

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED
SCM/M/32
27 January 1987
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Committee on Subsidies and
Countervailing Measures

MINUTES OF THE MEETING HELD ON
27, 28, 29 AND 31 OCTOBER AND ON 13 NOVEMBER 1986

Chairman: Mr. E.O. Rosselli (Uruguay)

1. The Committee met on 27, 28, 29 and 31 October and on 13 November 1986.
2. The Committee adopted the following agenda:
 - A. Adherence of further countries to the Agreement
 - B. Examination of national legislation and implementing regulations (SCM/1 and addenda)
 - (i) Legislation of Korea (SCM/1/Add.13/Rev.2)
 - (ii) Legislation of the Philippines (SCM/1/Add.23 and SCM/W/109, 114 and 117)
 - (iii) Legislation of Pakistan (SCM/1/Add.24 and SCM/W/106, 111 and 113)
 - (iv) Legislation of India (SCM/1/Add.25 and Corr.1 and SCM/W/107 and 111)
 - (v) Legislation of Sweden (SCM/1/Add.2/Suppl.1 and SCM/W/110 and 115)
 - (vi) Legislation of Chile (SCM/1/Add.16/Rev.1 and SCM/W/108 and 112)
 - (vii) Legislation of Austria (SCM/1/Add.10/Rev.1)
 - (viii) Legislation of the United States (SCM/W/91/Rev.1)
 - (ix) Other legislation
 - C. Notification of subsidies
 - (i) Full notifications (L/5603 and addenda)
 - (ii) Up-dating of full notifications (L/5768 and 5947 and addenda)
 - (iii) Improvement of notifications (SCM/W/98)
 - D. Semi-annual reports of countervailing duty actions taken within the period 1 July 1985-31 December 1985 (SCM/69/Add.4 and 5)

- E. Semi-annual reports of countervailing duty actions taken within the period 1 January 1986-30 June 1986 (SCM/74 and addenda)
 - F. Reports on all preliminary or final countervailing duty actions (SCM/W/103, 105, 118 and 119)
 - G. Report of the Group of Experts on the Calculation of the Amount of a Subsidy (SCM/W/89)
 - H. Uniform interpretation and effective application of the Agreement (SCM/53 and 56)
 - I. European Economic Community - Subsidies on export of wheat flour - Report by the Panel (SCM/42)
 - J. European Economic Community - Subsidies on export of pasta products - Report by the Panel (SCM/43)
 - K. United States - Definition of industry concerning wine and grape products - Report by the Panel (SCM/71)
 - L. Report on the first meeting of the Working Party to examine obstacles which contracting parties face in accepting the Agreement
 - M. Countervailing duty investigation by Canada on boneless manufacturing beef from the EEC - Request by the EEC for the establishment of a panel under Article 17:3 of the Agreement (SCM/77)
 - N. Countervailing duty imposed by Canada on pasta products from the EEC - Request by the EEC for conciliation under Article 17:1 of the Agreement (SCM/78)
 - O. Other business
 - (a) Terms of reference and composition of the Panel on the initiation by the United States of a countervailing duty investigation of softwood lumber from Canada
 - (b) Statement by the EEC concerning its intention to make a submission to the Panel on the initiation by the United States of a countervailing duty investigation of softwood lumber products from Canada
 - P. Annual Review and Report to the CONTRACTING PARTIES
- A. Adherence of further countries to the Agreement
3. The Chairman informed the Committee that since its last regular meeting in April 1986 no further countries had acceded to or accepted the Agreement. The Chairman also drew the attention of signatories to document SCM/72 containing a communication from Hong Kong with regard to its status in the Committee.

B. Examination of national legislation and implementing regulations (SCM/1 and addenda)

(i) Legislation of Korea (SCM/1/Add.13/Rev.2)

4. The Chairman said that the Committee had examined the countervailing duty law of Korea at its meetings of 27 October 1982, 28 April 1983 and 17 November 1983. The Korean countervailing duty legislation had recently been revised to align it with the new anti-dumping legislation and this revised countervailing duty legislation had been circulated in document SCM/1/Add.13/Rev.2.

5. The representative of Korea recalled that his country had accepted the Agreement in June 1980. Since the Committee had concluded its examination of the Korean countervailing duty law in November 1983 no countervailing duty actions had been taken by Korea. In February 1986 Korea had accepted the Anti-Dumping Code which had necessitated a substantial revision of its anti-dumping legislation. The revised countervailing duty legislation circulated in SCM/1/Add.13/Rev.2, had become necessary to align the countervailing duty law with the provisions of the new anti-dumping law. He welcomed written questions or comments on the revised Korean countervailing duty legislation.

