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MINUTES OF MEETING

Held in the Centre William Rappard
on 3 and 4 November 1999

Chairman: Mr. Ali Mchumo (Tanzania)

<u>Subjects discussed:</u>	<u>Page:</u>
1. Organization of work for the Third Ministerial Conference.....	2
(a) Statement by the Chairman.....	2
2. Committee on Budget, Finance and Administration	3
(a) Report of the Committee.....	3
3. Committee on Balance-of-Payments Restrictions.....	4
(a) Consultations with the Slovak Republic	4
4. Five-year review of the exemption provided under Paragraph 3 of the GATT 1994	4
5. Review of the Dispute Settlement Understanding.....	7
(a) Report to the General Council	7
6. Attendance of Observers at the 1999 Ministerial Conference	13
(a) Governments	13
(b) International intergovernmental organizations	13
7. Waivers under Article IX of the WTO Agreement.....	16
(a) Harmonized System – Requests for extensions of waivers	16
(i) <i>Bangladesh</i>	16
(ii) <i>Nicaragua</i>	16
(iii) <i>Sri Lanka</i>	16
(b) Zambia – Renegotiation of Schedule LXXVIII.....	16
(i) <i>Request for extension of waiver</i>	16
(c) Decision on the introduction of Harmonized System changes into WTO Schedules of tariff concessions on 1 January 1996.....	17
(i) <i>Extension of time-limit</i>	17
(d) Review of waivers pursuant to Article IX:4 of the WTO Agreement	17
(i) <i>Canada – CARIBCAN, granted on 14 October 1996 until 31 December 2006</i>	17
(ii) <i>Cuba – Article XV:6, granted on 14 October 1996 until 31 December 2001</i>	17
(iii) <i>EC – The Fourth ACP-EC Convention of Lomé, granted on 14 October 1996 until 29 February 2000</i>	17
(iv) <i>EC/France – Trading arrangements with Morocco, granted on 9-11 and 18 December 1998 until 31 December 1999</i>	17

(v)	<i>Hungary – Agricultural export subsidies, granted on 22 October 1997 until 31 December 2001</i>	<i>17</i>
(vi)	<i>United States – Andean Trade Preference Act, granted on 14 October 1996 until 4 December 2001</i>	<i>17</i>
(vii)	<i>United States – Caribbean Basin Economic Recovery Act, granted on 15 November 1995 until 31 December 2005</i>	<i>17</i>
(viii)	<i>United States – Former Trust Territory of the Pacific Islands, granted on 14 October 1996 until 31 December 2006.....</i>	<i>17</i>
8.	Trade facilitation – Status report on work carried out by the Council for Trade in Goods under paragraph 21 of the Singapore Ministerial Declaration	19
9.	Review of WTO activities.....	19
	Reports of:	
(a)	General Council, Dispute Settlement Body, Trade Policy Review Body, sectoral Councils, Committees on Trade and Development, Balance-of-Payments Restrictions, Budget, Finance and Administration, and Regional Trade Agreements.....	19
(b)	Committee on Trade and Environment.....	19
(c)	Working Groups on the Relationship between Trade and Investment, the Interaction between Trade and Competition Policy, and Transparency in Government Procurement	19
(d)	Committees under the Plurilateral Trade Agreements.....	19
10.	Appointment of officers of WTO bodies.....	25

The Chairman invited the Director-General to make a statement¹ on developments in international trade and the trading system, after which the General Council met² as the Trade Policy Review Body and held a full discussion on this matter.

1. Organization of work for the Third Ministerial Conference

(a) Statement by the Chairman

The Chairman said that after consultations with the Secretariat and the host Government of the Third Ministerial Conference, the business of the Conference was being planned on the following basis: an opening ceremony on 30 November at 10 a.m.; plenary sessions in the afternoon of 30 November, and in the mornings and afternoons of 1 and 2 December; a night plenary session on 1 December to accommodate the overflow of speakers, and if necessary, a night plenary session on 2 December. Informal working sessions would be organized as appropriate by the Chairperson, in the light of developments during the Conference. The closing ceremony would be on 3 December preceded by a plenary session during which Ministers were expected to adopt the Ministerial Declaration and take any other action they deemed relevant under the Proposed Agenda of the Conference. At this plenary session Ministers would also take note of the General Council's report and endorse all recommendations therein. A document outlining the organization of work would be circulated to Members.³

The representative of Bolivia said there was a feeling of unease among many smaller delegations regarding the lack of transparency in the preparatory work for the Third Ministerial

¹ The statement was circulated in WT/GC/29.

² The minutes of this meeting are contained in WT/TPR/OV/M/2.

³ WT/MIN(99)/4.

Conference. Bolivia requested that the Chairman of the General Council and the Director-General take the necessary steps to ensure that delegations were informed of the meetings among small groups of delegations convened to solve certain problems not solved in plenary meetings, and that the results of such meetings be made known 24 hours in advance of any decision to be taken by Ministers.

The representative of Panama said that his delegation fully supported Bolivia's statement. The whole of the membership should be informed of what occurred in meetings in which the Chairman or the Director-General participated and which dealt with preparations for the Third Ministerial Conference. In light of the concerns over transparency, all Members should be informed of when these meetings were to be held and which issues were to be dealt with, so they could decide whether to take part in such meetings. Panama hoped that measures would be taken in this regard very soon.

The representative of Mauritius said that his delegation fully supported the statements by Bolivia and Panama. The need for transparency had often been stated in the General Council, yet in the context of preparations for the Third Ministerial Conference one was finding a repeat of the situation encountered during the Singapore Ministerial Conference, where many Ministers had to wait outside meeting rooms in order to find out from those attending the meetings what had occurred. The necessary steps should be taken in order to fully brief all delegations, so that they did not later face a *fait accompli*.

The representative of Cuba said that his delegation shared the views expressed by Bolivia, Panama and Mauritius regarding the lack of transparency and the need to improve working methods in the preparations for the Third Ministerial Conference. The consensus-building process was difficult but needed to be done in a room large enough to accommodate all interested delegations and to allow them to share in that process. Cuba hoped that this situation would be rectified.

The representative of Uganda said that his delegation appreciated that in order to build consensus it was at times necessary to bring a few delegations together, but this should not develop into a situation where many Ministers were kept in the dark until an outcome was announced. Uganda appreciated the Chairman's efforts to bring issues to the General Council so that this process could be as open as possible. The least-developed country Members might be poor in resources but were not poor in ideas.

The General Council took note of the statements and of the organization of work at the Third Ministerial Conference.

2. Committee on Budget, Finance and Administration

(a) Report of the Committee (WT/BFA/44)

Mrs. Dubois-Destrizais (France), Chairperson of the Committee on Budget, Finance and Administration, announced that the Committee had not yet reached a final decision on the WTO's budget for the year 2000. Consensus was emerging on a budget that would represent an increase of 4.5 per cent over the 1998 budget, which represented less than 2 per cent real growth.

The Chairman proposed that the General Council adjourn after consideration of the remaining items on its agenda and reconvene as soon as possible to consider this item.

The General Council took note of the statement and so agreed.⁴

3. Committee on Balance-of-Payments Restrictions

(a) Consultations with the Slovak Republic (WT/BOP/R/48)

Mr. Jenkins (United Kingdom), speaking on behalf of Mr. Jodko (Poland), Chairman of the Committee on Balance-of-Payments Restrictions, said that the Committee had met with the Slovak Republic on 20 and 21 September to consult on the 7 per cent import surcharge applied since 1 June 1999. Members had recognized that the Slovak Republic faced serious economic difficulties and a fragile balance-of-payments situation. Fiscal and current account deficits were unsustainable, external debt had nearly doubled in the last three years and foreign exchange reserves, at less than three months of import coverage, remained at uncomfortably low levels. Members had considered that the import surcharge, as a price-based measure accompanied by a phase-out schedule, was consistent with the provisions of GATT 1994. Several Members had noted the number of exemptions, designed to promote investment and meet basic needs, and some had expressed doubts about the effectiveness of the measure to solve the present economic difficulties. The Committee had welcomed the fact that the trade measure was part of a larger package aimed at financial stabilization and accompanied by a concerted effort to undertake macroeconomic and structural reform, which Members recognized as painful and courageous but necessary and long overdue. Members had encouraged the Slovak Republic to ensure that the reform process was implemented as planned, and even accelerated if possible. Such fundamental reform was vital to bringing about lasting stability and would allow the surcharge to be eliminated in line with the proposed timetable, if not ahead of schedule.

The General Council took note of the statement and adopted the report on the consultations with the Slovak Republic (WT/BOP/R/48).

