeared on false invoices. In the latter instance, the company's name was simply used by the transshipper without the knowledge of the company. There had been instances where the US customs officials had visited such firms only to find out that instead of wearing apparel, the company was manufacturing electronics, or fabricating gold jewellery.

8.16 The question was how to deal with this situation. Her authorities had taken certain measures, e.g., since 1990, US customs had visited over 68 countries and territories to identify the problem of transshipment. Over US\$600 million worth of textile goods had been charged to the correct country of origin, in accordance with bilateral and multilateral commitments and procedures. This amount would be even greater, but in many cases the true country of origin could not be identified because of lack of complete documentation at the level required by international obligations.

8.17 The US had brought circumvention charges four separate times against one particular exporting Member. This country, a large cotton-producing exporting Member, had been found to be illegally transshipping cotton fabrics, bedsheets and towels. In all four of these illegal transshipment schemes, US customs officials had visited the true country of origin and its factories as well as the countries where the goods were alleged to have been produced, in order to provide to the Member documents and evidence showing the movement of goods from the true country of origin through the country of transshipment to the US.

8.18 The US had provided training and technical assistance for exporting countries to assist in the prevention of circumvention, and had worked with exporting countries to automate and streamline "visa" or export authorization systems, which helped to eliminate fraudulent export documentation and circumvention. The establishment by the US of an "assembly" based rule of origin for imported apparel products helped to harmonize requirements among the major importing countries, and to minimize the confusion about origin requirements in the major markets. The US had also recently established new requirements for importers to ensure and verify the country of origin of their goods, and expanded penalties in these areas to include penalties based on negligence. In addition, new transparency initiatives had made the trading community in the US, and also the exporting countries, aware of countries that had engaged in illegal transshipment.

8.19 The focus of the review exercise should also be the measures that could be taken by the exporting countries. Without effective actions by Members, to fulfil their commitments "to prevent, to investigate and, where appropriate, to take legal and/or administrative action against circumvention practices within their territory", and without full cooperation among Members, transshipment would become even more difficult to eliminate. As the US had noted in its communication, "effective implementation of the ATC depends on exporting countries adopting effective measures to prevent circumvention of the Agreement." In the context of encouraging closer cooperation in this area, the US proposed the following: the enactment of domestic legislation, making transshipment of textiles and apparel illegal, and the establishment of penalties; the enactment of legislation which required the retention of documents/records for the past three to five years, illustrating the production/manufacturing of the merchandise; the creation of programmes which would encourage the textile industry to come forward and report instances of transshipment; the conducting of unannounced production verification visits; partnerships with importing countries to share information and techniques; establishment of a border inspection system which focused on these shipments; in instances where transshipment was suspected, provision of information to the importing country so action could be taken before the goods had actually entered the consumer market; the requirements that the manufacturer who was receiving the quota allocation report all sub-contracting work (names and addresses), verification of where the production was done; examination and verification of the production in the foreign trade or free trade zones.

In the past, free trade zones had offered an excellent opportunity to change shipping documentation, thereby masking the true country of origin.

8.20 She wished to challenge each Member to implement a strong and aggressive anti-circumvention programme and to challenge Members to work together to develop new solutions to stop the transshipment of textile products in violation of the Agreement. In conclusion, she wished to highlight that after almost two years under the ATC, and when looking at integration, exporting countries had not notified sensitive products, and many had not followed the ATC reference period in making these notifications. Looking at the entry into the US market, her authorities had found that market access into the US was substantially greater than access to the exporting country market. She had also noted the existence of various tariff and non-tariff barriers. While some of them might be consistent with WTO commitments, they were still great impediments to access, and in some cases barred entry into exporting country markets. US concerns regarding the level of circumvention through transshipment, which was clearly against the spirit and the letter of the Agreement had been highlighted, and all Members had an obligation to actively prevent it. The US would implement the text it had negotiated with other Members, and also expected exporting Members to abide by the letter and the spirit of the ATC.

8.21 The representative of Colombia, speaking also as Chairman of the International Textile and Clothing Bureau (ITCB)¹ stated that he was grateful that the Chairman had referred to the statement made by the Director-General recently at a Heads of Delegation meeting on the perception he had obtained from the multiple consultations he had been holding with Members regarding the importance and the implementation of the ATC in the general review of implementation. To this extent, this Council was complying with a very serious responsibility which was part of the proper preparation for the Singapore Ministerial Conference. He thanked the US for the presentation that was given on this issue. His remarks would be limited, at this stage, to the communication from the US, circulated in document G/L/95.

8.22 In its communication, the US had requested that there be an analysis on the way in which countries had complied with the obligation to eliminate impediments to textile imports. The US, therefore, assumed that this was a commitment that the exporting countries had made as a trade-off for progressive liberalization of import restraints imposed by importing countries that used quantitative restrictions under the former Multifibre Agreement (MFA). However, there was no provision in the ATC which established a linkage between integration commitments and the dismantling of quantitative restrictions with the removal of trade barriers in textiles in developing countries. The obligations that were assumed by the textile-exporting WTO Members which included dismantling of trade barriers were those contained in the various Agreements. Consequently, the obligation to reduce bound tariffs was one deriving from what was contained in each Member's schedule.

8.23 The US had also requested that there be a review of compliance with commitments in terms of circumvention practices by the textile and clothing exporting developing countries. At this stage, it sufficed to indicate that paragraph 1 of Article 5 of the ATC placed an obligation on WTO Members to adopt provisions to avoid circumvention of quantitative restrictions, to combat such practices and to permanently cooperate to solve problems resulting from circumvention. The Agreement did not establish any obligation to notify measures adopted in response to the provisions of Article 5.1. Thus in the absence of any specific request for information, the conclusion should be drawn that the obligation of Article 5.1 was fully complied with.

¹WTO Members of ITCB: Argentina, Bangladesh, Brazil, Colombia, Costa Rica, Egypt, El Salvador, Hong Kong, Honduras, India, Indonesia, Jamaica, Korea, Macau, Mexico, Pakistan, Peru, Sri Lanka, Thailand, Turkey, and Uruguay.

8.24 The representative of Pakistan noted with satisfaction that the US was confident that it would implement its obligations under the ATC. That was precisely what his delegation wanted. He wished to add, that in accordance with the law of treaties, the implementation of an Agreement had to be done in a way that was consistent with its central objectives, and that any actions that were tantamount to the subversion of the central objectives of that Agreement were *ipso facto* contrary to the letter and the spirit and the substance of the commitments contained in that Agreement.

8.25 In connection with the remarks made by the US representative, he wished to state that the Uruguay Round Agreements represented a carefully negotiated balance of rights and obligations. Market access commitments relating to tariffs were undertaken by all countries participating in the Round. These commitments were to his delegation's knowledge being fulfilled in accordance with the staging established in each country's Schedule. Developing exporting countries had made great sacrifices in binding their tariffs even in relation to textiles and clothing. Pakistan had agreed to bind textile tariffs in addition to eliminating quantitative restrictions, even though these were justified under the Balance of Payment provisions of the GATT. What the US representative had however advanced was the proposition that the US intended to implement its obligations under the ATC in exchange for anticipated market access liberalization by the textile exporting countries. That, was not written anywhere in the ATC, and was contrary to the balance of obligations set out in the Agreement. No further concessions could be demanded by importing countries for the implementation of obligations under the ATC. The US representative had cited extensive trade data to try and establish that the US market was liberal and open, whereas the markets of the exporting countries were not. In fact one of the examples chosen was that from one country the US imported 80 times the volume of textiles that it exported to that country. International trade could not be conducted on the criteria of sectoral reciprocity. To take an example, making a proposition for sectoral reciprocity with the US in the import and export of computers from Pakistan to the US, and vice versa, would not stand up to any rational analysis. The US representative had also stated that, in her view, high tariffs were even worse than quotas as barriers to trade. If that were the case, then his delegation would propose to the US that all quotas and tariffs be eliminated, and textiles trade be liberalized completely.

8.26 While on the subject of market access, attention should be drawn to the fact that, unlike most developing countries, the US had agreed to implement its tariff reductions over a period of ten years, rather than the generally agreed six. This, despite the fact that the levels of these reductions were much lower than the average reductions agreed to by the US for the industrial sector as a whole, thereby, denying the relevant exporting countries the much needed access to the US market in a sector of such great importance to their economies. His delegation hoped that the importing countries would abide by their commitments and implement the ATC to the letter and spirit.