6. The representative of the EEC said that it appeared from the text of the Korean legislation that the Korean authorities could open a countervailing duty investigation on their own initiative, and he asked whether this applied only in the case of special circumstances, as required by Article 2:1 of the Agreement. Secondly, he noted that under the countervailing duty legislation of Korea parties who could petition for the application of countervailing duties included wholesalers and workers' unions and he wondered how this complied with the requirement in the Agreement that such a petition be filed by or on behalf of the industry affected, i.e. the domestic producers of the like product. In this connection he also referred to the second paragraph of Article 4:13 of the Presidential Decree of the Customs Act; this paragraph contained the term "a person who is concerned with the domestic industry to which the importation of subsidized goods has caused material injury." He requested a clarification of the precise meaning of this phrase and asked whether there was any difference in meaning between this phrase and other provisions of the Korean legislation which referred to "any person having an interest in ... the domestic industry." Finally, he put a question on Article 10:5 of the Customs Act insofar as this provision was applicable to countervailing duty investigations. According to this provision the investigating authorities could terminate an investigation in case the amount of subsidization or injury was deemed "insignificant". He requested further clarification as to the meaning of this provision.

7. The representative of the United States requested further clarification on two issues. Firstly, the Korean legislation allowed "any person having an interest in ... the domestic industry" to file a petition even though the Agreement required that a petition be brought "on behalf of" the domestic industry. This seemed to allow a domestic producer to file a petition even if the producer did not represent the industry. Secondly, it was unclear whether the "interested parties" who had the right to request hearings and to make written submissions included exporters.

8. The representative of Korea said that more time was needed to reply to the questions put by the delegations of the EEC and the United States and requested those delegations to submit their questions in writing.

9. The Chairman invited delegations to submit written questions on the Korean countervailing duty legislation by 19 December 1986 and concluded that the Committee would revert to the legislation of Korea at its next meeting. In this context the Chairman also stated that in general it would be useful if written replies could be provided to questions concerning national countervailing duty laws and regulations.

(ii) Legislation of the Philippines (SCM/1/Add.23 and SCM/W/109, 114 and 117)

10. The Chairman said that at its meeting in April 1986 the Committee had started its examination of the countervailing duty legislation of the Philippines, reproduced in SCM/1/Add.23. Written questions concerning this legislation had been received from the United States (SCM/W/109), the EEC (SCM/W/114) and Australia (SCM/W/117).

11. The representative of the Philippines replied in detail to the questions which had been circulated in documents SCM/W/109, 114 and 117. Those replies have been circulated in document SCM/W/123.

12. The representative of Australia thanked the representative of the Philippines for the answers he had provided. With respect to Section 4 of Department of Finance Order No. 300 which provided, inter alia, for the filing of a bond at double the dutiable value of the article subject to investigation he wondered whether the authorities of the Philippines were considering the possibility to amend the Order to ensure that no immediate penalty could be imposed in excess of what might be necessary to remove injury. He considered that such an amendment was desirable even though the Order was seldom invoked.

13. The representative of the United States said that his delegation continued to be concerned about the very short period within which a countervailing duty investigation had to be carried out under the Order and about the sequence of the findings on injury and subsidization.

14. The representative of Canada said he shared the concerns expressed by other delegations in respect of the short duration of the investigation and the requirement that a bond be filed at double the dutiable value.

15. The representative of the EEC said he hoped that a more detailed reply could be provided to the questions put by his delegation in item 3 of SCM/W/114. He reiterated that his delegation had serious concerns about the short period for the making of a preliminary determination and about the level of provisional duty which could be imposed. He considered that on these two key issues the provisions of the Department Order were not fully in conformity with the Agreement. Finally, he requested the delegate of the Philippines to mention the precise provision in the Agreement which permitted the retroactive application of a provisional measure as provided for in the second paragraph of Section 4 of the Department Order.

16. The representative of the Philippines said he had taken good note of the points made by the representatives of Australia, the United States, Canada and the EEC.

17. The Chairman concluded that the Committee would revert to the legislation of the Philippines at its next meeting, after delegations had examined in greater detail the written replies provided by the Philippines and after the delegation of the Philippines had reflected on the additional comments made at this meeting.