4. Five-year review of the exemption provided under Paragraph 3 of the GATT 1994 (WT/GC/W/228)

The Chairman recalled that the exemption under paragraph 3 of the GATT 1994 provides in sub-paragraph 3(b) for a five-year review after the date of entry into force of the WTO Agreement in order to examine whether the conditions which created the need for the exemption still prevail, and thereafter for a review every two years for as long as the exemption is in force. At its meeting on 6 October the General Council had considered this matter, as well as a communication on it from Japan in WT/GC/W/344, and had agreed to revert to it at the present meeting.

The representative of the United States said that the provision in question was not a waiver and was not about measures taken by the United States pursuant to the security exception provided under Article XXI. Thus, questions about the US law's operation relative to US national defense capacity were not in order. Her delegation had explained earlier why this matter was before the General Council, and how the US saw both the measure and the scope of this review, and she would repeat those explanations. At the October meeting of the General Council the US had received additional questions on the operation of the exemption from Japan, some of which were appropriate and some not. At an informal consultation organized by Panama on 2 November the US had explained its position on these questions to several WTO Members. Certain additional questions had been received from the European Communities, and where appropriate to the context of this review,

⁴ The General Council's subsequent consideration of this item is carried in an addendum to these minutes.

the US would answer those questions as well. Due to the technical details involved, her delegation did not have answers to those questions at the present meeting, but would forward both the Community's and Japan's questions to Washington for written responses to those questions the US considered appropriate in the context of this review, and these would be circulated to all Members. However, she reiterated that the exemption in paragraph 3 of GATT 1994 was neither a waiver nor an invocation of GATT's security exception. Thus, while her delegation was prepared to clarify how the exemption and the US legislation operated in practice and in law, it did not intend to engage in an exercise of answering questions that implied that the US had to justify this exception on economic or national security grounds. In the US view, the General Council should conclude that the conditions which made the exemption necessary still existed and that the first review of this provision should be concluded at the present meeting. She asked whether delegations had any questions they felt had not yet been answered by the US in previous meetings.

The representatives of Panama, Japan, European Communities, Korea, Australia and Hong Kong, China expressed appreciation for the United States' undertaking to provide written answers to questions raised by several delegations.

The representative of Panama recalled that the US had said that the scope of the review provided for under paragraph 3 of GATT 1994 was limited to a review of whether the US had adopted any amendment, legislative change, or measure which affected the implementation of an exemption provided under that paragraph, and that the simple fact that there had been no such change should lead to the conclusion that the conditions creating the need for the exemption continued to exist. Panama did not agree with this reading of paragraph 3. The conditions that had led to the need for the exemption were those that had provoked the adoption of the legislation under consideration, and not the simple existence of the legislation, and it was those conditions that should be reviewed under paragraph 3. It could even be asked whether the US legislation qualified for an exemption under paragraph 3, in terms of the compliance of the legislation notified by the US in its letter of 20 December 1994 with the conditions of paragraph 3(a). These conditions were that the legislation had to be mandatory, specific, and enacted before the Member had become a contracting party to GATT 1947. Furthermore, the exemption was limited to that legislation prohibiting the use, sale or rental of vessels built or re-built abroad for trading applications between points located in national waters or in waters in an exclusive economic area. Similar questions could be asked regarding the regulations implementing this legislation. The legislation could not stray from the conditions imposed by paragraph 3. For example, to the extent the legislation was not mandatory or specific, or that its prohibition extended beyond the limits specified in paragraph 3, it was not clear that it qualified for the exemption. In view of the seriousness of waivers or exemptions from fundamental WTO principles provided under paragraph 3 of GATT 1994, its applicability in the present case should be reviewed carefully and in detail. This question should be resolved before turning to the full review of the exemption, to which Panama attached considerable importance. Assuming that Members could determine that the legislation did effectively benefit from this exemption, the review should be all-encompassing and not unnecessarily limited. Waivers or exemptions to fundamental GATT/WTO principles had always been interpreted restrictively. Panama reserved the right to submit to the United States at the appropriate time any questions it considered appropriate, both to determine whether the legislation met the criteria for the exemption, as well as to pursue the purposes of the review provided for under paragraph 3. His delegation would submit questions to the United States concerning the operation and application of the notified legislation.

The representative of Japan said that the common understanding among most Members was that the review under paragraph 3 of GATT 1994 should be substantive and not merely a formality. This review was of great importance since that paragraph allowed a serious deviation from GATT fundamental principles. The US responses to Japan's questions in WT/GC/W/344 were therefore of extreme importance. After considering these responses, Japan would decide whether it was appropriate to conclude the review.

The representative of the European Communities said that the continued use of the exemption under paragraph 3 of GATT 1994 was an anachronism. It was hard to believe that more than 50 years after this exemption had first been granted, the United States still found it necessary to have recourse to it. There was no economic justification for the exemption, and therefore the review should be substantive and should go beyond a pure pro-forma exercise. Regarding the US statement that there had been no change in the legislation, not only was this not the case, but a new element had been introduced relating to US national security requirements. This new element would have to be considered with great care and scrutiny, since it could have serious implications for the organization.

The representative of Hong Kong, China said that the Jones Act was outdated legislation that was inconsistent with the fundamental principles of the GATT/WTO and did not meet modern business needs. It was also incompatible with the United States' generally liberal services regime and its call for further liberalisation of trade in services in the new round of multilateral trade negotiations. The collapse of the maritime transport services negotiations in June 1996 had been disappointing. Hong Kong, China was among the few Members who had maintained their commitments in this sector, notwithstanding the US decision to walk away from the negotiations at the very last moment. Maritime transport was a major service sector, and it was important for the US to be a party to the Agreement in this area. Reform of the Jones Act was instrumental to enabling the US to move in this sector and hence to the successful conclusion of the negotiations, and the US should take immediate action. The exemption under paragraph 3(b) was a major impediment to any meaningful market access – not to mention national treatment – commitment. To facilitate Members' consideration of the US request for continuation of the exemption under paragraph 3(b), the US should provide the information requested by Japan and others and should demonstrate that the conditions which created the need for the exemption still prevailed. This issue was of a trade and systemic interest to his delegation, and the review required under paragraph 3(b) had to be substantive and related to the WTO's ongoing work.

The representative of Korea said the fact that no legislative changes had taken place did not automatically imply that the conditions which had created the need for the exemption still prevailed. Moreover, even if these conditions had remained the same, it was for the Ministerial Conference to assess this in accordance with paragraph 3(b) of GATT 1994. There should be a thorough discussion of this issue in an appropriate forum to be decided by the General Council. Paragraph 3 of GATT 1994 allowed a serious derogation from the principle of national treatment. Therefore, the Jones Act should be reviewed substantively in a manner that would enhance its compatibility with the fundamental principles of the multilateral trading system.

The representative of Panama said that the review should be carried out in such a way as to identify the substance of the amendments to the US legislation.

The representative of Australia said that this issue was very important both in terms of the systemic operation of this organization and in terms of Australia's direct commercial interests in the future of the legislation at issue. Therefore, the review should be a substantive one.

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

5. Review of the Dispute Settlement Understanding

(a) Report to the General Council

The Chairman recalled that at its meeting on 6 October the General Council had heard a statement by the then-Chairman of the Dispute Settlement Body (DSB) concerning the mandated review of the Dispute Settlement Understanding (DSU), and had had an extensive discussion of how to proceed and what action to take in regard to this review. It had been agreed at that meeting to revert to this matter at the present meeting.

Mr. Bryn (Norway), Chairman of the DSB, recalled that in accordance with the Ministerial Decision on the Application and Review of the Understanding on Rules and Procedures Governing the Settlement of Disputes, the Ministerial Conference had been invited to complete a full review of dispute settlement rules and procedures under the WTO within four years after the entry into force of the Agreement Establishing the WTO. He recalled in particular that the last paragraph of the Decision provided that the Ministerial Conference will take "a decision on the occasion of its first meeting after the completion of the review, whether to continue, modify or terminate such dispute settlement rules and procedures". It had not been possible to reach agreement on a report by the DSB on the question of the DSU review. Therefore, he had been authorized by the DSB to make a statement in his capacity as Chairman on his own responsibility. He believed that the elements of that statement reflected the general trend of the discussions on this matter in the DSB on 27 October and 3 November 1999. However, that statement should be read in conjunction with the individual statements by Members at DSB meetings, setting out specific national positions. His statement was as follows:

"1. I wish to note the oral report⁵ to the General Council on 6 October 1999 of Mr. Akao, then Chairman of the DSB. That report provides a review of the discussions and actions taken pursuant to the Ministerial Decision (Marrakesh) and the General Council Decision, taken at its meeting of 9-11 and 18 December 1998, to continue and complete the review process by end of July 1999.

In light of the discussions in the DSB at its meeting on 27 October and 3 November 1999, I would note the following points:

2. The 31 July 1999 deadline for the completion of the review process has lapsed. Informal consultations among some interested delegations have continued after 31 July 1999.