8.27 With regard to circumvention, he wished to first of all place the problem in perspective. The US representative had stated that US imports of textiles amounted to 44 billion dollars annually. She had also cited that since 1990, the US had taken action on circumvention for imports of over 600 million dollars. A rough calculation indicated that the amount of trade which had been subjected to circumvention action was less than 0.2% of US imports. His delegation felt that this inordinate focus on a problem that applied to such a small share of imports was to some extent distorting the focus of attention that was required regarding the implementation of the ATC as a whole. This did not mean that circumvention should be justified or condoned. However, his delegation believed that the ATC provided sufficient remedies, which had been painstakingly negotiated, for this purpose. If the intention was to reopen negotiations on this aspect, negotiations could also be opened on other aspects. However, his delegation did not believe that this was the time to do so. Its concern was the subjective manner in which the circumvention provisions were being interpreted and applied. Moreover, there had been an arbitrary manner in which the US had been shifting and implementing its rules of origin relating to textiles and clothing products. A long discussion had taken place during the Council's 25 July meeting on the changes in the rules of origin that had been introduced and which

had produced uncertainty in textiles trade and in the full utilization of access possibilities into the US market. Furthermore, problems had been created by a recent Committee for the Implementation of Textile Agreements (CITA) directive which appeared to exceed the scope of Article 5.3 of the ATC. The directive authorized the US Customs to deny entry of certain textile products if, for example, the country of origin for such articles might not have permitted the US Customs to conduct on-site verification of their production. This was an extremely subjective interpretation, and an extension of the circumvention provisions of the ATC which did not conform with its letter or spirit. His delegation urged the US to ensure that the provisions and disciplines of the ATC relating to circumvention were fully complied with in any alleged instances of circumvention.

8.28 The representative of Hong Kong stated that the issues raised by the US did not appear to be pertinent to the implementation of the ATC. More specifically, his delegation could see no basis for the US textile integration programmes to be equated to the WTO Market Access commitments. Similarly the ATC disciplines governing the invocation of transitional safeguard actions could not be equated to the type of circumvention issues raised by the US. Contention was made in the US proposal (G/L/95) that there was a trade-off between progressive liberalization of MFA restraints on the one hand, and the all-embracing exercise to improve access to markets on the other hand. Such a contention was not supported by the structure of provisions of the ATC. The obligation to phase out MFA restraints applied to four importing countries, because they were the only parties maintaining such restraints. The ATC integration programmes had a special meaning to these four importing parties, in that it meant rectification of past MFA restraints which were derogations from GATT rules. Their responsibilities under the ATC integration programmes were different from those of the other WTO Members who did not maintain MFA restraints, but were obliged to submit integration programmes. For clarity of reference, the four importing parties were sometimes called ATC Article 2.7(a) Members, while the WTO textile exporters required to make integration programmes were called ATC Article 2.7(b) Members.

8.29 It was even more difficult to see how the integration programmes of the four importing Members could be compared with market access commitments. However, if claims of trade-offs or linkages were made in respect of market access, they could only be made in the context of the respective commitments of all WTO Members in the market access exercise. However, there was no evidence that the textile exporting Members had not fulfilled their market access obligations. In any event, even if evidence could be produced the matter would be more appropriately dealt with in the Market Access Committee.

8.30 Regarding circumvention, Article 5 of the ATC had clearly defined the rights and obligations of WTO Members in this respect. There were commitments to establish necessary mechanisms to deal with the problems of circumvention, and commitments to closer cooperation (Article 5.3 of the ATC). Such commitments were necessarily qualified by the requirements of consistency with Members' domestic laws and procedures. Furthermore, there were clear and unambiguous provisions for "appropriate action" to be taken, "to the extent necessary" to curb circumvention. Such action "may include denial of entry" or "adjustment...to restraint levels" (Article 5.4 of the ATC). These were powerful provisions, and had been carefully negotiated during the Uruguay Round to address precisely the problems raised by the US. It was part of the balance that provisions for action could be invoked only after certain essential requirements were met, namely that investigations had taken place, that sufficient evidence had been secured, that consultations between the Members concerned had taken place, but that a mutually satisfactory solution had not been found (Article 5.4 of the ATC).

8.31 His delegation had no problem with the suggestion that Members commit themselves to closer co-operation and re-affirm their determination to eradicate circumvention of the ATC. From the US proposal, however, it was not clear as to whether anything further than a reaffirmation was sought, and if so, why. Hong Kong was determined to implement the ATC provisions, including Article 5 and

expected other Members to do the same. The US had recently imposed additional import measures on certain textile and clothing categories, from a number of WTO Members, including Hong Kong. His authorities had expressed the view that they did not think that the US, in introducing this action, had fully followed the procedural and substantive provisions of Article 5. In line with the spirit of the WTO's dispute settlement mechanism, his authorities had been trying to resolve the matter with the US bilaterally and hoped that a mutually satisfactory solution could be found. However, any solutions in order to be satisfactory would have to be in conformity with the multilateral rules.

8.32 The representative of Thailand, speaking on behalf of the ASEAN Members, stated that the attention which had been given so far to the textile and clothing trade by WTO Members was indicative of the high priority that was placed on this particular issue. Therefore, trade in textiles and clothing had to have a prominent place on the agenda of the Singapore Ministerial Conference.

8.33 These delegations shared the US view that "an important element of the ATC is increased market access for textile exports". At the same time, they recalled that the ATC clearly referred to the commitments resulting from the Uruguay Round, and that all Members should ensure fair and equitable application of textile policies in all aspects. However, as to the US statement that "a trade-off for the progressive liberalization of import restraints by importing countries was the removal of various impediments to textile imports by exporting countries", no provision in the ATC required that the integration be conditional on the removal of impediments to textile imports by the exporting countries. The approach taken by some importing countries in offering more meaningful integration in exchange for greater market access in developing countries was not justified. Such conditionalities would inhibit the fulfilment of textile commitments reflected in the Final Act of the Uruguay Round. The integration under the ATC was designed to remove the MFA restrictions progressively. The very purpose of the transition period could only be served by substantial elimination of restrictions at each stage. It was unfortunate that the first stage integration programmes by some importing countries did not meet this objective. The market access obligations of ASEAN members, however, had been fully complied with. To date, the reports of the Market Access Committee did not reveal any failure on the part of any WTO Members to fulfil market access commitments. Improved market access, as a result of the Uruguay Round negotiations, did not necessarily translate into higher volume of trade in every case. The commitments provided the existence of secure and predictable trading opportunity for all Members. It was a common economic phenomenon that one country might do better than the others in one product sector owing to its competitiveness in that particular sector. Market access commitments could not be measured or assessed by merely looking at trade data. Trade was not a zero-sum game. These delegations agreed with the representative of Pakistan regarding the impossibility of conducting international trade on the basis of sectoral reciprocity.

8.34 As concerned circumvention, ASEAN had always placed high priority on this issue and continued to fully implement necessary anti-circumvention measures in their administration of textile trade in order to prevent and guard against possible circumvention in accordance with Article 5.1 of the ATC. They had to the utmost of their abilities cooperated with trading partners at combatting and redressing circumvention issues.

8.35 The representative of Korea stated that, as a matter of principle, Korea had no objection to the discussion of increased market access in the textile sector, as well as enhancing the effectiveness of measures to prevent circumvention and other fraudulent trade practices. However, his delegation did not agree that the Goods Council should examine compliance with market access commitments and that Members be requested to submit trade data to demonstrate the fulfilment of those commitments. It was well recognized that one of the greatest achievements of the Uruguay Round negotiations was increased market access through tariff reductions and the removal of non-tariff barriers in many areas. That achievement reflected the spirit of compromise and balance embodied in the concessions of each Member. The result was a general equilibrium between advantages and commitments among developed

and developing countries. In this regard, his delegation considered many of the obligations of some Members under the ATC as trade-offs for other benefits enjoyed in other WTO Agreements. Therefore, his delegation did not think that there was any contractual link between the integration of textile products by importing countries and the removal of exporting countries' restrictions. Regardless of what happened in other fields, his delegation wished to underscore its firm belief that progressive liberalization of MFA restrictions should be implemented fully as provided for in the ATC.