(iii) Legislation of Pakistan (SCM/1/Add.24 and SCM/W/106, 111 and 113)

18. The Chairman recalled that the Committee had begun its discussion of the countervailing duty law of Pakistan (Ordinance No. III, circulated in SCM/1/Add.24) at its meeting held in April 1986. Written questions concerning this legislation had been received from the United States (SCM/W/106), Australia (SCM/W/111) and the EEC (SCM/W/113).

19. The representative of Pakistan said he could reply to some of the questions which had been raised and that he would revert to the remaining questions at a later stage. He further said that the law reproduced in SCM/1/Add.24 was a framework law; detailed implementing regulations could be made under Section 11 of the Ordinance but such regulations had not yet been promulgated. His authorities would take into consideration the comments made on the Ordinance by other signatories when drafting the implementing regulations. He also drew attention to the fact that Pakistan had never taken any countervailing duty action.

20. In response to a question put by the United States (item 1 in SCM/W/106) concerning the circumstances under which the Pakistan authorities would regard "the use of dual or multiple rates of exchange in relation to the proceeds of export sales" as a countervailable (export) subsidy the representative of Pakistan said that this matter would be dealt with in greater detail in the implementing regulations. Replying to a question put by the United States in item 3 of SCM/W/106 as to the method of conducting an investigation in case the country of export was not the same as the country of origin, he said that this question concerned Section 3:1 of the Ordinance which applied only to anti-dumping duty investigations; he would therefore reply to this question at the meeting of the Committee on Anti-Dumping Practices.

21. Referring to questions on Section 4 of the Ordinance (item 4 in SCM/W/106 and item (iii)(c) in SCM/W/111), in particular on the nature of the investigation required before a provisional duty could be imposed and the discretion enjoyed by the Pakistan authorities in the determination of the rate of the provisional duty, the representative of Pakistan said that detailed procedures for the conduct of investigations would be laid down in the implementing regulations. The relevant authorities would no doubt use their discretion in levying the additional provisional duty in a rational manner and the level of the duty would not exceed the extent of subsidization found in the preliminary investigation.

22. In response to a question put by the United States (item 5 in SCM/W/106) and Australia (item (ii)(a) in SCM/W/111) why the Ordinance, and in particular Section 3, referred to "injury" rather than "material injury", the

representative of Pakistan said that there was no difference in meaning between the words "injury" used in the Ordinance and the concept of "material injury" used in the Agreement. In this regard he further pointed out that Section 3:3 of the Ordinance listed practically the same factors which should be considered in the determination of injury as Article 6:3 of the Agreement.

23. In response to a question from the EEC (SCM/W/113) whether Section 6 of the Ordinance allowed signatories to hold consultations with the Pakistan authorities before the initiation of an investigation (as stipulated in Article 3:1 of the Agreement) and whether signatories would have a reasonable opportunity to continue consultations throughout the investigation (as provided for in Article 3:2 of the Agreement) the representative of Pakistan said the implementing regulations would contain procedures for such consultations which would be in accordance with the relevant provisions of the Agreement.

24. The delegation of Australia had asked whether the Pakistan authorities were of the view that Section 6 of the Ordinance, which required that a decision on the imposition of duties be taken within thirty days after the announcement of an investigation, left them sufficient time to carry out an adequate investigation (item (iii)(a) in SCM/W/111). The representative of Pakistan replied that Section 6 did not provide that a decision on the imposition of duties be taken within thirty days from the announcement of an investigation; the period of thirty days in Section 6 was the period within which interested parties could make their views known and did not concern the duration of the investigation as such.

25. In response to a question by Australia whether price undertakings were permitted under the Ordinance (item (iii)(d) in SCM/W/111) the representative of Pakistan said that the Ordinance was silent on the use of price undertakings and that such undertakings therefore were not ruled out. The implementing regulations would contain provisions on price undertakings in accordance with Article 4:5 of the Agreement.

26. With respect to item (iv) in SCM/W/111, containing a question by Australia why Section 7 of the Ordinance provided that a review of countervailing duties was allowed only within fifteen days from the date of imposition of the duties, the representative of Pakistan said that no provisions for a review at a future date were being contemplated, in particular because the Agreement did not require such later reviews. If practical experience would demonstrate the need to allow the possibility for reviews at a later date his authorities would reconsider their position on this issue.