3. It is my impression that there is a consensus view that the WTO dispute settlement rules and procedures have proved an effective and important instrument in enforcing the rules of the multilateral trading system and that it could be further improved.

4. Accordingly, I would propose that the General Council:

(a) take note of all the discussions that have taken place during the review; and

(b) note that in the context of the informal consultations among some interested delegations mentioned above, it is still possible that proposals to amend the DSU which may constitute a consensus can emerge in time for a decision at the Third Ministerial Conference."

⁵ See WT/GC/M/48, page 25.

Many representatives expressed appreciation to the DSB Chairman for his statement and to Mr. Suzuki (Japan) for the text he had produced.

The representative of Egypt reiterated her delegation's position as follows: the mandate for the review had expired on 31 July 1999 and there had been no consensus to extend it; the ongoing informal consultations lacked a legal basis; a year and a half of consultations had failed to produce a text of amendments on which there was consensus; and the three weeks remaining before the Third Ministerial Conference would not be sufficient to produce a text that was balanced, took Members' interests into consideration, and could be carefully studied in capitals.

The representative of Malaysia said that his delegation could go along with the DSB Chairman's statement made on his own responsibility, but would have preferred that the latter reflect more clearly the fact that the legal mandate for the review had ended. No one had contested that fact, which the former DSB Chairman's statement to the General Council on 6 October 1999 had clearly stated. Malaysia wanted to reiterate that (i) the legal mandate for the DSU review had expired; (ii) there was no consensus to modify the existing DSU; (iii) the ongoing consultations among some interested delegations that had been chaired by Mr. Suzuki had been completely informal, lacked a legal mandate and should not be mandated either by the DSB or the General Council; (iv) any possible proposals to amend the DSU at the Third Ministerial Conference would have to be agreed by consensus as stated by the DSB Chairman; (v) Malaysia had repeatedly stated in the DSB and in the General Council that it would not be able to agree to the inclusion of any proposals on transparency; and (vi) in the absence of any agreement to amend the DSU, the current DSU would remain in force.

The representative of Hong Kong, China recalled that the DSB had been given a mandate by the General Council in December 1998 to continue and complete the review process, including the preparation of the report, by 31 July 1999. That mandate had expired on 31 July 1999 and there had been no further decision by the General Council to extend it. No consensus had ever been reached on any proposed amendments to the DSU arising from the review process, nor was there a consensus to terminate the DSU. Informal consultations among interested delegations had continued after 31 July, and his delegation had participated positively and constructively in those consultations. However, these consultations had to date not produced any consensus text on possible amendments to the current DSU. Among other things, most delegations remained strongly opposed to the so-called "transparency proposals". The WTO dispute settlement rules and procedures were a central element in providing security and predictability to the multilateral trading system. While the current DSU had been effective in its operation, there was a general view that ambiguities in the existing DSU provisions on the implementation of DSB rulings and recommendations should be clarified on an urgent basis. Accordingly, Hong Kong, China proposed that the General Council: (i) take note of the fact that the DSB mandate on the review had expired on 31 July 1999 and that no consensus had been reached regarding any proposed amendments to the current DSU, nor had there been a consensus to terminate the DSU; and (ii) take note that in the context of the informal consultations among interested delegations, it might be possible for a consensus on the proposals relating to implementation issues, participation of third parties, and technical amendments – and no other substantive issues – to emerge in time for a decision at the Third Ministerial Conference. Pending such a consensus, the current DSU should continue.

The representative of Mexico said that his delegation had noted the fact that the DSB Chairman had made his report on his own responsibility and that the report was to be read in conjunction with the statements by delegations at the DSB meetings of 27 October and 3 November 1999. The informal consultations that had been held after the deadline for the DSU review had been held amongst some interested delegations, which made it clear that those consultations had not stemmed from any mandate by the DSB or any other WTO body. As Hong Kong, China had said, the dispute settlement mechanism was a central element in ensuring security and predictability in WTO agreements. Members had the power at any time to propose amendments

to WTO agreements under Article X of the Agreement Establishing the WTO or in the context of the preparatory process for the Third Ministerial Conference. If there was no consensus to amend the DSU, the current DSU remained in force. No Member had called for the termination of the DSU, and the logical consequence of a lack of consensus on the three possibilities provided in the Decision on the DSU review was that the existing text would continue to apply.

The representative of the United States said that the most recent meeting of the DSB had made clear that there were still issues to be resolved that required further discussion. The 1994 Ministerial Decision called for a decision on "whether to continue, modify or terminate" the DSU rules and procedures. Thus, a consensus decision was required for any of these alternatives. It could not be assumed that continuation of the DSU would happen automatically. Rather, this would require a consensus decision of Members, and Members could not and should not assume that the United States would agree to a continuation of the rules as they were, or that it would agree to a modification of the rules that was unacceptable to some Members. It was clear that there were aspects of the present DSU rules that did not work. If Members worked together, agreement could be reached on modifications to the DSU that would fix the problems in a way that all could accept, and that could be adopted at the Third Ministerial Conference. However, it was too early to rule out any of the options provided for in the 1994 Decision. His delegation was ready to continue discussion with a view to reaching a consensus. Members should seek that goal and should spend time working on developing a consensus, rather than speculating on scenarios in the event that no consensus was reached.

The representative of Guatemala reiterated her delegation's position as stated at the October meeting of the DSB. The DSU review process had concluded, there was no consensus on the proposals that had been made, and it would be difficult to reach a consensus before the Third Ministerial Conference. Delegations could not continue to discuss this matter in informal meetings in the time remaining before that Conference. The General Council should reiterate the fact that the current DSU continued in force.

The representative of Thailand said that his delegation shared the DSB Chairman's view that it was still possible that a consensus proposal to amend the DSU could emerge in time for a decision at the Third Ministerial Conference. The DSU had proved to be a useful and effective instrument and had contributed to a large extent to the credibility of the WTO, especially in the eyes of the developing world. This was evident in the increasing number of dispute cases that had been brought by developing countries to the WTO since its establishment. However, Thailand was convinced that the DSU could be further improved so that it might better serve the objectives of the multilateral trading system. It was therefore important that Members arrive at a consensus at the earliest opportunity on how this instrument should be improved, and submit a proposal to the Third Ministerial Conference for decision accordingly. In the absence of a consensus to modify the DSU, the General Council should recommend to Ministers that the current DSU be continued.

The representative of Turkey said that his delegation supported the statement by the DSB Chairman on the DSU review. There had been long and comprehensive discussions on this matter which, unfortunately, had not led to consensus on any issue. For the sake of the integrity and credibility of the dispute settlement system, Members had to reach agreement on the provisions of Articles 21 and 22, as there were inconsistencies in the provisions of these two Articles. Turkey attached utmost importance to the need to amend these Articles and had stated that it would join a consensus on a package of amendments provided this important issue was resolved. It was crucial to settle this issue before the Third Ministerial Conference. The legal problem of the expiration of the period for the DSU review could be resolved by submitting a proposal to the General Council in line with Members' wishes.

The representative of Venezuela said that his delegation supported all those who had said that efforts should be continued as stated by the DSB Chairman in his report. The Minister's mandate

should be that the current DSU would continue should there be no agreement on amendments by the time of the Third Ministerial Conference, and that the period for the DSU review should be extended to 31 July 2000.

The representative of Switzerland said that his delegation fully endorsed the statement by the DSB Chairman. His delegation maintained the position that the text put forward by Mr. Suzuki, as the Chairman of the informal group of interested Members on the DSU review, and the results of those consultations, constituted a balanced package. This settled in a satisfactory manner some of the issues to which Switzerland attached great importance, for example, the sequence between Articles 21.5 and 22, and the strengthening of the surveillance of implementation of findings and recommendations. The draft text had not yet achieved a consensus, but did represent a basis for possible agreement at the Third Ministerial Conference and was the result of a process that had been underway for some months. It was important that Members not introduce any new elements into that text, which Switzerland was convinced was an improvement on the current DSU and strengthened the multilateral character of the WTO. Ministers at Seattle should take a decision to amend the DSU on the basis of that text. Should no agreement on this be possible, the current DSU should continue to apply.

The representative of the European Communities said that the Community could support the DSB Chairman's statement and was ready to continue work on the DSU review.

The representative of Hungary said that his delegation welcomed the statement by the DSB Chairman and shared his view that there was still a possibility that proposals to amend the DSU could be the basis for a consensus allowing a decision at the Third Ministerial Conference. The contradictions and ambiguities that had been discovered in the provisions governing the implementation of DSB recommendations and rulings constituted the single biggest shortcoming in the present DSU. Their elimination was critical to maintaining and strengthening the multilateral character of the dispute settlement mechanism and warranted extra efforts by all. Hungary hoped that despite the short time left until the Third Ministerial Conference and the pressures of preparations for that meeting, it would be possible to solve at least this outstanding issue. In the absence of a consensus on amendments to the DSU, the current DSU should continue, since the dispute settlement mechanism, which was the pillar of the multilateral trading system, could not be left in a state of permanent review during the new round of negotiations.