8.36 On circumvention, while the determination of Members to eradicate circumvention should be reaffirmed, this did not necessarily justify any unilateral actions such as denial of entry and the imposition of punitive charges. Any punitive action had to follow the appropriate procedures, of the ATC, and be pursued only if proven through such procedures that a Member had not taken measures to comply with its commitments. In addressing this issue, two points had to be kept in mind, so as to ensure a just approach and resolution to this problem. The flow of normal trade had to be safeguarded from the simple assumption of circumvention. Whatever measures were eventually taken to prevent circumvention, the provisions and disciplines stipulated in Article 5 had to be strictly adhered to. In short, his delegation was concerned about the possibility that excessive unilateral action on the part of certain importing countries on questions such as circumvention might damage or delay the process of integration. Finally, it had difficulty in agreeing that discussion by the Goods Council of certain ATC-related items should wait for the arrival of the TMB's report. The TMB had been created by the ATC, and the Goods Council had the competence and authority to deliberate on any ATC-related issues including the report of the TMB.

8.37 The representative of India thanked the United States for having submitted its views on the implementation of the ATC. His delegation would reflect on the US paper submitted at this meeting and revert with comments later. His understanding was that the report expected from the TMB was not the TMB review contained in the ATC but rather an administrative requirement from this Council to the TMB, to provide a report for the consideration of the Council and for transmission to Ministers.

8.38 Market access was a significant issue for India as textiles and clothing exports accounted for a major share in India's total export earnings. Market access provisions were negotiated as part of an integrated package in the ATC. His delegation was therefore surprised that the US argued that "a trade off for the progress of liberalization of import restraints by importing countries was the removal of various impediments to textile imports by exporting countries". His delegation could not find any provision in the ATC, which bore out this US viewpoint and sought clarification on the legal basis for this argument. Negotiations on all subjects covered by the Uruguay Round, had been conducted as a total package, and he did not recall any agreement during these negotiations to link the removal of GATT inconsistent MFA restrictions maintained by textile importing developed countries with GATT consistent restrictions maintained by textile exporting developing countries.

8.39 The negotiations leading up to the ATC had been difficult and had taken place against the background of 40 years of arbitrary regulation of trade in the textile and clothing under the discriminatory MFA. The effort in the negotiations had been to bring this sector into the non-discriminatory GATT system. As the negotiations during the Uruguay Round had progressed, the textile exporting countries realised the enormous price that they were being asked to pay for doing away with the MFA regime, namely to agree to bring new areas such as intellectual property rights and trade in services into the multilateral trading system. Negotiations had been further hampered by the insistence of importing developed countries that the integration of textiles and clothing trade into GATT would require a transitional period of 10 years. In addition, they had negotiated their right to take discriminatory safeguard action during this transitional period. He considered it ironic that countries which considered themselves strong proponents of trade liberalization had demanded and had obtained provisions which went against the objectives to which the multilateral trading system was committed.

8.40 As had been stated earlier, the obligation of the four developed entities was to bring their textile trade into the GATT system through integration. The integration by the other countries whose trade was under GATT disciplines even before the ATC, was a notional integration. His delegation considered that it had already paid the price for expecting real integration by the four developed importing entities. It had not heard any complaints, based on the provisions of the ATC, that market access commitments made in this sector during the Uruguay Round had not been met. The Committee on Market Access had decided as early as 25 April 1995 (paragraphs 5.1 and 5.2 of document G/MA/M/1), that if any problems arose with the implementation of these concessions then Members should rely on cross or reverse notifications. He enquired whether the United States had made any such notifications to the Market Access Committee which could serve as a reliable basis for the views it had expressed. Furthermore, he noted the remark by the US on the preference for quotas over tariffs.

8.41 His delegation had made substantial efforts to provide significant market access. As part of the concessions during the Uruguay Round, his Government had agreed to lower its tariffs from over 100% to 40%. Such concessions on reductions of tariffs had been made by most developing countries, and were in sharp contrast to the cosmetic integration of trade in textiles and clothing by the four developed importing Members. He added that his delegation had notified its decision to significantly liberalize imports of textiles and clothing items as from 15 February 1995. As a result, specified fibres, yarns and industrial fabrics were permitted to be imported freely without an import license. Also, a large number of fabrics and garments had been notified to the WTO as being permitted to be imported against special import licences into India. His Government's trading partners had welcomed and utilized these opportunities. He contrasted his Government's efforts to remove so-called "impediments to textile imports" with the attempts by one Member to continue to maintain protectionist barriers to trade in textiles and clothing as evidenced by its publicly announced integration programme and its indiscriminatory use of the transitional safeguard provisions of the ATC.

8.42 The representative of the United States clarified that her submission and oral remarks noted the US President's commitment to the Congress and also to the textile industry. Article 7 of the ATC contained the commitment of all Members to achieve and improve market access; negotiation of these provisions had established the link between market access commitments and the ATC. While she did not use the notion of reciprocity, clearly in the negotiation of the ATC there had been a give and take in what would be the commitments. Although she voiced doubts about the representative of Pakistan's idea on removing all quotas and tariffs, she was always willing to discuss these issues. She suggested that delegations consider accelerating their tariff reductions since they were asking the United States to do likewise with integration. She reiterated that the US market was one of the largest markets in the world to which many countries wanted access; at the same time the US wanted access to other markets too.

8.43 She added that the amount of imports which had been subject to charge-backs did not show the overall problem of transshipment. Many millions of dollars worth of merchandise which her Government had seized could not be charged back against quotas. Transshipment was illegal and should not be ignored. In Article 5.3, Members had agreed "to take necessary action, consistent with their domestic laws and procedures, to prevent, to investigate and, where appropriate, to take legal and/or administrative action against circumvention practice within their territory". Therefore an obligation existed before, during and after an investigation of circumvention.

8.44 The representative of Pakistan recalled that Article 7 referred to commitments which had already been made on market access and which were included in each country's schedule of tariffs. Therefore there was no question of further concessions on market access in lieu of the implementation of the obligation of the restricting Members to integrate textile trade in accordance with the ATC's schedule of integration. There seemed to be a fundamental misunderstanding or difference of position with

regard to the interpretation of Article 7 which had to be clarified, because otherwise there would continue to be a considerable degree of disagreement with regard to the implementation of the entire ATC.

8.45 He also noted that the US paper contained a reference to the establishment of an assembly-based rule of origin for imported apparel products which, it was said, had helped to harmonize requirements among the major importing countries. In this connection, he recalled that the Agreement on Rules of Origin mandated the relevant Committee to harmonize rules of origin in a period of 3 years. His delegation was disturbed that this sort of harmonization had taken place among the major importing countries without consultations and without agreement being reached in that committee. He looked forward to a further productive and constructive dialogue with the US so as to ensure the smoother implementation of ATC in the future.

8.46 The Council took note of the statements.

9. Implementation of the Agreement on Textiles and Clothing and Related Matters
- Communication from the European Communities (G/L/97)

9.1 The representative of the European Communities said that his delegation took a perspective similar to the US with regard to market access and also had experience with the serious problem of circumvention. He reiterated the statement by his delegation at the meeting of the Council of 25 July, that while accepting the freedom of the Council to discuss any item relating to trade in goods that it considered appropriate, there was a need to respect the special status and the responsibilities given to the TMB. His delegation looked forward to its report in early October.

9.2 In applying the ATC, he considered it important to ensure that the spirit and letter of the Agreement were respected. Cooperation was important and in that respect he drew attention to a recent appeal by Sir Leon Brittan in which he stated that "the Commission is about to decide on its proposal for the second phase of textiles liberalization under the Uruguay Round. We are open-minded and want to be as liberal as possible in order to contribute to the worldwide opening of the textiles trade. However, the Commission will need to reflect on the degree of access given to our own exporters before deciding how ambitious our own proposals can afford to be. I, therefore, appeal urgently to textiles exporting nations interested in further multilateral opening of the EU market to propose serious improvements to market access in their own countries".