27. The representative of Canada requested further explanations on a number of issues. Firstly, he referred to Section 3:2 of the Ordinance and asked how the phrase "or adversely affects the local market conditions in Pakistan" related to the definition of the concept of material injury as provided for in the Agreement. Secondly he asked what were the conditions for the application of provisional duties under Section 4; it seemed to him that the requirement of the Agreement that preliminary findings of injury and subsidization be made before the application of provisional duties was not reflected in this Section. Finally, he requested more detailed information as to the category of "persons" who could request that an investigation be opened.

28. The representative of the United States said that item 3 in SCM/W/106 contained a typographical error; the question concerned Section 3:2 of the Ordinance instead of Section 3:1. Section 3:2 provided that a countervailing duty could be applied against a subsidy in either the country of origin or the country of export. He wondered whether in a case in which a duty had been imposed on the basis of a subsidy granted in the country of export this duty would automatically affect exports from the country of origin. Secondly, he said he continued to be concerned about the provisions in the Ordinance on the introduction of provisional duties as those provisions did not clearly rule out the possibility to levy a duty in excess of the amount of subsidization found in the preliminary investigation.

29. The representative of Australia thanked the representative of Pakistan for the replies he had provided. In view of the fact that the actual operation of the Ordinance would, to a large extent, depend upon the contents of the implementing regulations he expressed the hope that those regulations would at some stage be notified to the Committee.

30. The representative of the EEC thanked the representative of Pakistan for the answers he had given. With respect to Article 7 of the Ordinance he asked how this provision was consistent with Article 4:9 of the Agreement. He also wished to know when the implementing regulations would be available for scrutiny by the Committee.

31. The representative of Pakistan said he had taken note of the comments made; he wished to revert to those comments at a subsequent meeting of the Committee.

32. The Chairman said the Committee would revert to the legislation of Pakistan at its next meeting.

(iv) Legislation of India (SCM/1/Add.25 and Corr.1 and SCM/W/107 and 111)

33. The Chairman recalled that at its meeting in April the Committee had examined the Indian countervailing duty legislation contained in the Customs Tariff (Second Amendment) Act of 1982 and the related Customs Tariff Rules of 1985 (SCM/1/Add.25 and Corr.1). Written questions concerning the Indian countervailing duty legislation had been received from the United States (SCM/W/107) and Australia (SCM/W/111).

34. The representative of India, replying to a question by the United States on Section 2(a)(i) of the Customs Tariff Act (item 1 in SCM/W/107), said that whether the Indian authorities would countervail the type of "input subsidies" to which the United States had referred would depend upon the facts of the case. A second question put by the United States concerned the definition of domestic industry in Section 2:C of the Customs Tariff Rules, and in particular the consistency of the inclusion of the phrase "and any activity connected therewith" with Article 6:5 of the Agreement (item 2 in SCM/W/107). In response to this question the representative of India stated that the definition of domestic industry in Section 2:C was intended to make it clear that activities of domestic producers related to manufacture or production as well as any activity connected with manufacture or production, such as sales, should be taken into account. He explained that it might not be possible to safeguard the interests of the domestic industry as a whole if

the concept of domestic industry were interpreted in a narrow manner as including only activities of domestic producers within factory premises relating to production or manufacture. It was therefore necessary to include in the definition of industry commercial activities ancillary to production or manufacture insofar as such commercial activities related to the like product. With respect to a question put by the United States in item 3 of SCM/W/107 why Section 2:C of the Customs Tariff Rules mandated the exclusion from the domestic industry of producers who were also importers, the representative of India said that this mandatory exclusion was not precluded in the Agreement.

35. The delegation of the United States had asked why some provisions of the Indian legislation contained the phrase "injury to any established industry in India" and whether this implied that injury to an industry not engaged in the production of the like or most similar product would be sufficient to justify the application of countervailing duties (item 4 in SCM/W/107). The representative of India said this question presumably referred to provisions such as Section 4:2 and Section 13 of the Customs Tariff Rules. In his view it was not correct to conclude from such provisions that injury to any industry in India would be sufficient to justify the application of countervailing duties; the concept of industry had been defined in Section 2 of the Rules and the provisions on the injury standard had to be interpreted in accordance with this definition.

36. With regard to item 5 in SCM/W/107, containing a question by the United States as to why the Indian legislation provided for the application of countervailing duties on a non-discriminatory basis the representative of India said that this question presumably referred to Section 19:2 of the Customs Tariff Rules. He explained that the requirement of non-discriminatory application of countervailing duties applied to all imports of the article subject to investigation if found to be subsidized and, where applicable, causing injury. This did not mean that all such imports would be subject to the same level of duty.