The representative of Canada said that her delegation could support the DSB Chairman's statement. Canada was among those who believed it was still possible to agree by consensus on proposals to amend the DSU at the Third Ministerial Conference, and was prepared to work to that end.

The representative of Hong Kong, China said that in the event there was no consensus at the Third Ministerial Conference on whether to continue, modify or terminate the DSU, the current DSU should continue in force for the following reasons: Article II.2 of the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement) stipulated that "the WTO agreements and associated legal instruments included in Annexes 1, 2 and 3 are integral parts of the WTO Agreement, binding on all Members." The DSU was included in Annex 2 of the WTO Agreement. By virtue of Article II.2 of the WTO Agreement, the DSU was an integral part of that Agreement. By virtue of Article XIV.1 of the WTO Agreement and paragraph 3 of the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, the WTO Agreement and the Multilateral Trade Agreements annexed thereto had entered into force on 1 January 1995. The DSU, being an integral part of the WTO Agreement, had entered into force on the same date. At the Third Session of the Ministerial Conference, Ministers would take a collective decision on whether to continue, modify or terminate the DSU. Such a decision would have to be made in accordance with Rule 28 of the Rules of Procedures for Meetings of the Ministerial Conference and in turn, Article

IX.1 of the WTO Agreement. After following the decision-making process as required, if the decision was to modify the DSU, the procedural requirements as stipulated in Article X.8 of the WTO Agreement would have to be followed. If the decision was to terminate the DSU, the relevant provisions of the WTO Agreement, including Article II.2, Article III.3, Article IV.3, Footnote 3 to Article IX.1, Article X.8 and Annex 2 to the WTO Agreement, would have to be amended as well. Such WTO amendments or deletions would again be subject to the procedural requirements stipulated in Article X of the WTO Agreement. If the decision was to continue the DSU, there would be no need for further procedural steps, by virtue of Article II.2 and Article XIV.1 of the WTO Agreement. However, if there was no consensus on any of the options, the following would apply: Article 54 of the Vienna Convention on the Law of Treaties provided that the termination of a treaty may take place in conformity with the provisions of the treaty or at any time by consent of all parties after consultation with the other contracting States. If either condition was not fulfilled, the result was that the DSU would not be terminated, and the only logical conclusion was that the DSU remained as it was. In the absence of any decision taken under Article IX.1 of the WTO Agreement and before any amendment procedures were fully taken, the current DSU would remain in force by virtue of Articles II.2 and XIV.1 of the WTO Agreement.

The representative of the Czech Republic said that the DSB Chairman's statement was balanced and did not prejudice any delegation's position. Like others, his delegation believed it was still possible to come to an agreement on a number of points contained in Mr. Suzuki's text. He invited those delegations who had doubts or objections to that text to join the consultations on this matter. These consultations represented an open-ended informal setting where every Member could participate and present its views. It would be in the interests of all if, by the time of the Third Ministerial Conference, Members could agree not only on the continued application of the DSU but also on measures to improve its functioning.

The representative of Colombia said that his delegation attached particular importance to the DSU review and had participated actively in the informal meetings convened by Mr. Suzuki. The text proposed constituted an important step towards what might be agreed in the way of amendments to the DSU. However, these amendments had to fill the current gaps in the DSU and respond to the interests of all Members. While the text was a starting-point, Colombia could not accept it until improvements had been achieved on Article 21.5, paragraph 8, on the reduction of the consultation period from 60 to 30 days, and paragraph 18 on transparency. If there were no consensus on amendments, the DSU should remain in its present form.

The representative of Japan said that the dispute settlement mechanism was a pillar of the WTO multilateral trading system and played a significant role in ensuring the security and predictability of that system. Japan realized the necessity of assuring the fair and effective functioning of the dispute settlement mechanism. Thus, it was important for the WTO that Ministers agree on modifying the DSU at the Third Ministerial Conference. Japan believed it was still possible to reach agreement on amendments. Therefore, it supported Mr. Suzuki's efforts and would continue its utmost efforts to improve the current dispute settlement system.

The representative of the Philippines noted that the DSB Chairman himself had said that it had not been possible to reach agreement in the DSB on a report and that he had made the present report on his own responsibility. In light of this, no one could disagree with the contents of that report. He reiterated his delegation's position as stated in the DSB meetings that the deadline for the DSU review had expired on 31 July 1999 and could not be extended without a consensus to do so, that there was nothing to prevent Members from at any time agreeing by consensus on amendment of the DSU, and that there remained an obligation to formulate a recommendation to Ministers on whether to continue, modify or terminate the DSU. However, the failure of the DSB, the General Council, or the Ministers to take such a decision would have no adverse consequences on the DSU itself, as the DSU would continue as it was. The reasons for this were the following: (i) a Ministerial

Declaration imposing an obligation on Ministers did not constitute an amendment to the WTO Agreement itself; and (ii) the failure of Ministers to comply with a self-imposed obligation did not result in the termination of the DSU, which could only be terminated in accordance with the provisions of the WTO Agreement. Underlying this was the fact that in the event of a conflict between the Ministerial Declaration and the WTO Agreement, the latter would prevail.

The representative Brazil said that the text that had resulted from the informal consultations was a good text, and Brazil was ready to try to fine-tune it before the Third Ministerial Conference. However, his delegation could not consider favorably any text it had not examined carefully. Also, if the Chairman of the DSB deemed there was a possibility of consensus on a given text, he did not need consensus in the DSB to present it.

The representative of Argentina said that his delegation shared the views expressed by the DSB Chairman regarding the possibility of reaching consensus on amendments to the DSU before the Third Ministerial Conference, and was willing to continue working to improve the text that had been discussed in the informal consultations, on the basis that no new elements or proposals would be introduced. Any new proposals or re-introduction of proposals that had not achieved a certain degree of consensus among participants would not promote a favourable outcome in the short time remaining. Should there be no consensus to amend the current DSU, the latter would continue in force in its present form.

The representative of India said that the Suzuki text was a good basis for further work. India could support it provided that there was no linkage, direct or indirect, to matters outside this text, that the universe remained the same, and that there were no substantive negotiations around the text. India wanted to reflect on the assessments of the legal situation put forth by various delegations. However, the factual situation was that there was no consensus either on the continuation of the DSU or on its modification, and this was a serious situation. It was not in any Member's interest to have a DSU that was in a state of constant review, and India hoped this issue could be resolved as quickly as possible.

The representative of Peru said that the Suzuki text was balanced and constituted a good basis for consensus. His delegation hoped that the short time remaining would be sufficient to reach agreement on it. Peru could support this text provided there were no substantial changes to it.

The representative of Singapore agreed that the DSU was the backbone of the WTO. As such, her delegation had continued to participate in the informal consultations that had taken place since 31 July 1999. Singapore would continue to work in the hope of being able to forge a consensus at the Third Ministerial Conference. However, should that not be possible, the current DSU should continue.

The Chairman proposed that the General Council take note of the statement by the Chairman of the DSB and the proposals contained therein and submit them to Ministers for consideration at the Third Ministerial Conference, and take note of the statements by delegations which would also be conveyed to Ministers.

The General Council so agreed.

The representative of the Philippines asked whether the General Council was recommending the DSB Chairman's report to Ministers for decision, or merely forwarding it to Ministers.

The Chairman said that the report was merely being forwarded to Ministers.

The General Council took note of the statements.

6. Attendance of Observers at the 1999 Ministerial Conference

(a) Governments (WT/L/321, 324, 331 and 332)

The Chairman recalled that according to paragraph 1 of Annex 2 to the Rules of Procedure for meetings of WTO bodies, governments seeking observer status in the Ministerial Conference shall address a communication to that body indicating their reasons for seeking such status, and such requests shall be examined on a case-by-case basis. He drew attention to the communications from the Bahamas (WT/L/321), the Libyan Arab Jamahiriya (WT/L/324), Eritrea (WT/L/331) and Comoros (WT/L/332) requesting observer status at the Third Ministerial Conference, and proposed that if no objection was received by the Secretariat from any Member by 8 November,⁶ these Governments be granted observer status to that Conference.

The representative of Egypt said that her delegation fully supported the requests of these four Governments.

The General Council took note of the statements and agreed to the Chairman's proposal.