9.3 He noted that the overall balance of advantage was delicate and could easily be disturbed and at the same time, serious political and economic constraints existed. The concept of demanding concessions of the exporting countries was alien to the WTO which was based on concepts more close to persuasion, cooperation and consensus, as borne out by the reference in the Preamble of the General Agreement to mutual advantageous arrangements directed at the substantial reduction in tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce. Article 7 of the ATC took this language one step further in the specific context of textiles with its appeal that all Members should take such actions as may be necessary to abide by GATT 1994 rules and disciplines so as "to achieve improved access to markets for textile and clothing products through such methods as tariff reductions", and going on to enumerate a number of other ways in which that process could be facilitated. Although not looking for strict reciprocity regarding the opening of markets, the political and economic constraints put this delegation in the position where it had to be able to show that provisions such as Article 7 were being met. Thus, there was no imposition of any kind of condition but an acknowledgement of a particular political difficulty which, if resolved, would be to the mutually advantageous benefit of all WTO Members.

9.4 With regard to rules and discipline, his delegation's submission also drew attention to the problem of circumvention with which it had had its own unfortunate experience. It therefore supported much

of what the US had said, and recalled its own proposal that the Goods Council examine the extent to which WTO Members have complied with the GATT 94 rules and disciplines.

9.5 The representative of Colombia, while agreeing on the importance of the TMB report, noted that this would be different from an analysis of the implementation of the ATC conducted by the Goods Council. The TMB report would be factual and describe the cases and debates that had taken place. The Council's analysis would examine retrospectively the implementation of the ATC and would also have a perspective analysis as to how implementation would continue. The ATC contained a clear, concrete and specific built-in agenda and this was where analysis had to be conducted on a forward looking basis.

9.6 He reiterated that the suggestion that an increase in the applied tariff up to the bound rate was a *de facto* market access reduction was not well-founded in the light of the ATC nor any other WTO Agreement. The obligations that existed in the WTO for each Member were those that were expressly contained in the GATT/WTO rules, in the light of interpretations, prevailing common sense, and in view of the aim and purpose of each Agreement. Regarding tariff rates and levels, GATT provisions only concerned obligations on bound tariff rates; moving the applied tariff rates up to the bound level in a Member's Schedule was a legitimate right compatible with GATT 1994 provisions and with the letter and the spirit of the ATC. The very nature of the ATC was to provide a framework in which to integrate textile products into the GATT and thus ensure a progressive dismantling of measures that were incompatible with the GATT. As to measures in force in developing countries, not only were they compatible with the ATC but they were also compatible with the provisions of GATT. Thus there could not be a connection between dismantling of a GATT consistent measure and one that was not GATT consistent. In no subsidiary body of the Goods Council, in particular the Market Access Committee, nor in the TMB or the DSB had there been any complaints as to the way in which textile exporting developing countries had been complying with the obligations of the ATC.

9.7 Finally, regarding circumvention, to what he had stated with regard to the US communication, he added that an effective evaluation of the implementation of the ATC would require Members restricting themselves to the commitments that came directly from that Agreement without extending it to compliance with all the other disciplines contained in the WTO. If the Community wished to evaluate compliance with anti-dumping, balance of payments, subsidies, and intellectual property requirements, reference would have to be made to the corresponding committee.

9.8 The representative of Canada stated that her Government was committed and had always been committed to the full implementation of the ATC. The discussion in the Council had shown that all Members were also committed to that goal. An important point was that although there was considerable reference to the spirit and the letter of the ATC, there was not any specific reference to a Member being in breach of its obligations under the ATC. She considered it fair to say that all shared the same objectives, whether as importers or exporters, in terms of implementation and the need to show that the WTO as an institution was capable of ensuring that rights and obligations were being fully met. Therefore, she found the distinction that some had made between what was called an Article 2.7(a) and an Article 2.7(b) Member perhaps an inappropriate categorization. It was important that actions ensuring complete integration were being taken by all Members.

9.9 Her delegation would reflect thoroughly upon the particular aspects raised in the US paper. However, she acknowledged that these aspects would need to be considered in the detailed review of the implementation of the ATC. In that respect her delegation had always been of the view that the Goods Council had the clear authority to review the functioning of the ATC. However, it had also noted that the ATC itself required the Goods Council to conduct a major review of the implementation of the ATC before the end of each stage of the integration process and it also further stipulated, that in order to assist in this review, the TMB should transmit to the Goods Council a comprehensive report

on the implementation of the ATC. Her delegation considered that it had been clearly in the minds of the drafters of the ATC that a report from the TMB would be an important and indeed an essential precursor to any major review by this Council. She believed that the report that the TMB was preparing for the Singapore Ministerial Conference was well under way and on track.

9.10 The representative of Pakistan believed that Article IV of the WTO Agreement made it clear that the Goods Council had the authority to conduct a review. What was expected from the TMB could be an additional input but it could not replace the review that had to be made by the Members in the Goods Council of the implementation of the ATC. Regarding the points made by the Communities on Article 7 of the ATC amounted, in his view, to an interpretation or misinterpretation. He considered the Article to be absolutely clear where it stated that "part of the integration progress and with reference to the specific commitments undertaken by the Members as a result of the Uruguay Round, all Members shall take actions as may be necessary to abide by GATT 1994 etc". This reference clearly was to the commitments made in these agreements and there could be no interpretation that the commitments for the ATC's implementation were in exchange for anticipated market access. Members did not write a blank cheque when they negotiated the ATC. He wondered whether the US and the Communities' interpretation of Article 7 implied that the importing countries were under no obligation to integrate the MFA restricted items into the WTO/GATT within the 10 year period if there were to be no further market access by exporting countries outside of what they had committed in these agreements. If that was the assertion being made it would be a serious violation of the letter and the spirit of the ATC. His delegation hoped that this was not the case and that new conditions were not being imposed for the implementation of the ATC. He added that there could be no parity between the obligations of those countries which had restrictions that were inconsistent with GATT under the MFA and those that had restrictions which were consistent with GATT.

9.11 He agreed that if no Member was found in breach of the ATC, that was only because this evaluation was still in the process of being made. The submissions by his delegation and others indicated that the purpose and objective of the ATC, of integrating restricted trade into the WTO, had not been fulfilled in the first phase of the implementation. If this was so, it presented a situation of breach or at least of grave departure from the spirit and the objectives of the ATC. This would have to be concluded at the end of the debate. His delegation was not encouraged by what it had heard at this meeting.

9.12 The representative of Egypt considered the Communities' submission ambitious in proposing to the Goods Council many items which fell within the competence of other bodies of the WTO, and many which went beyond the scope of the present analysis, which was limited to the review of the implementation of the ATC. Referring to market access, she stressed the delicate balance of rights and obligations negotiated under the Uruguay Round agreements. The conditionality transpiring from the remarks on market access made by the Communities and the US went beyond the requirements of the ATC and would not fit into the current exercise.

9.13 To date there had been no complaints regarding the implementation of commitments undertaken by the exporting countries as included in their Schedules of Concessions. The Market Access Committee had reported no default, nor had there been any notifications or reverse notifications to the TMB in accordance with Article 7 of the ATC that had any bearing on the implementation of the Agreement. Any evidence that exporting countries had not fulfilled their market access obligations should be taken up in the Market Access Committee which was the appropriate forum.

9.14 On rules and disciplines she wondered whether the Goods Council could at this stage examine the extent to which WTO Members had complied with GATT 1994 rules and disciplines having an impact on trade in the textile sector. It might, however, be worthwhile, on the basis of available relevant information, to look into the many measures taken that were unjustified and unfounded and served

only as disguised protectionist purposes and obstructed the flow of trade. In this context, investigation procedures against exporting countries were in many instances on questionable grounds. The misuse of anti-dumping proceedings on products that were already under restrictions was but one example. There were instances of repeated investigations that amounted to nothing, and that were dropped a long time after the allotted twelve-month period. Others remained in spite of the fact that injury had not been found. Such actions deserved to be brought to the notice of the Goods Council.

9.15 On other aspects of the EC paper such as the functioning of the TMB, no one had ever contested the importance of that body. Both the TMB and the Goods Council were entitled to present their reports on the implementation of the ATC through parallel channels to the General Council. The TMB had to report what had transpired throughout the two-year implementation period through its regular review of notifications whereas the Goods Council was a more forward looking body. In addition, what was being sought was a political message to the Singapore Ministerial Conference and for this the TMB was not the appropriate forum. Ministers had to demonstrate the political will to implement the ATC in letter and in spirit, and the functioning of the TMB was one of the issues in that context. The role of the Goods Council in general as it related to the TMB also needed to be considered. These issues could be examined independently without waiting for the TMB report. Her delegation was interested in the good functioning of the TMB and its image as a serious and objective body in the system would strengthen its ability to discharge its responsibilities in accordance with Article 8.1 of the ATC.