37. Finally, the representative of India replied to a question put by Australia in item 2 of SCM/W/111 concerning Section 14:1 of the Customs Tariff Rules. The Australian delegation had asked why this Section provided that when, in the course of an investigation, the designated authority was satisfied that there was not sufficient evidence of subsidization and, where applicable injury, the authority could "at its discretion" terminate or suspend the investigation. The representative of India said that if the authority was satisfied that not sufficient evidence of subsidization or injury existed, it would certainly exercise the option of terminating promptly the investigation; there would be no other option.

38. The representative of the United States said he appreciated the detailed responses given by the delegate of India. Nevertheless, his delegation continued to have a number of serious concerns about the Indian legislation and its consistency with the Agreement. With respect to Section 2(a)(i) of the Customs Tariff Act he said that this appeared to grant authority to levy countervailing duties on inputs which had been subsidized in one country, exported to another country and transformed in that country into another product. He considered that this provision for the application of countervailing duties in respect of cross-border input subsidies went very far and deserved further examination in the Committee. Regarding the

explanation given by the Indian delegate of the purpose of the phrase "any activity connected therewith" in Section 2:C of the Rules, he said that to widen the scope of the concept of domestic industry to include the commercial activities referred to by the Indian delegate, such as the activities of wholesalers, went beyond the provisions of the Agreement which defined domestic industry as producers of the like product. In many cases wholesalers were not related to producers.

39. The representative of the EEC said his delegation was also concerned about the fact that the Indian countervailing duty law made it possible to countervail cross-border input subsidization; he reminded the Committee that the question of input or indirect subsidies was currently being discussed in the Group of Experts on the Calculation of the Amount of a Subsidy; in view of the fact that the Group had not yet reached agreement on this question a cautious approach was warranted in this regard. Concerning the definition of the concept of domestic industry in the Indian legislation he said that this definition was considerably wider than the one contained in Article 6:5 of the Agreement which unequivocally defined the term domestic industry as the domestic producers as a whole of the like product. Moreover, Article 6:6 required that the effect of the subsidized imports be assessed in relation to the domestic production of the like product which implied that activities related to production should not be taken into consideration.

40. The representative of India said he had noted the comments made with respect to the issue of input subsidies. He reiterated that whether such subsidies would be countervailed against would depend upon the particular circumstances of each case and he therefore considered that at this stage a theoretical discussion of this issue in the Committee would not be useful. On the question of the definition of the term domestic industry he said that the purpose of this definition in the Indian legislation was not to widen the scope of the products covered by an investigation but to include all commercial activities, in particular sales related to the production of the like product.

41. The representative of the United States said his delegation needed more time to reflect on the answers given by the representative of India, in particular with respect to the question of input subsidies, and he therefore requested that the legislation of India be retained on the agenda of the Committee.

42. The representative of Canada said his delegation would like to see a further explanation of the provision in the Indian countervailing duty law on cross-border input subsidies.

43. The Chairman concluded by saying that the Committee would revert to the countervailing duty legislation of India at its next meeting.

(v) Legislation of Sweden (SCM/1/Add.2/Suppl.1 and SCM/W/110 and 115)

44. The Chairman said that at its meeting in April 1986 the Committee had discussed the Swedish Ordinance on Dumping and Subsidy Investigation of 1985 (SCM/1/Add.2/Suppl.1). The delegations of the United States and the EEC had submitted written questions on this Ordinance (SCM/W/110 and 115, respectively).

45. The representative of Sweden said his delegation had replied in writing to the questions put by the United States and the EEC (SCM/W/124).

46. As there were no further comments or questions the Chairman concluded that the Committee had finished its examination of the countervailing duty legislation of Sweden.

(vi) Legislation of Chile (SCM/1/Add.16/Rev.1 and SCM/W/108 and 112)

47. The Chairman said that at its meeting in April 1986 the Committee had started its examination of the Chilean countervailing duty legislation (SCM/1/Add.16/Rev.1). Written questions on this legislation had been received from the United States (SCM/W/108) and the EEC (SCM/W/112).

48. The representative of Chile, replying to a question posed by the United States as to why the Chilean legislation defined an industry as "any productive activity", said that in the original Spanish version of the Regulations reproduced in SCM/1/Add.16/Rev.1 the term "a productive activity" instead of "any productive activity" was used. In reply to the second question put by the United States as to whether the term industry as defined in the Regulations included productive activities other than those of the producers of the like product he pointed out that in the Chilean domestic legal order the Agreement on Subsidies and Countervailing Measures had the force of law. Consequently, the terms used in the Regulations had to be interpreted in accordance with their meaning in the Agreement.