(b) International intergovernmental organizations

The Chairman recalled that at its meeting on 15 June 1999 the General Council had agreed that consultations would be held on requests for observer status to the 1999 Ministerial Conference from international intergovernmental organizations (IGOs) that were not observers to the WTO. Since the meeting of the General Council on 6 October, the Secretariat had received requests for observer status to the 1999 Ministerial Conference from the Conference of Ministers of Agriculture of West and Central Africa (CMA/WCA), the International Civil Aviation Organization (ICAO), the West African Economic and Monetary Union (WAEMU), the Organisation Internationale de la Francophonie, the Joint United Nations Programme on HIV/AIDS (UNAIDS), and the United Nations University (UNU). The WAEMU had ad hoc observer status in the Committee on Trade and Development and pending requests for observer status in the General Council, the Committee on Regional Trade Agreements and the Committee on Market Access. The ICAO had ad hoc observer status in the Council for Trade in Services. The CMA/WCA had a pending request for observer status in the Council for TRIPS. Members wishing to consult the communications sent to the Secretariat by these organizations were invited to contact the External Relations Division. He proposed that unless any objection was received by the Secretariat from any Member by 8 November, these organizations be granted observer status to the Third Ministerial Conference.

The representative of Egypt said that her delegation was concerned about the assessment in the minutes of the General Council's October 1999 meeting regarding requests from IGOs for observer status at the 1999 Ministerial Conference. In her recollection, the General Council had agreed with the Chairman's statement on the requests for observership to the 1999 Ministerial Conference by four IGOs on a no-objection basis, and had decided that unless any objection was received by the Secretariat from any Member by 21 October 1999, the requests by the four organizations concerned would be granted. Egypt wanted to be informed of what had transpired since then, since at that meeting no objection had been raised to the request by the League of the Arab States. In this regard, footnote 4 on page 32 of the minutes of that meeting (WT/GC/M/48) was misleading and incorrect, as no objection had been raised at that meeting, and those minutes should be corrected. Had any objection been raised, Egypt would like information from the Chairman on what the reservation was, where it had come from, and what the present status of the League of Arab States'

⁶ Subsequent to the meeting, the deadline for any objection to the request by the Libyan Arab Jamahiriya was extended to 19 November 1999.

request was. Her delegation requested that a corrigendum be issued to reflect what had actually happened at the meeting and what had subsequently transpired, and proposed that the objections raised to the request be attached to the corrigendum and circulated to all Members.

The Chairman recalled that on 6 October the General Council had decided that unless any objection was received by the Secretariat from any Member by 21 October 1999, the four IGOs concerned would be granted observer status to the 1999 Ministerial Conference. However, subsequent to that meeting, objections to the League of Arab States' request had been raised. This was why he had announced that no consensus had been reached on that specific request.

The Secretary of the General Council said that the established procedure since the Singapore Ministerial Conference had been that when a request for observership was submitted by an IGO that was not already an observer to the WTO, such a request would be communicated to the General Council. The General Council had then decided that unless any objection was raised by any Member, such a request would be considered as accepted. Concerning the League of Arab States' request, two objections had been received in writing by the Secretariat. This indicated that a consensus had not been reached on the request, and the Chairman of the General Council was now in the process of informing Members of this.

The representative of Egypt said that her delegation was aware of the established procedures. However, two issues still remained. First, the minutes of the October General Council meeting were not accurate since no objection had been raised at that meeting to the League of Arab States' request. Second, the principles of transparency and fairness had not been respected in the case of the League of Arab States' request, as the process had been selective. On 6 October the Chairman had concluded that unless any objection was received by the Secretariat from any Member by 21 October, the requests by the four IGOs would be accepted. However, the General Council was being informed only at the present meeting of the objections raised, almost ten days after the deadline had expired. The General Council should have been informed before the expiration of the 21 October deadline, and her delegation wanted to know why it had not been, in the interests of transparency and fairness.

The Secretary of the General Council said that the Secretariat would issue a corrigendum to the minutes. Footnote 4 had been inserted in the minutes in the spirit of transparency to inform Members of what had occurred since the General Council's October meeting. He clarified that the two objections in question had been received by the Secretariat before the 21 October deadline. In such a situation, the practice had been that the organization concerned would be immediately informed, and this had been done in a formal communication by the Secretariat. Members were to be informed at the first opportunity, which happened to be the present meeting. However, if Members so wished, the Secretariat could inform Members before the subsequent General Council meeting as to whether an objection to a request for observership had been received.

The representative of the Philippines asked whether it was also part of the Secretariat's practice to disclose the identities of delegations who had objected to a request. If this was the case, he wondered why this information had not been communicated to Members.

The representative of Bulgaria said that the relevant item of the airgram convening the present meeting did not contain any reference to WTO documents. Therefore, he asked that the list of governments and IGOs that were to be observers at the 1999 Ministerial Conference be provided as a WTO document. The 8 November deadline that had been established was too close. Given the fact that the airgram convening the General Council was issued ten days prior to the date set for the meeting, he suggested the 8 November deadline be extended in order to give his Government time to be informed which entities would be observers to the 1999 Ministerial Conference.

The Director of the External Relations Division said that the 8 November deadline had been set to allow the IGOs concerned to make arrangements, in the limited time left, to enable their representatives to attend the 1999 Ministerial Conference. Extending that deadline by ten days would considerably complicate that task.

The representative of the United States said that in the interest of transparency, he wished to indicate that his delegation had opposed the League of Arab States' request for observership, as the United States believed that the League of Arab States had sponsored certain political and economic activities that were incompatible with the WTO's objectives.

The representative of Israel said that his delegation also had objected to the League of Arab States' request and concurred with the United States' explanations for this. Israel could not see the direct link between a political organization such as the League and the WTO's trade-related work.

The Secretary of the General Council, in response to the Philippines' question, said that in situations such as this the Secretariat did not, as a rule, disclose names of delegations that had objected to a specific request. This was the responsibility of each Government.

The Chairman, in response to Bulgaria's questions, said that the countries that had applied for observership to the 1999 Ministerial Conference were the Bahamas, Libyan Arab Jamahiriya, Eritrea and Comoros.

The representative of Bulgaria said that for the sake of transparency, information concerning the IGOs that had applied for observership to the 1999 Ministerial Conference should have been circulated to Members ten days before the present meeting.

The Secretary of the General Council said that some of these requests had been received by the Secretariat only 48 hours before the present meeting, and this was the reason they did not appear on the airgram. However, written requests by specific Governments had been circulated as documents to all Members.

The representative of Egypt said that her delegation wished to be informed before the expiration of the deadline whether any objections had been received regarding requests for observer status at the 1999 Ministerial Conference. She thanked the United States and Israel for their transparency. However, her delegation did not agree that the League of Arab States was only a political regional organization. A simple reading of the application of the League of the Arab States showed that it had every right to ask for observership to the WTO. The Leagues of Arab States had two organs: the Council of the Arab Economic Unity, and the ECOSOC. The League of Arab States also oversaw the Arab Common Market.

The representative of Bulgaria asked whether the General Council was now taking a decision on requests received prior to the current meeting or on those that would be tabled before the 8 November deadline.

The Director of the External Relations Division said that only requests by those organizations listed by the Chairman in his introduction were before the General Council for consideration, and the 8 November deadline applied only to them. No other requests were being considered at the present meeting.

The representative of Tunisia said that his delegation concurred with Egypt's statement. The League of Arab States had both a political vocation and also carried out important economic activities. It was surrealistic that the General Council was agreeing to grant observership to UNAIDS – which had no trade-related activities – while excluding an organization such as the League of Arab

States, whose membership included WTO Members. Issues raised by the United States related to security, and therefore would fall under Articles XX and XXI of the GATT 1994, on general exceptions and security exceptions, respectively.

The Chairman said that the IGO requests for observership that were before the General Council were not being automatically approved, but were subject to approval by 8 November. Therefore, there might be objections to the requests by UNAIDS or the UN University. This was without prejudice to the statement by Tunisia.

The representative of Israel said that an organization calling for primary, secondary and tertiary boycotts was not complying with the basic WTO rule of non-discrimination. This was one of the reasons Israel had opposed the League of Arab States' request.

The General Council took note of the statements and agreed to the Chairman's proposal.

7. Waivers under Article IX of the WTO Agreement

(a) Harmonized System – Requests for extensions of waivers

(i) *Bangladesh (G/L/324, G/C/W/162)*

(ii) *Nicaragua (G/L/320, G/C/W/160)*

(iii) *Sri Lanka (G/L/321, G/C/W/161)*

The Chairman drew attention to the requests from Bangladesh (G/L/324), Nicaragua (G/L/320) and Sri Lanka (G/L/321) for extensions until 30 April 2000 of waivers previously granted in connection with their implementation of the Harmonized System, and to the related draft decisions (Bangladesh - G/C/W/162, Nicaragua - G/C/W/160, and Sri Lanka - G/C/W/161).

Mr. Farrell (New Zealand), Chairman of the Council for Trade in Goods, reported on the consideration of these requests by that Council.

The Chairman proposed that, in accordance with the Decision-making Procedures under Articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), the General Council adopt the draft decisions in G/C/W/160 through 162.