9.16 The representative of the United States noted that her Government was examining closely the market access commitments and would probably have complaints to bring to the Market Access Committee. She expected Members to recognize the commitment to market access in the ATC and expected concerned Members to continue to take actions to achieve and improve market access as stated in Article 7. Her delegation did not advocate the notion of reciprocity but emphasized free and fair trade. The ATC was a product of this and a product of the give-and-take for which a balance should be ensured.

9.17 The representative of Mexico stated that tariff bindings constituted the very corner-stone of the GATT/WTO system. Tariff bindings gave certainty both to importers and to exporters and represented rights and obligations to be respected by all WTO Members. Each country had the right to apply tariff rates with only the obligation that the rates applied should not exceed the bound levels contained in its WTO schedule.

9.18 The representative of Norway shared the view expressed by, among others, the Communities and Canada that the Goods Council was the proper forum in which to have this discussion. However, his delegation believed that the Council would have a better and more informed debate in this forum on the basis of the TMB report. Secondly, his delegation considered that it was proper that the questions on market access and rules and disciplines had been brought into the debate. There was a legal and political side to these matters which needed to be recognized and discussed. He thought that one of the points of having a debate in this Council which was superior to the committees was that relevant questions could be examined in full. The discussion should not be artificially limited because Members did not like certain aspects of the discussion. On the question of circumvention, his delegation in support of the US and the Communities felt that the size of the breach of rules was less significant than the question of whether or not there had been a breach.

9.19 The representative of India recalled that these discussions were taking place in the context of the analysis of the implementation of the ATC. Noting the request that the Council examine the extent to which all commitments entered into during the Market Access negotiations had been complied with, he asked whether the Communities had made any cross or reverse notification in keeping with the Decision of the Market Access Committee in paragraphs 5.1 and 5.2 of document G/MA/M/1. Such notifications could serve as a basis for discussing the concerns expressed by the Communities. He recalled

the market access commitments made by his Government, as explained in his intervention on the US submission, and added that the EC had publicly stated its appreciation for India's contribution to achieving effective access to its market for textile and clothing products in a communication circulated by the TMB in document G/TMB/N/60/Add.3. His delegation was therefore somewhat confused about the Communities view as well as a little aggrieved to be implicitly accused of not fulfilling commitments made. India could not consider going beyond the provisions of the ATC to provide any additional market access. In this context, he requested clarification on the EC policy on this issue. If this proposed opening was to be multilateral, did this mean new negotiations? His delegation did not seek new negotiations, but only the implementation of already negotiated provisions of the ATC.

9.20 With reference to the interpretation of Article 7.1 of the ATC, he recalled that the word "achieve" market access had a negotiating history which the Communities and the US were aware of. He therefore expected both these Members to understand and accommodate his delegation's interpretation that it had already paid the price for this provision as reflected in India's Uruguay Round schedule. He requested the EC delegation to clarify the veracity of a recent report in which it had made an offer to 12 leading textile exporting countries to cut quotas on the most protected textile and clothing items on condition that these countries would dismantle barriers to EC imports. His delegation also had serious political and economic considerations in considering any such a linkage or suggestion of reciprocity.

9.21 The representative of Thailand, speaking on behalf of the ASEAN Members, also recognized that there were political and economic constraints in this sector and persuasion, cooperation and consensus were certainly the key elements in working towards a mutually beneficial trade solution. It was a welcome sign that the Community had stated during the last meeting that the Goods Council was an appropriate forum for the discussion on textiles. These delegations also considered that a constructive and non-confrontational discussion on the ATC was an important element in Members' common quest to balance the agenda for the Singapore Ministerial Conference. Noting the EC request that the Goods Council examine the extent to which all commitments entered into during the market access negotiations had been complied with, he pointed out that these commitments in the form of tariff bindings and reductions had been duly implemented since the day the WTO went into effect.

9.22 Secondly the notion that market access had been reduced through the raising of applied tariff rates to the bound levels was not a valid argument. The raising of applied rates within the bound levels did not in any way constitute a breach of commitments; applied rates could fluctuate under the bound rate depending upon the revenue and the development needs of Members. He also took note of the comments made by Norway that Members should be more open to subject matters in the areas of rules and disciplines. With regard to this issue, he noted his delegation's concern regarding the changes in the rules of origin recently introduced by one important trading partner which had brought uncertainty and had begun to disrupt trade under the ATC. Any changes in the rules of origin should be consistent with the provisions of the ATC, the Agreement on Rules of Origin and Article IX of GATT 1994. In principle the rules of origin should not themselves create restrictive, distorting or disruptive effects on international trade.

9.23 Another important concern of the past two years was the growing misuse of antidumping proceedings on textile products. These proceedings should not be employed in a repeated manner since this could only result in the disruption and dislocation of trade flows. There had been instances of repeated investigations by an importing country on similar textiles products. In some cases, the investigations had remained in effect for over two years which went far beyond the normal twelve-month period in spite of the fact that no injuries had been found. Such actions amounted to trade harassment and deserved to be brought to the notice of the Goods Council.

9.24 The representative of the European Communities clarified that he was not trying to say that if there was no further access given by exporting countries to their own markets, the Community would

have no further obligations under the ATC. It had clear obligations under the ATC and stood by them. His delegation was not trying to establish any kind of legal link nor any kind of reciprocity, but it would be illusory to conclude that there was no linkage between what happened in respective markets. In the light of the political and economic realities of which he had spoken earlier, he asked what, in concrete terms, would exporting countries be prepared to contribute to worldwide liberalization of trade in textile and clothing. The answer to that question would have an impact on the nature of the decisions which were imminent, and which would be taken with regard to the implementation of Phase II of the ATC. His delegation was not seeking to establish a new kind of conditionality but was looking for the widest possible contribution to the worldwide liberalization of trade in textiles and clothing.

9.25 With regard to the Indian question, on a recent report referred to, the EC had invited countries to consult with it on what they would wish to see included in the proposals for Phase II of the ATC. The response to those invitations had been somewhat disappointing. On the question of bound rates, a Member might adjust the applied tariff rate upwards to as far as the binding itself, but he seriously questioned the logic of those who would argue that there was no deterioration of the real conditions of access to markets of countries that made such an adjustment.

9.26 The Council took note of the statements.

10. Implementation of the Agreement on Textiles and Clothing and Related Matters

- Communication from Pakistan on behalf of a number of WTO Members (G/L/92)

10.1 The representative of Colombia referred to the importance of maintaining an on-going dialogue amongst exporting and importing countries as well as among participants from the public and private sector on the analysis of the implementation of the ATC and the way in which integration into GATT rules should take place. There was a serious concern felt by exporting countries on the way in which the ATC had been implemented. These concerns related not only to integration but also to other matters that had capital importance such as those concerning the use of the safeguard clause or legislation on rules of origin. He considered that the ATC's integration provisions were designed to progressively eliminate the quantitative restrictions of the MFA. This was the most important element of the ATC and should be met in three stages and on the basis of a very serious analysis of the first stage of integration. It was extremely important that the integration percentages that were provided for in the second stage be commercially significant, thus contributing to the liberalization process. To this end a balance had to be sought between products that were subject to restrictions and those that were not as well as a balance between sensitive and non-sensitive products, laying emphasis on made-up products. It was also necessary to analyze what had happened to the use of the textile safeguard. In 1995, the US had resorted to safeguard action in a rather disproportionate manner, contrary to the obligation in Article 6.1, that the "transitional safeguard should be applied as sparingly as possible, consistently with the provisions of this Article and the effective implementation of the integration process...". It had led to further quantitative restrictions being placed on the imports of textile products which, together with an integration programme with little trade significance had a net negative effect on trade flows. An additional problem that was affecting the implementation of the ATC concerned rules of origin. While work was still being done on the harmonization of rules of origin which was expected to be finalized by the end of 1997, in July the United States had adopted new rules which, according to analysts, would affect existing patterns of trade as these rules tended to favour chains of production in a single country rather than recognizing and allowing for the use of comparative advantage resulting from different sources of production in each stage of production. This ran counter to the principle of application of advantages that resulted from globalization and would also have a negative effect on patterns of production in several developing countries. In very broad terms, these were the central issues concerning implementation of the ATC that had to be discussed for the purpose of the preparation of the Ministerial Meeting at Singapore.