49. In response to a request by the EEC for an explanation of the phrase "... without prejudice to the powers of the President of the Republic to fix countervailing duties" in Article 1 of Decree Law No. 7412 (item 1 in SCM/W/112), the representative of Chile said that the President of the Republic was the sole authority in Chile competent to apply countervailing duties. Under Decree Law No. 742 the President appointed the Commission as the authority competent to examine a complaint empowering it to recommend either the application of a countervailing duty or rejection of the complaint. In deciding whether or not a countervailing duty should be imposed the President had to abide by the law which was the Agreement on Subsidies and Countervailing Measures. Thus the Commission examined a complaint, determined whether imports were being subsidized and whether there was a causal link between injury and subsidized imports. Subsequently, it made a Recommendation to the Minister of Finance who then informed the President of the Republic so that the President might take a decision in accordance with the law.

50. A second question put by the EEC was whether Section 3 of the Regulations allowed complaints to be lodged by persons or firms other than those acting for or on behalf of the industry affected, and whether the Chilean authorities required that petitioners represent a major proportion of the industry affected (item 2 in SCM/W/112). The representative of Chile replied that since Section 3 of the Regulations used the word "shall", complaints could be lodged solely by natural or legal persons to whom the subsidized imports were causing or threatening material injury. He further said that the Commission established under the Regulations evaluated the alleged injury in respect of all domestic industries manufacturing the product referred to in the complaint. Accordingly, although the complaint might be lodged in respect of one particular industry, the investigation by the Commission would cover all industries manufacturing the like product.

51. In reply to a question by the EEC on the status of the report of the Chilean Central Bank provided for in Section 13 of the Regulations, the representative of Chile said this report was a technical study carried out by the Central Bank on the basis of which the Commission might, if it deemed it appropriate, apply a provisional measure in accordance with the provisions of the Agreement. Accordingly, this report was a necessary requirement but did not in itself constitute a sufficient condition for the application of a provisional measure. He added that in many cases in which the report of the Central Bank had argued in favour of the application of a provisional measure, no such measures had been applied.

52. The representative of the EEC requested a further clarification of Section 3 of the Regulations. He said that, as this Section used the phrase "... any natural or legal person to whom such a subsidy causes or threatens material injury ...", it would seem that a petition could also be lodged by persons other than the domestic producers of the like product.

53. The representative of Chile reiterated that the Agreement constituted the basic law governing the application of countervailing measures in Chile and that it prevailed over the Regulations.

54. The representative of the EEC said that under the Agreement a petition could be lodged only by or on behalf of the domestic producers of the like product. Section 3 of the Regulations did not specifically refer to this term and would therefore seem to go beyond the provisions of the Agreement. He added that his concerns would be allayed if it could be confirmed that under Chilean domestic law the Agreement was directly effective and that it could be invoked by private parties before a court.

55. The representative of Chile said that the Agreement had been published as a Law of the Republic; as such it could be invoked by private parties before a court.

56. As there were no further comments or additional questions the Chairman concluded that the Committee had terminated its examination of the countervailing duty legislation of Chile.

(vii) Legislation of Austria (SCM/1/Add.10/Rev.1)

57. The Chairman said that at its meeting in April 1986 the Committee had examined the countervailing duty legislation of Austria, reproduced in document SCM/1/Add.10/Rev.1. One delegation had considered that, as many of the additional comments made by the representative of Austria at the meeting in April concerned the anti-dumping aspects of the legislation, it might be useful to revert to the Austrian legislation at the next meeting of the Committee.

58. As there were no requests for the floor, the Chairman said that the Committee had concluded its examination of the countervailing duty legislation of Austria.

(viii) Legislation of the United States (SCM/W/91/Rev.1)

59. The Chairman recalled that the Committee had continued its discussion of the draft countervailing duty regulations of the United States (SCM/W/91/Rev.1) at its meeting in April. A number of delegations had

expressed their concerns about certain aspects of these regulations and it had therefore been decided to retain these draft regulations on the agenda of the Committee. The Chairman asked the representative of the United States whether definitive regulations had already been adopted.