The General Council so agreed.⁷

(b) Zambia – Renegotiation of Schedule LXXVIII

(i) *Request for extension of waiver (G/L/329, G/C/W/163)*

The Chairman drew attention to the request from Zambia (G/L/329) for an extension until 30 April 2000 of the waiver previously granted in connection with the renegotiation of its schedule, and to the related draft decision in G/C/W/163.

Mr. Farrell (New Zealand), Chairman of the Council for Trade in Goods, reported on the consideration of this request by that Council.

⁷ The Decisions were subsequently circulated in WT/L/334 through 336.

The Chairman proposed that in accordance with the Decision-making Procedures under Articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), the General Council adopt the draft decision (G/C/W/163).

The General Council so agreed.⁸

- (c) Decision on the introduction of Harmonized System changes into WTO Schedules of tariff concessions on 1 January 1996
- (i) *Extension of time-limit (G/C/W/165)*

The Chairman drew attention to the draft decision in G/C/W/165 to suspend the application of the provisions of Article II of GATT 1994 until 30 April 2000.

Mr. Farrell (New Zealand), Chairman of the Council for Trade in Goods, reported on the consideration of the draft decision by that Council.

The Chairman proposed that in accordance with the Decision-making Procedures under Articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), the General Council adopt the draft decision in G/C/W/165.

The General Council so agreed.⁹

- (d) Review of waivers pursuant to Article IX:4 of the WTO Agreement
- (i) *Canada – CARIBCAN, granted on 14 October 1996 until 31 December 2006 (WT/L/185 and 323)*
- (ii) *Cuba – Article XV:6, granted on 14 October 1996 until 31 December 2001 (WT/L/182 and 320)*
- (iii) *EC – The Fourth ACP-EC Convention of Lomé, granted on 14 October 1996 until 29 February 2000 (WT/L/186, WT/L/325 and Add.1 and Add.1/Corr.1)*
- (iv) *EC/France – Trading arrangements with Morocco, granted on 9-11 and 18 December 1998 until 31 December 1999 (WT/L/294)*
- (v) *Hungary – Agricultural export subsidies, granted on 22 October 1997 until 31 December 2001 (WT/L/238 and 322)*
- (vi) *United States – Andean Trade Preference Act, granted on 14 October 1996 until 4 December 2001 (WT/L/184 and 328)*
- (vii) *United States – Caribbean Basin Economic Recovery Act, granted on 15 November 1995 until 31 December 2005 (WT/L/104 and 329)*
- (viii) *United States – Former Trust Territory of the Pacific Islands, granted on 14 October 1996 until 31 December 2006 (WT/L/183 and 327)*

⁸ The Decision was subsequently circulated in WT/L/337.

⁹ The Decision was subsequently circulated in WT/L/338.

The Chairman recalled that under paragraph 4 of Article IX of the WTO Agreement, any waiver granted for a period of more than one year shall be reviewed by the Ministerial Conference not later than one year after it is granted, and thereafter annually until the waiver terminates. That paragraph further provides that in each review the Ministerial Conference shall examine whether the exceptional circumstances justifying the waiver still exist and whether the terms and conditions attached to the waiver have been met. The above eight waivers were before the General Council for review.

The representative of the European Communities said that regarding sub-item (iv), this waiver had originally had an unlimited period of validity. At the General Council meeting in December 1998, the Community had requested an extension of the waiver for a period of one year, until 31 December 1999, in the expectation that during that period the need for the waiver would lapse through the entry into force of the Community's Euro-Mediterranean Agreement with Morocco. As that Agreement covered matters of Community full competence and shared competence between the European Communities and the member States, the latter needed to ratify the Agreement. That ratification process had been completed, but in order for the Agreement to enter into force, there was one further element of Community legal procedure that needed to be completed, which was a decision by the Council on the conclusion of the Agreement, after which the Agreement would then enter into force on the first day of the second month following this conclusion. As the Community had hoped that the various stages of these formalities would have been completed by the present time and that there would be no need for a report on the waiver, his statement should be regarded as an oral report on the waiver. His delegation expected to make a request for a short extension of the waiver until the ratification process was completed. Regarding sub-items (vi) and (vii), his delegation understood there were legislative developments concerning these waivers currently under discussion in the US Congress. The outcome of those discussions would help Members to complete a meaningful review of those waivers, and he asked the United States to inform Members of the outcome of those deliberations.

The representative of the United States said there were no legislative developments underway in the US relative to the waivers before the General Council in sub-items (vi) and (vii). The previous day the US Senate had approved legislation that would enhance features of the preference programme for CBERA beneficiaries, but there were additional steps in the legislative process that had to be accomplished before those enhancements could enter into force. The existing waiver governed existing preferences, and would clearly not be sufficient to cover significant changes to the CBERA programme. Should new legislation providing for enhancement of that programme enter into force, the US would have to come back to the WTO for a different or revised waiver. It was not clear why the Community had given no indication of a concern relative to the existing waiver when the matter had been considered recently by the Council on Trade in Goods, and why the Community – which had so strongly defended the economic interests of this region in the long debate over bananas trade – would now question the US intent to enhance preferences to the region. Regarding the Community's request for more information on CBI-related matters, it was curious that it was asking for information on pending legislation that did not even pertain directly to the waiver under consideration, when at the same time it had not even produced a report on the waiver for French trading relations with Morocco. He asked the Community to advise Members as to when the required written report on the operation of that waiver would be provided.

The General Council took note of the statements and of the reports in documents WT/L/320, 322, 323, 325 and Add.1 and Add.1/Corr.1, 327, 328 and 329.

8. Trade facilitation – Status report on work carried out by the Council for Trade in Goods under paragraph 21 of the Singapore Ministerial Declaration (G/L/333)

The Chairman recalled that paragraph 21 of the Singapore Ministerial Declaration directs the Council for Trade in Goods "to undertake exploratory and analytical work, drawing on the work of other relevant organizations, on the simplification of trade procedures in order to assess the scope for WTO rules in this area." He drew attention to a status report by the Council for Trade in Goods on this work (G/L/333).

Mr. Farrell (New Zealand), Chairman of the Council for Trade in Goods, introducing the report, said that in accordance with the mandate given in Singapore, the Council for Trade in Goods (CTG) had undertaken an extensive work programme on trade facilitation. Following an introductory phase devoted largely to an assessment of the scope of work in other intergovernmental organizations, a Trade Facilitation Symposium had been organized in March 1998, where speakers from various business sectors had addressed the trade facilitation problems their industries faced. Intergovernmental organizations had described their ongoing work on trade facilitation. After the Symposium the CTG had held four informal meetings on trade facilitation in September and December 1998 and in April and June 1999, which had addressed a wide array of trade facilitation issues. Based on input from a number of its subsidiary bodies, from the TRIPS and Services Councils, as well as from the Committee on Trade and Development, the CTG had also discussed WTO Agreements relating to, or including provisions on, trade facilitation. The CTG had subsequently agreed to present a status report on the work carried out since the Singapore Ministerial Conference which would inform Ministers on the state of play regarding the work programme on trade facilitation.

The General Council took note of the statement and of the status report in G/L/333.

9. Review of WTO activities

Reports of:

- (a) General Council (WT/GC/W/345 and Add.1), Dispute Settlement Body (WT/DSB/16 and Add.1 and Corr.1), Trade Policy Review Body (WT/TPR/69), sectoral Councils (G/L/337, S/C/10, IP/C/19), Committees on Trade and Development (WT/COMTD/22), Balance-of-Payments Restrictions (WT/BOP/R/47), Budget, Finance and Administration (WT/BFA/43), and Regional Trade Agreements (WT/REG/8)
- (b) Committee on Trade and Environment (WT/CTE/4)
- (c) Working Groups on the Relationship between Trade and Investment (WT/GTI/3), the Interaction between Trade and Competition Policy (WT/WGTCP/3), and Transparency in Government Procurement (WT/WGTGP/3)
- (d) Committees under the Plurilateral Trade Agreements (GPA/30 and Job No. 6358)

The Chairman recalled that under this item the General Council would be conducting a review of WTO activities in pursuance of the Decision concerning procedures for an annual overview of WTO activities and for reporting under the WTO (WT/L/105). He drew attention to the annual reports of the various Committees and Councils in the documents referred to under this item, and noted that the Chairman of the Committee on Trade in Civil Aircraft had sent him a communication concerning the work of that Committee which had been circulated in document Job No. 6358. He

invited the Chairpersons of the respective WTO bodies to introduce the reports from these bodies before turning to the report of the General Council.