10.2 The representative of Pakistan wished to identify the main areas where Members would need to make an evaluation and to pronounce themselves in the context of the Singapore Ministerial Conference. It had been strongly reaffirmed that textiles was a sector which was important for a very large number of developing countries, important for the development process itself, important for the expansion of world trade and important for the evolution of a balanced agreement at the Conference. There were, in the view of his delegation and several others, at least ten areas on which evaluation would need to focus. The first area, was that of the integration process. Members were aware of the concerns of the exporting countries that in the first stage of integration the products which had been integrated were not subject to MFA restrictions. The products integrated were high in volume but low in value and therefore the conclusion was that the four major textile importing Members had failed to provide meaningful market access. His delegation hoped that in the second and third stage the outcome would be better. However, what had so far been published in the United States and the indications which had been received from the Communities, did not reflect a positive signal with respect to the second stage either. In this context his delegation wished to reiterate the view that there was no aspect of sectoral reciprocity in the context of the integration process. The second area of concern was the application of transitional safeguards which was supposed to be used as "sparingly" as possible. The use of such safeguard measures by one major Member in 24 cases within a span of a few months against 14 Members, which were all developing countries, could not be considered to be the sparing use of the transitional safeguard. Thirdly, there was considerable disappointment with the performance of the TMB. The TMB's decisions had not always lived up to the expectations that were ascribed to this Body in the ATC. Most importantly, there had been many decisions where the rationale for its decisions had not been provided and the process of decision-making had remained rather opaque. It was hoped that the TMB's performance would be better in the future and that it would live up to the expectations of the ATC. The fifth area concerned the treatment of the least-developed countries, where there was no indication of any special measures that had been taken in their favour. Sixth, the question of special treatment for cotton-producing countries, which had not received any such treatment, nor indeed had they been consulted in the process of drawing up the integration programmes as was implied in the ATC. The seventh area was that of rules of origin where one major trading partner had announced changed rules of origin in late 1994. These rules had brought a lot of uncertainty and had begun to disrupt textiles trade. The eighth concern was that of special regimes maintained by certain countries which provided more preferential treatment to certain regimes at the cost to other exporting countries. The ninth area was the impact of regional trading arrangements the growth of some of which had clearly had a negative impact on the degree of liberalization on textiles trade. For example, when three Members joined the European Union, this had created a net deterioration for the status of liberalization. Finally, the spectre of social and environmental issues being used as non-tariff barriers to trade. There was talk, for example, of a task force being set up in one major trading country which would overlook whether the imports of textiles products were produced under humane working conditions. This was inducing subjective judgement over imports which was likely to have a very negative impact on many developing countries. His delegation felt that the recommendations and conclusions that came from any evaluation of the situation were self-evident and would hope that in the near future it would be possible to hold consultations with a view to presenting for the consideration of the Goods Council conclusions and recommendations with regard to what should be said about textiles at the Singapore Ministerial Conference.

10.3 The representative of Hong Kong stated that the time had arrived to convey the concerns of Members for consideration by Ministers. His delegation had no problem proceeding with the ten areas indicated by the representative of Pakistan. Alternatively, the ten areas could be grouped under five. The first would be integration. The second, new quantitative restrictions, in particular restrictions arising from the invocation of Article 6. The third would be other measures affecting textile trade, under which rules of origin, anti-dumping and use of other non-quantitative restrictive measures for protective purposes would be covered. The fourth, would deal with the question of special treatment for cotton-producers, and small suppliers in developing countries. Finally, the question of supervising

and overseeing the implementation of the ATC would need to be addressed. The two relevant bodies were the TMB and the Goods Council.

10.4 Regarding the last point, it was evident from Article 8.1 of the ATC that the TMB had an important role to play. However, discussions so far in the Goods Council suggested, at least to some Members, that this was not clear. Hong Kong's expectations of the Body were that it be open, fair and fully acceptable to Members. Open did not only mean affording adequate transparency to parties outside the TMB of its mode of operation. Equally, if not more importantly, reasons had to be given for the recommendations made by the Body, or, where recommendations should have been made but were not made, the reasons why. The latter was not taboo; times had changed since the days of the MFA. Any major difficulties the TMB faced and which could seriously affect the discharge of its functions had to be brought to the attention of WTO Members. Openness enhanced accountability, and would encourage consistency and coherence of actions. This would further strengthen the confidence of WTO Members that the way the TMB functioned was fair. His delegation supported concrete action to be taken in the Goods Council not only to further improve the functioning of the TMB, but also to ensure its full acceptability by WTO Members. His delegation supported a closer working relationship between the Goods Council and the TMB.

10.5 The representative of India stated that his delegation had expressed its views on several of the points contained in the communication by Pakistan on behalf of a number of Members including India, during the previous meeting of the Council. His delegation remained convinced of the merits of its arguments made on that occasion even after hearing the contrary views of importing Members. It therefore requested that the Council keep India's arguments in mind when deliberating on the further course of action. His delegation strongly supported the statements made by the delegations of Colombia, Pakistan and Hong Kong. It was India's view that this issue had to be appropriately placed before the Ministers at Singapore for their consideration and guidance. He wished to reiterate his Government's conviction that the Ministers had to be informed that all was not well with the implementation of the ATC. A renegotiation of the Agreement was not being sought, merely that it be implemented properly.

10.6 The representative of Thailand, speaking on behalf of the ASEAN Members, stated that they felt that the first and foremost task facing Members was to examine and take stock of the implementation of the Uruguay Round results. The Ministerial Meeting was an important opportunity for assessing what had been achieved to date as well as what had to be done to ensure full and faithful implementation of the letter and spirit of the obligations undertaken as part of the Uruguay Round Agreements. With the importance of textile and clothing trade as attested by both importing industrialized countries and exporting developing countries alike, there could be no question that trade in textiles and clothing must have a rightful place in the agenda of the Ministerial Meeting. ASEAN fully endorsed the communications presented by Pakistan on behalf of a number of Members and the contents appearing in the ITCB's Bangkok communiqué of May 1996. The most important aspect of the ATC was the integration of textile products which was designed to remove the MFA restrictions progressively. The implementation programme of the first stage by the four major importing Members did not contain commercially meaningful products of interest to any ASEAN members. ASEAN could only urge the restraining countries to prepare their commercially meaningful integration programmes for the second stage, contributing substantially to the liberalization of restrictions. These should include a judicious mixture of restrained and unrestrained products, a balanced proportion of sensitive and non-sensitive products with a greater emphasis on clothing products. An integration programme on these lines alone would ensure a smooth transition from the present system to the GATT disciplines, and was in the interests of both restraining and exporting countries. ASEAN was of the view that one way in which the Ministerial Conference could be most effective in improving the functioning of the TMB would be to advocate greater transparency in the TMB. This would enable WTO Members to gain a better understanding on how the Body worked and the reasons underlying the decisions that the TMB took. By transparency, ASEAN was referring to the public issuance of written decisions and recommendations

that articulated the factors and rules considered and the reasons for the findings and recommendations produced. Rationales and precedents were especially necessary in the case of the TMB, as membership of the body, particularly those of exporting developing countries changed on an annual basis. To ensure continuity and consistency in the working of the TMB and to educate future TMB members, a complete and well-documented record of precedent was essential. ASEAN believed that a mandate for such transparency in the TMB would be an extremely significant accomplishment for the Singapore Ministerial Meeting. ASEAN was very much concerned at the large scale introduction of transitional safeguards by one major trading partner in 1995. It believed that such use was in violation of the commitment to "sparingly" use the safeguard system contained in the ATC. In one instance, the transitional safeguard was introduced unjustifiably on imports of a product from Thailand which was already under restraint. To this end ASEAN urged Members to be very careful in the application of transitional safeguards, and to scrupulously respect the disciplines and procedures contained in the ATC. ASEAN believed that the Ministerial Conference should also address the misuse of rules of origin for protectionist purposes. The new textiles rules of origin introduced by one Member had affected the market access available to some members of ASEAN, and disrupted trade under the ATC. The Conference had to reiterate the importance of avoiding disruption of trade through changes in rules of origin, and of the need to make no new changes in rules of origin except in the context of the harmonization work programme undertaken under the Agreement on Rules of Origin. Trade measures for non-trade purposes had the potential of limiting the market access for the textile-exporting countries. There had been reports of incidence of such measures being applied to textile exports from developing countries, and ASEAN urged the Goods Council to examine the appropriateness of such measures with a view to seeking a Ministerial Decision.