60. The representative of the United States said that the final countervailing duty regulations had not yet been adopted; as soon as the final regulations had been adopted they would be notified to the Committee. The representative of the United States further drew the attention of the signatories to the fact that paragraph 1(a) of Section 612 of the Trade and Tariff Act of 1984, relating to the definition of industry in cases involving wine and grape products, had expired on 30 September 1986.

61. The Chairman said the Committee would revert to the countervailing duty regulations of the United States when the final regulations had been notified to the Committee.

(ix) Other legislation

62. No comments were made; the Chairman said the Committee would maintain this item on its agenda in order to allow the signatories to revert to particular aspects of countervailing duty laws and/or regulations of other signatories, e.g. in the light of their actual implementation.

C. Notification of subsidies

(i) Full notifications (L/5603 and addenda)

63. The Chairman informed the Committee that a full notification had been received from Egypt (L/5603/Add.32); thus all signatories had submitted their full notifications due in 1984. He reminded the Committee that new full notifications were due in 1987 and he urged the signatories to submit those full notifications as early as possible in 1987. In this connection he recalled that in conjunction with the regular meeting in autumn 1987 the Committee would hold a special meeting to examine in detail all full notifications received by that time.

(ii) Updating of full notifications (L/5768 and L/5947 and addenda)

64. The Committee had before it document SCM/W/120 containing a list of all notifications under Article XVI:1 of the General Agreement submitted by signatories during the period 1984-1986. The Chairman recalled that at the previous meeting of the Committee he had expressed his concern about the fact that very few signatories had updated their full notifications. Since that meeting only three updating notifications had been received. He added that even if no changes had occurred since the last full notification this should be notified to the Committee.

65. The Chairman informed the Committee that Australia had submitted an updating notification for 1986 (L/5947/Add.9). No comments were made.

66. The Chairman said that Austria had submitted all its notifications on time. No comments were made.

67. The Chairman said that Brazil had not submitted updating notifications for 1985 and 1986 and requested the representative of Brazil to explain this situation.

68. The representative of Brazil said his delegation hoped to submit an updating notification as soon as possible.
69. The Chairman said that Canada had submitted a full notification in 1984 and an updating notification in March 1986.
70. The representative of Canada said his delegation would submit updated information shortly concerning agricultural programmes.
71. The Chairman said a full notification from Chile had been received in 1984 and an updating notification in 1985.
72. The representative of Chile said his delegation had submitted an updating notification for 1986 which should have been mentioned in SCM/W/120.
73. The Chairman said that, if Chile had submitted a notification, this would be mentioned in the report of the Committee to the CONTRACTING PARTIES.
74. The Chairman said Egypt had submitted its full notification in October 1986. No comments were made.
75. The Chairman said Finland had submitted all notifications on time. No comments were made.
76. The Chairman said Hong Kong had submitted all notifications on time. No comments were made.
77. The Chairman said that India had not submitted an updating notification since its full notification received in March 1984. As the representative of India was not in the room no further comments were made.
78. The Chairman said that Indonesia had submitted a full notification in October 1985 and a supplement to this notification in January 1986. No comments were made.
79. The Chairman said that Israel had submitted a full notification in April 1986; it could therefore be assumed that this report covered the most recent reporting period. No comments were made.
80. The Chairman stated that a full notification had been received from Japan in 1984 and updating notifications in March and June 1986. No comments were made.
81. The Chairman said that Korea had not submitted any updating notification since its full notification received in June 1984.
82. The representative of Korea said his delegation would submit a new full notification in 1987 which would include all changes to the notification made in 1984.
83. The Chairman said that New Zealand had submitted a full notification in 1984 and an updating notification in November 1985. In October 1986 a further updating notification had been received, circulated in L/5947/Add.11. No comments were made.

84. The Chairman said that Norway had submitted its full notification in 1984 and an updating notification in September 1986. No comments were made.

85. The Chairman said that no notification had been received from Pakistan since it submitted its full notification in October 1984. As the representative of Pakistan was not in the room no further comments were made.

86. The Chairman said a full notification had been received from the Philippines in November 1985 and that no updating notification had been submitted. As the representative of the Philippines was not in the room no further comments were made.

87. The Chairman said that Portugal had submitted a full notification in April 1985; no updating notification had been received.

88. The representative of Portugal said his delegation would notify in due time and within the appropriate framework any changes which might have occurred since the last full notification submitted by his country.

89. The Chairman said that Spain had submitted a full notification in 1984 and an updating notification in April 1985. No response had been received from Spain to the request to provide updated information for 1986.