Mr. Kåre Bryn (Norway), Chairman of the Dispute Settlement Body, said that the DSB's annual report provided factual information on its activities thus far in 1999 in implementing the provisions of the DSU. In 1999 the DSB had continued to discharge its various tasks of administering the system of dispute settlement in accordance with Article 2.1 of the DSU. These tasks had included the authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under the covered agreements. In 1999 the dispute settlement mechanism had continued to be used frequently by both developed and developing countries to resolve their differences in the area of trade. In many respects, 1999 had also been a year during which the DSB had had to deal with new procedural elements in the dispute settlement process. During the period covered by the report, the DSB had held 18 meetings, 33 new requests for consultations had been filed, and dispute settlement panels had been established in respect of 19 requests. Appellate Body and panel reports had been adopted with regard to six different matters. In three of those matters the Appellate Body had modified the panels' findings, and in the other three, the panels' findings had been upheld. In addition, panel reports had been adopted with regard to two matters where the parties had not sought recourse to Appellate Body proceedings. In the area of implementation, the DSB had heard status reports on progress in implementation with regard to six different matters. In three of those matters, the process of implementation had been completed as foreseen. For the first time, recourse to Article 21.5 of the DSU had been sought by Members with regard to three matters, in order to examine compliance with the rulings and recommendations adopted by the DSB. Regarding one matter, the DSB had already adopted an Article 21.5 panel report, and in the other, two such proceedings were ongoing. Also for the first time, the DSB had authorized suspension of concessions in respect of three requests under Article 22.7 of the DSU. These authorizations had been granted on the basis of the Arbitrators' decisions on the level of suspension of concessions. Pursuant to the Ministerial Decision on the Application and Review of the Understanding on Rules and Procedures Governing the Settlement of Disputes, the DSB had undertaken a review of the DSU. Following the extension of the deadline for the completion of the review, intensive discussions had been held up to 31 July 1999. Subsequently, at the October 1999 meeting of the General Council, the then-Chairman of the DSB had made an oral report on the DSU review, and he himself had made a statement in connection with the DSU review at the present meeting.

Mr. Jean-Marie Noirfalisse, Chairman of the Trade Policy Review Body, said that the Trade Policy Review Body's (TPRB) report was purely factual. He stressed that the reviews had been held on time and that the preliminary reports prepared by the Secretariat had been generally well appreciated. He drew attention to paragraph 7 of the report concerning the appraisal of the operation of the TPRB to be forwarded to the Third Ministerial Conference. There had been a number of discussions of this text and he welcomed the spirit of cooperation shown by all who had participated in this exercise. The TPRB made possible a dialogue among all Members which contributed to the goal of transparency.

Mr. Roger Farrell (New Zealand), Chairman of the Council for Trade in Goods, said that during the period under review the Council had met four times and had considered a range of matters. It had taken note of the final report of the Working Party on Preshipment Inspection which had concluded its work at the end of March 1999. On trade facilitation, it had adopted the status report in G/L/333. Regarding the TRIMS Agreement, the Council had considered a request by the Philippines for extension of a transition period pursuant to Article 5.3 and had agreed to hold further informal consultations on this matter. It had also begun the review of the operation of the TRIMS Agreement provided for in Article 9 of that Agreement. Regarding the Understanding on the Interpretation of Article XVII of GATT 1994, the Council had adopted an illustrative list of relationships between governments and state trading enterprises and the kinds of activities engaged in by such enterprises.

The Council had also heard periodic reports on the work of the Market Access Committee, as well as on the continuation of the Harmonization Work Programme provided for in the Agreement on Rules of Origin. Lastly, it had adopted the terms of reference for the examination of 20 regional agreements by the Committee on Regional Trade Agreements.

Mr. Hugo Cayrús (Uruguay), in the absence of Mr. Carlos Pérez del Castillo (Uruguay), Chairman of the Council for TRIPS, said that some of the main features of the Council's work in 1999 had been continuing the review of national implementing legislation; agreeing on the practical arrangements for the reviews of the TRIPS implementing legislation of developing country Members in 2000 and 2001; monitoring the technical cooperation provided to developing and least-developed country Members; and continuing work on the built-in agenda of the TRIPS Agreement, in respect of "non-violation" disputes in the TRIPS area, geographical indications in the context of Articles 24.2 and 23.4, as well as on the review of the provisions of Article 27.3(b) concerning the protection of plant and animal inventions. In regard to non-violation disputes, the TRIPS Agreement required the Council to "submit its recommendations to the Ministerial Conference for approval" before the end of 1999. As indicated in paragraph 26 of the report, the Council had agreed to reflect in the report that "Most Members have expressed themselves in favour of recommending to the Ministerial Conference an extension of the period referred to in Article 64.2 of the Agreement, in order to allow the Council to further examine the scope and modalities of 'non-violation' complaints under the TRIPS Agreement. One Member has made it clear that it is not in a position to join a consensus to that effect. Some Members were of the view that, in the absence of a decision of the Ministerial Conference pursuant to Article 64.3, there would be no scope for 'non-violation' complaints under the TRIPS Agreement. Some other Members were not in a position to share this view."

Miss Amy Yuen (Hong Kong, China), in the absence of Mr. Stuart Robinson (Hong Kong, China) Chairman of the Council for Trade in Services, said that annexed to the report, which was of a factual nature, were the reports of the subsidiary bodies, namely the Committee on Specific Commitments, the Committee on Trade in Financial Services, the Working Party on Domestic Regulation and the Working Party on GATS Rules. The Council had conducted a number of significant activities during the period covered by the report, most important of which were those associated with the preparation for the new round of negotiations, namely, the exchange of information exercise, the assessment of trade in services and the discussion of the guidelines for the negotiations. At its September and October meetings the Council had also started discussing the mandated reviews of MFN exemptions and the Annex on Air Transport. Another significant area of work related to the Work Programme on Electronic Commerce. The results of the Council's deliberations had been forwarded to the General Council. Other notable matters were the coming into force of the Fifth Protocol on Financial Services, agreement on Article 21 procedures, and adoption of disciplines on accountancy.

Mrs. Absa Claude Diallo (Senegal), Chairperson of the Committee on Trade and Development, said that the Committee on Trade and Development (CTD) had held five sessions in 1999. Seven main topics had been at the centre of the Committee's work: review of special and differential treatment provisions in the WTO Agreements; concerns and problems of small economies; the development dimensions of trade facilitation and of electronic commerce; technical assistance and training; the development of a waiver covering preferential tariff treatment for least-developed countries in other developing country markets; and possible inputs into the Third Ministerial Conference, together with the Committee's future work programme. Many of the topics raised in the Committee had found a strong echo in the ongoing preparatory work for the Third Ministerial Conference. This was certainly true for the issues of special and differential treatment, the concerns of small economies, and the ongoing discussions on the future shape, nature and financing of technical assistance. This showed the continuing importance of development issues in the work of the WTO and the need to maintain the CTD as a strong and effective forum for monitoring these questions. The Committee's work programme for the year 2000 would be, in part, defined in the light

of the outcome of the Third Ministerial Conference, and the CTD would hold an informal meeting in January 2000 to discuss this. However, it was already clear that the Committee would be required to continue its examination of the technical cooperation programmes of the WTO, in the light of a mandated evaluation. In addition, a seminar on special and differential treatment was planned for February 2000. During 1999, the Committee had received a number of guests from other organizations to discuss their operations in the field of trade and development. These included representatives from the Commonwealth Secretariat and World Bank, who had presented the draft report of the joint Commonwealth Secretariat/World Bank Task Force on Small States, and the Development Assistance Committee of the OECD. In 1999, the Sub-Committee on Least Developed Countries had continued its monitoring of the follow-up to the 1997 High-Level Meeting on Integrated Initiatives for Least-developed Countries' Trade Development. On the basis of a Secretariat paper, the Sub-Committee had discussed issues of market access and supply-side constraints facing least-developed countries. The Secretariat had also circulated new information on the market access conditions facing products exported by individual least-developed countries. The Sub-Committee had also reviewed difficulties faced by least-developed countries in implementing WTO Agreements and the response to such difficulties, on the basis of a background note by the Secretariat. However, the main focus of the work of the Sub-Committee had continued to be the monitoring of implementation of the Integrated Framework for Trade-Related Technical Assistance to LDCs (IF). The Sub-Committee had heard presentations by the representatives of UNCTAD, the IMF and UNDP on their work in connection with the IF and updates by the WTO Secretariat on its activities. A number of "round-table" meetings under the IF were imminent and the Sub-Committee would meet on 19 November to review progress in this regard.

Mr. Thomas Jodko (Poland), Chairman of the Committee on Balance-of-Payments Restrictions, said that during the period covered by the report the Committee had held consultations with Romania, Bangladesh and the Slovak Republic. In all three cases the Committee had found the actions taken by those countries to be compatible with the respective provisions of the GATT/WTO. Members had made recommendations and offered encouragement regarding the reasons for the measures taken by these three Members. The consultations foreseen with Pakistan had not yet taken place as this country had requested their postponement. The last paragraph of the report contained information on the actions taken by Bulgaria, Tunisia and Nigeria in connection with past consultations.