10.7 The representative of Japan sought clarification regarding the issue of transparency or lack of transparency in the functioning of the TMB. The TMB was a quasi judicial body which placed reasonable limits regarding how transparent it could be, and also meant that its reports had to be carefully drafted. It was difficult to cite names of TMB members who worked on an *ad personam* and on a consensus basis.

10.8 The representative of Norway stated that the debate had reaffirmed that textile was important to trade and to development, and had recognized that this was an important issue for the Singapore Ministerial Meeting. He also agreed that, for the reasons advanced, an exporting Member might be disappointed with the first integration phase. However, with respect to transitional safeguard mechanism and its sparing use, reference had been made of one country having used it in 24 cases involving 14 countries, and it was said that this was not "sparing". In his view the term "sparing" was relative. He did not agree with the disappointment expressed regarding the functioning of the TMB. His delegation had always supported a policy of greater transparency, however, in the case of the TMB, Norway agreed with the comments made by Japan. There were reasonable limits to transparency in view of the fact that the TMB was a quasi judicial body. As TMB members were acting on an *ad personam* basis, having the kind of transparency where people were identified would open up that body to outside pressure. With respect to social and environmental issues being used as obstacles to trade, he reminded Members of another context when Norway had launched, together with the US, the issue of labour standards. At that time, his delegation had argued that this issue was trade-related, and the general response had been that it was not. Today it was being brought up again, but in another context and it had become trade-related.

10.9 The representative of Canada sought clarifications on some of the issues contained in Pakistan's communication on behalf of a number of WTO Members. It was proposed that the review might address integration at the second phase by restraining Members. So far, only one WTO Member had announced its second stage integration list. Given that the second stage programmes were to be notified to the TMB at least 12 months before their entry into force (i.e. by the beginning of 1997) and then circulated by the TMB to WTO Members, how was it being proposed to proceed in view of the fact that some

Members were working to this deadline? It was proposed to consider the recourse by one Member to a large number of safeguard actions against the criteria of whether this was done "sparingly" and consistently with the provisions of the ATC, and the implications for the effective implementation of the integration programmes. The ATC provided that the TMB should supervise the implementation of the ATC and her delegation wondered whether it was not therefore up to Members that might have concerns in this regard to bring issues before the TMB. Furthermore, it was not clear whether the proposal was to assess the implications of all actions including those that had been withdrawn or were not pursued as a result of the TMB's reviews. In that case, one could assess the TMB's impact in moderating the use of safeguard measures by restraining Members in 1996 compared to the first year of the ATC. On Bilaterally Agreed Arrangements, she wondered whether it was being proposed that the Goods Council review such arrangements even before the TMB reviewed them, or whether the Goods Council was only to review arrangements on which the TMB had been unable to reach a consensus. Recalling that the ATC dealt, e.g. with arrangements under Article 6.9 (agreed safeguard measures), Article 2.17 (administrative arrangements), Article 5.2, (mutual arrangements to deal with transshipment), she enquired whether it was being proposed to review the ATC with the object of changing some of its provisions, or of giving directions to the TMB as to how it should assess such agreements. On the TMB, was it being proposed that the Goods Council examine ways to improve its functioning and specifically to improve transparency and to ensure that its members operate on an *ad personam* basis? It had taken the TMB over 4 months of lengthy meetings, both formal and informal, to decide on its rules of procedure. The length of these rules and the minutia they covered made it clear that this was a hard-fought issue, which involved strongly-held opinions of TMB members. If it had taken the TMB 4 months to agree on these rules, she wondered how long it would take the 124 Members of the WTO to improve upon them. Was it being proposed that the Goods Council give direction or make suggestions to the TMB as to how it should go about its work? If the Council sought to give direction to the TMB, would the Council not then be interpreting the ATC? In terms of the functioning of the TMB, the record showed that since its inception, the TMB had heard a number of disputes, and had reviewed notifications by Members. She thought that it might be useful, in any review of the work of the TMB to examine what had been the degree of compliance by Members with TMB recommendations. On Rules of Origin, it was argued that one Member had implemented changes to its rules of origin which either might run counter to the provisions of the ATC or of the Agreement on Rules of Origin or that these changes might have been implemented in ways that did not accord with the provisions of either agreement. She wondered whether WTO Members had sought recourse on this matter either before the TMB, the Committee on Rules of Origin or the Dispute Settlement Body. Canada had expressed concern about these new rules in the Committee on Rules of Origin as they would have a negative impact on Canada's exports. Her authorities were consulting with the Member in question, but so far Canada had not requested the intervention of any WTO body, nor had Canada suggested that this matter be raised in the Goods Council.

10.10 The representative of Egypt hoped that the Singapore Ministerial Conference would provide an opportunity for all trading partners to reaffirm their commitment to take appropriate and correct actions to ensure that the 10-year transition was beneficiary to all parties, and that the ultimate objectives of the Agreement could and would be met within that time-frame.

10.11 The representative of Mexico stated that it was his delegation's view that discussion on regionalism should not be segmented. The WTO had set up a Committee on Regional Trade Agreements, and therefore any discussion about such agreements should be conducted in the framework of that Committee.

10.12 The representative of Hong Kong stated that in response to the question raised by Japan on transparency, he agreed that the TMB was a quasi judicial body and there ought to be certain limitations regarding transparency with respect to such a Body. It was ex-post transparency that, in the view of his delegation, was most appropriate, relevant and necessary. The objective of transparency should

be an indication of the arguments, at least the main arguments, on the basis of which different opinions were formed leading to a situation in which no consensus could be reached. The concern was to enhance the systemic effectiveness of the Body, and not to target individual members. Concerning the point raised by Canada on the time taken by the TMB to formulate its working procedures, this was definitely not a good enough reason for the Goods Council not to seek improvement of those procedures. In fact, the question of why the TMB had taken so long to formulate its working procedure could be a separate question that this Council might want to examine.

10.13 The representative of Thailand, in reference to Japan's question on transparency, stated that the objective of transparency was not to identify in a TMB report a member who had agreed or not agreed with the others. The objective was that the reasons for the findings or recommendations produced by the TMB be well-recorded.

10.14 The representative of Pakistan stated that the basic objective that had to be evaluated was the degree of liberalization that had taken place as a result of the conclusion of the ATC, what mechanisms had been used for liberalization and what had been used to prevent liberalization. In this context, Canada had liberalized one restricted item (work gloves) in the first phase of the liberalization process. But the question was also linked to the use of transitional safeguards, and whether 25 times was sparing or not sparing. Out of those 25 actions, 11 had resulted in some form of restraints through bilateral arrangements and the amount of trade which was restricted as a result of those 11 arrangements was 1.7 billion dollars, 100 times more than the amount of trade that was liberalized in the first phase. So if one were to evaluate whether these measures had been used sparingly, whether they had been used in the spirit of the ATC, the conclusion would be inevitable: following the adoption of the ATC, textile trade had been restricted further rather than liberalized. Whether bilateral agreements were preferred or not, the whole spirit of the ATC was to move away from the bilateral arrangements which were so much a part of the culture of the MFA, and it was because of the necessity to have a multilateral supervision of the ATC that importance was attached to the role of the Goods Council. With regard to the TMB, and the remarks made by Japan, Norway and Canada, the Goods Council was a superior body, comprising all WTO Members. The TMB was supposed to play an important role but it was not quite evident that the TMB had been able to play that role. If it had, restraints of 1.7 billion dollars of trade after the conclusion of the ATC would not exist. As regarded the transparency of the TMB, names were not sought, however, reasons were. Why was it that the TMB was not able to reach a decision? Why was it that it was able to reach a decision which always favoured the importing countries? In reference to the remarks by Norway, on the social and environmental obstacles to trade, this was in no way an admission of legality of the use of labour standards as a trade measure. On the contrary, it was precisely the illegality of such measures which was being complained about. The national positions and measures that had been adopted, on subjective criteria by the importing countries, would affect the exports of textiles from many developing countries and was a further measure of restraint contrary to the spirit of the ATC, and contrary to the spirit of the whole Uruguay Round Agreements.

10.15 The Council took note of the statements.

11. Further Industrial Tariff Negotiations
- Statement by Australia

11.1 The representative of Australia, speaking under "Other Business", stated that his delegation had tabled a formal proposal at the last meeting of the Goods Council in the context of the report of the Goods Council to the Singapore Ministerial Conference. The proposal had earlier been raised at the Heads of Delegation meeting chaired by the Director General and it had been agreed that it be referred to the Goods Council. The Australian proposal contained two elements. First, Australia proposed that the Council recommend to Ministers at Singapore that they agree that liberalizing

negotiations begin on industrial tariffs in the year 2000, to coincide with the negotiations on agriculture and services mandated in the built-in agenda of the WTO. Australia had argued that the absence of a mandate for such negotiations in the built-in agenda was an inadvertent oversight due to the lack of a covering agreement specific to industrial tariffs. Secondly, Australia proposed that the Council recommend to Ministers that they instruct either the Goods Council or the Market Access Committee to begin preparations for such negotiations.

11.2 Since tabling its proposal, Australia had held informal discussions with a wide range of other Members. As a result of these discussions it had become clear to Australia that some Members held unwarranted concerns about the nature of the Australian proposal. There were in particular four points that needed to be made about the proposal.

11.3 First, a commitment to conduct further industrial tariff negotiations would help to balance the negotiations on services and agriculture to be conducted under the built-in agenda, and would provide an avenue for the pursuit of the market access interests of all Members. It would contribute to the balance and comprehensiveness that Members had identified as key requirements in the agenda for the Singapore Ministerial Conference. Secondly, a commitment to conduct further industrial tariff negotiations would not entail the acceleration of any Uruguay Round commitments on industrial tariffs. Equally, it would not preclude the possibility of negotiation of sectoral liberalization initiatives (such as the ITA) which enjoyed the support of individual Members. Thirdly, the proposal should not be seen as likely to impose new burdens on individual economies as Uruguay Round implementation of industrial tariff commitments would be largely completed. In any event, many economies were already lowering their tariffs unilaterally or as part of regional trading arrangements, and this trend could be expected to continue over the next several years. Fourthly, in proposing a preparatory process starting in 1997 and leading up to negotiations in 2000, Australia did not support "negotiations about negotiations". Any preparatory process should be focused on the "process of analysis and information exchange which would allow Members to understand the issues involved and identify their interests in respect of them before undertaking negotiations". (This quote is taken from the reference to the built-in agenda at paragraph 9 of the statement of the Chair at the APEC Christchurch Trade Ministers Meeting). The proposal for a tariff continuation clause similar to those for services and agriculture had been tabled formally. His delegation would be happy for there to be further consultations on this proposal in the framework of any informal meetings that the Chairman of the Goods Council might conduct on the preparation of the Council's report to the Singapore Ministerial.

11.4 The Council took note of the statement.

12. US: Request for Consultations concerning Restrictive Business Practices in the Japanese Photographic Film and Paper Market

- Statement by the United States

12.1 The representative of the United States, speaking under "Other Business", stated that the U.S. Government had requested consultations with the Government of Japan concerning restrictive business practices in the Japanese photographic film and paper market. The United States had requested these consultations with the Government of Japan pursuant to the CONTRACTING PARTIES' decision on "Restrictive Business Practices: Arrangements for Consultations" under the General Agreement on Tariffs and Trade as set forth in BISD 9S/170. This decision was part of GATT 1994 as defined under Article I(b) of that Agreement. Consequently, this Council had responsibility for overseeing the functioning of the Decision on Restrictive Business Practices.

12.2 In adopting its decision, the CONTRACTING PARTIES had recommended that, upon request, "a contracting party should enter into consultations on such practices on a bilateral or a multilateral basis as appropriate." The United States wished to bring to the Council's attention that more than

three months had passed since the United States' had presented its request to the Government on Japan on 13 June 1996. The Community had requested to be joined in these consultations on 5 July and the United States had accepted this request on 15 August.

12.3 Japan had not yet accepted these consultations nor had it responded to the Community's request to join. Instead, Japan on 24 June had requested further information on the measures and practices that the United States intended to discuss at the consultations. His government had provided a full response on 8 July. Then, after an additional delay of one month, Japan had sent the United States a letter on 9 August setting forth a list of preconditions to be met before accepting the request for consultations.

12.4 The United States had replied on 21 August, noting that the GATT Decision did not impose preconditions on the subject matter or the conduct of the consultations that would prevent a productive dialogue about the potential resolution of, issues concerning business practices in the Japanese photographic film and paper markets which appeared to restrict competition in international trade. It was appropriate that the consulting parties be able to discuss factors and conditions, including market structure and regulatory environment, that might provide a fuller understanding of the environment in which the business practices were taking place and their impact on competition in international trade.

12.5 It had very recently come to the United States' attention that the Government of Japan might be on the verge of accepting the request for consultations. His delegation hoped this to be the case and urged Japan to enter into the consultations without further delay and without seeking inappropriate or unnecessary preconditions.

12.6 The representative of the European Communities wished to confirm that the Community had requested to be joined in these consultations, as indicated by the representative of the United States. The Community had a substantive interest in the questions raised by this case. He agreed with the US that an early answer would be welcomed in the interest of the respect and support of the WTO system.

12.7 The representative of Japan stated that his government was taking seriously the request for consultations from the United States since Japan recognized that the "Decision on Restrictive Business Practices" was part of the WTO Agreement. However, Japan had considered that a careful examination would be required as this request for consultations based upon this decision seemed to be the first case in history and the Decision itself did not give clear guidelines as to the agenda or procedures for consultations. In this regard, based upon the decision, Japan had sought clarification from the United States regarding the coverage of the consultations and the procedures. His government had found in the reply from the US that Japan's and US' understanding of the decision differed on some points. He assured the US that there was no deliberate attempt to delay the consultations and that his authorities would be in a position to respond to the request in the very near future.

12.8 The Council took note of the statements.

13. Availability of documents in Spanish

- Statement by El Salvador on behalf of GRULAC

13.1 The representative of El Salvador, speaking on behalf of GRULAC and under "Other Business", expressed concern felt by GRULAC at the fact that documents were not made available in the Spanish language in time for meetings. He wished to make a request that insofar as possible documents were made available in all three languages sufficiently in advance of meetings in order to enable delegations to prepare for meetings.

13.2 The representative of Morocco supported the statement made by El Salvador on behalf of GRULAC, and indicated that the same problem had arisen regarding documents in French. Any action undertaken should cover all the WTO working languages.

13.3 The Council took note of the statements.

14. Review under Article 6 of the Preshipment Inspection Agreement (PSI)

- Statement by the Chairman

14.1 The Chairman, speaking under "Other Business", stated that Article 6 of the PSI Agreement envisaged a review of the provisions, implementation and operation of this Agreement by the Ministerial Conference at the end of the second year from the date of the entry into force of the WTO Agreement, which was the end of this year. However, there was no specific body, designated to conduct such a review. He proposed to hold informal consultations on this matter.

14.2 The Council so agreed.

15. Date of the next meeting

15.1 The Chairman stated that he intended to hold an informal meeting of the Goods Council on 7 October 1996. He intended to have the advice and views of delegations on primarily the format and content of the Council's report to the Singapore Ministerial Conference. In this connection, he wished to have the views of Members on the following four subject areas: 1) the Council's treatment of the reports of its subsidiary bodies; 2) Australia's proposal on "Further Industrial Tariff Negotiations"; 3) the body which should be designated to conduct the review under Article 6 of the Agreement on Pre-shipment Inspection as well as the timing of the exercise; and (4) the preparation of the Council's report on the "Implementation of the Agreement on Textiles and Clothing (ATC) and related matters" for the Singapore Ministerial Conference. Members might wish to discuss the broad themes and contents of the Council's report on this item. He intended to hold a formal meeting of the Council on 15 October 1996.

15.2 The Council took note of the statement.