Mrs. Laurence Dubois-Destrizais (France), Chairperson of the Committee on Budget, Finance and Administration, noted that the Committee had reached agreement on the establishment of the minimum contribution applied to the least-developed country Members, and that this agreement would be formally adopted along with the budget for the year 2000. As a result, the minimum contribution for these Members for the year 2000 would be Sw F 19,000 instead of Sw F 30,000. Second, the joint meeting held with the Committee on Trade and Development to discuss technical assistance matters had been most useful. While this meeting had not been conclusive, it had been helpful in clarifying the issues and in seeking solutions. This matter was now in the hands of the Chairman and the Director-General and was ripe for a decision at the Third Ministerial Conference on the financing of technical assistance.

Mr. István Major (Hungary), Chairman of the Committee on Trade and Environment, said that the Committee on Trade and Environment (CTE) had held three meetings in 1999 and had continued to discuss all items on the work programme set out in the Marrakesh Ministerial Decision on Trade and Environment, based on a cluster approach under the themes of market access and the linkages between the multilateral environment and trade agendas. With respect to market access, the discussions had focused primarily on the sectors of agriculture and fisheries, and had also dealt with energy, forestry, non-ferrous metals, textiles and clothing, leather and environmental services. The sectoral discussions had highlighted areas where the removal of trade restrictions and distortions could be both

environmentally and economically beneficial and would thus result in "win-win" opportunities for trade and environment. Concerning the linkages between the multilateral environment and trade agendas, the CTE had held an information session with five secretariats of Multilateral Environmental Agreements (MEAs) in order to inform Members on the trade-related developments in these agreements. This meeting had illustrated how trade-related measures function in MEAs and had helped to deepen the understanding of the MEA relationship to the multilateral trading system. Throughout the course of 1999, there had been a constructive atmosphere of cooperation and willingness to move ahead and to understand the complex issues on the CTE's agenda. The CTE's work was important not only for trade and the environment, but for the multilateral trading system as a whole, and the public scrutiny of the WTO and the CTE's work would continue. He was confident that the spirit of cooperation that had helped to facilitate the CTE's work in 1999 would prevail in 2000, as Members continued to advance the CTE's challenging work programme.

Mr. Joong Keun Kim (Korea), in the absence of Mr. Man Soon Chang (Korea), Chairman of the Working Group on the Relationship between Trade and Investment, said that pursuant to the General Council decision of 18 December 1998, the Working Group had continued the educational work it had been undertaking on the basis of the mandate contained in paragraph 20 of the Singapore Ministerial Declaration. The report provided an overview of that work.

Mr. Ronald Saborío Soto (Costa Rica), Chairman of the Working Group on Transparency in Government Procurement, said that the Working Group had held three meetings in 1999. An informal note by the Chairman attached to this report listed the substantive issues raised in the Working Group together with the points made on these issues. Also, in the period covered by the report various papers had been submitted to the Working Group, including four proposals by six delegations for draft texts of an agreement on transparency in government procurement.

The Chairman, introducing the report of the General Council for 1999, said that 1999 had been one of the busiest years on record for the General Council, which had held extensive meetings at which a number of important and difficult issues were considered. This included the exercise of appointing a Director-General, and on a separate track, the lengthy and complex preparations for the Third Ministerial Conference – a process which had involved extensive formal and informal meetings of the General Council and which was still ongoing. The culmination of this work would be the General Council's submission of recommendations to Ministers regarding the WTO's work programme in the new millennium. Issues brought to the General Council by Members during the year included the need for greater coherence among the policies of the WTO, the International Monetary Fund and the World Bank, on which two special informal meetings had been held. The General Council had also continued its oversight role in the implementation of the Work Programme on Electronic Commerce and had contributed to the input to Ministers on this matter. He recalled that on 6 October 1999 the General Council had agreed to forward the reports on electronic commerce of the Council for Trade in Services, the Council for Trade in Goods, the Council for Trade-Related Aspects of Intellectual Property Rights and the Committee for Trade and Development to the Third Ministerial Conference with the recommendations that: (a) the General Council revert to the matter of electronic commerce as early as possible in the year 2000 in the context of its regular work programme; and (b) in doing so, the General Council continue its work on electronic commerce on the basis of the above-mentioned reports submitted by the four relevant WTO bodies; any further work that might be carried out by those bodies in the interim period; and any agreements that might be reached at the Third Ministerial Conference on the issue of electronic commerce. In recognition of the importance of enhancing public understanding of the benefits of the multilateral trading system, the General Council had considered the issue of promotion of the institutional image of the WTO and had authorized informal consultations on this matter so that Members could benefit from their respective experiences in such activities. The General Council had also considered the question of the WTO senior management structure. A review of the WTO Secretariat and senior management

structure would be concluded by the end of September 2000 in conjunction with the review of the current rules and procedures for appointment of the Director-General. During the period covered by the report, the General Council had established three working parties on accession and had adopted decisions authorizing the accession of three new Members. Several other accession working parties were deemed to be close to completing their work. The General Council had granted two waivers to Members, had agreed to extend the time-limit on a number of waivers on various WTO obligations, and had considered reports on waivers granted for a period exceeding one year. He expressed his gratitude to the Chairpersons of all WTO working bodies for their effort, their determination and their competence, and also to the Members for the spirit of cooperation they have shown in the difficult work undertaken. This, together with a firm commitment to the tradition of consensus in the WTO, had enabled the organization to move forward to meet the challenges of the new millennium and to strengthen the WTO's capacity to respond positively to those challenges.

The General Council adopted the report of the Committee on Trade and Development, took note of the reports of the other WTO bodies, including the reports from the bodies under the Plurilateral Trade Agreements, and took note of the introductory statements by the Chairpersons.

The representative of Australia said that regarding the draft annual report of the General Council there were two crucial elements missing in relation to electronic commerce, both of which were required by the Declaration on Global Electronic Commerce: that the General Council was required "to produce a report on the progress of the work programme and any recommendations for action" to Ministers at the Third Ministerial Conference, and that the General Council was to review the Declaration – which included the moratorium on the application of customs duties to electronic transmissions – and to decide by consensus if it should be extended. The issue of the moratorium should be among the immediate decisions for the Third Ministerial Conference, and Australia urged Members to reach the necessary consensus to extend it. Regarding the work programme, work on electronic commerce could not continue before the General Council had examined the reports of the subsidiary bodies and had produced a composite report clearly identifying areas of consensus and areas where further action was needed to address gaps and uncertainties in the applicability of trade rules to electronic commerce. The next step would be to recommend that the relevant working and negotiating groups take specific action on specific issues as part of their work programme. Therefore, the General Council's annual report should make two recommendations to Ministers: that Members extend their current practice of not imposing customs duties on electronic transmissions for the duration of the multilateral negotiations, and that the General Council complete the existing work programme on electronic commerce by producing a report synthesising the findings of the subsidiary bodies with recommendations for further practical action being referred to relevant working and negotiating bodies for inclusion in their respective work programmes. His delegation would be happy to provide language on those two recommendations.

The representative of Malaysia, speaking on a point of order, said that the recommendations suggested by Australia for inclusion in the General Council's report should not be part of that report. Rather, this should be part of the draft Ministerial Declaration, and Australia should make these suggestions in the context of the preparatory process for the Third Ministerial Conference. On another point, he said that the review of the Trade Policy Review Mechanism which had been successfully concluded had not yet been reflected in the draft Ministerial Declaration.

The Chairman recalled that the matter of how to take the work on electronic commerce forward had been extensively discussed at the October General Council meeting and that the conclusion reflected in the minutes of that meeting clearly indicated that the General Council would not revert to the matter of electronic commerce until after the Third Ministerial Conference, pending any decision Ministers might make on this matter. Thus, any proposal at this stage regarding electronic commerce in the General Council was out of order.

The representative of India said that his delegation appreciated the Chairman's clarification regarding the issue of electronic commerce and shared Malaysia's views on this matter.

The Chairman proposed that the General Council adopt the report of the General Council, on the understanding that the Secretariat would make the necessary adjustments to the draft report in document WT/GC/W/345 and Add.1 so as to include matters considered at the present meeting¹⁰, and take note of the statements.

The General Council so agreed.

10. Appointment of officers of WTO bodies

The Chairman, speaking under "Other Business", recalled that the General Council normally took up the appointment of officers of WTO bodies at its final meeting of the year. However, due to the intensity of preparations for the Third Ministerial Conference, it had not been possible to carry out consultations on this matter. These would be held as soon as possible after that Conference.

The General Council took note of the statement and adjourned.¹¹

¹⁰ The General Council's annual report was subsequently circulated in document WT/GC/28 and Add.1.

¹¹ The meeting will be reconvened to consider the report of the Committee on Budget, Finance and Administration under item 2.