90. The representative of Spain said that the notifications made by Spain in 1984 and 1985 were still valid. Since 1 January 1986 a number of changes had occurred of which the Committee had been informed in document SCM/25/Add.2. In 1987 the notification by the Community would also cover Spain.

91. The Chairman said that Sweden had submitted a full notification 1984 and an updating notification in March 1986. A further updating notification had been received in October 1986 (L/5947/Add.10). No comments were made.

92. The Chairman said that Switzerland had submitted a full notification in 1984 and an updating notification in November 1985. No updating notification had been received in response to the request contained in L/5947. As the representative of Switzerland was not in the room no further comments were made.

93. The Chairman said that Turkey had submitted a full notification in January 1986. No comments were made.

94. The Chairman said that the United States had submitted a full notification in 1984 and an updating notification in April 1986. No comments were made.

95. The Chairman said that a full notification had been submitted by Uruguay in 1984 and an updating notification in February 1986. No comments were made.

96. The Chairman said that Yugoslavia had submitted a full notification in 1984 and an updating notification in March 1985. No notification had been received in response to the request to submit updated notifications for 1986. As the representative of Yugoslavia was not in the room no further comments were made.

97. The Chairman said that in 1984 the EEC had submitted a full notification concerning measures applied at the Community level with respect to agricultural and industrial products. This notification had been updated in November 1985 and he had been informed that during present the meeting the EEC had submitted updated information for 1986 (L/5947/Add.13). As regards the member States the Chairman said that the full notification made in 1984 contained information supplied by Belgium and Germany; the updating notification submitted by the EEC in November 1985 also contained a chapter on measures applied at the national level by the United Kingdom. No notifications had ever been received regarding measures applied at the national level in the other member States.

98. The representative of the EEC said that the updated information for 1986 which his delegation had supplied at the meeting also covered the United Kingdom.

99. The representative of the United States asked whether the other EEC member States intended to notify their subsidies; she noted that the notification requirement of Article XVI:1 applied to all contracting parties to the General Agreement.

100. The representative of the EEC said the notification of the EEC also covered the member States.

101. The representative of the United States requested that all civil aircraft subsidies be notified under Article XVI of the General Agreement.

102. The Chairman concluded by reiterating his request that all signatories submit their new full notifications due in 1987 in time for the meeting of the Committee in 1987.

(iii) Improvement of notifications (SCM/W/98)

103. The Chairman said that as at this stage no progress could be reported on the question of improvement of the notification system, he could only draw the attention of the signatories to document SCM/W/98 and to the statement he had made at the meeting in April 1986 (SCM/M/31, paragraph 77).

D. Semi-annual reports of countervailing duty actions taken within the period 1 July 1985-31 December 1985 (SCM/69/Add.4 and 5)

Australia (SCM/69/Add.4)

104. The Chairman recalled that at its meeting in April the Committee had discussed the semi-annual report submitted by Australia for the period 1 July-31 December 1985. The delegation of the United States had asked a number of questions on this report and it had therefore been agreed to revert to this report at the next meeting of the Committee.

105. The representative of Australia said that at the last meeting of the Committee the delegation of the United States had requested a further explanation on a number of issues concerning four pending investigations involving products imported from New Zealand (hand hacksaw blades, refrigerators, stainless steel tubing and waterbed heaters). He informed the Committee that the first three of these investigations had been

terminated as a result of undertakings from the suppliers in New Zealand. The fourth investigation had been concluded with a finding of no injury. One of the questions of the delegation of the United States concerned the fact that no final outcome had been reported even though provisional measures, which under the Agreement could not remain in force for more than four months, had been taken in August 1985. With respect to this issue the representative Australia said that the duration of the provisional measures taken in the four cases in question had not exceeded a period of four months. A second point made by the United States at the April meeting was that the investigations involving refrigerators and stainless steel tubing had lasted more than a year without a final determination; in this context the United States had pointed to the requirement of Article 2:14 of the Agreement. The representative of Australia admitted that these investigations had taken more time than was provided for in the Agreement; it was the intention of his authorities to complete future investigations within a considerably shorter period of time. Finally, the representative of Australia replied to a question put by the United States as to why the column on provisional duties did not contain the rates of the duties imposed. He said the reluctance of his authorities to report these rates had probably been caused by concerns about confidentiality; his authorities were examining their position on this issue and he expected that future reports would contain the rates of provisional duties.

106. The Committee took note of the statement by the representative of Australia.

United States (SCM/69/Add.5)

107. The Chairman said that at the meeting held in April a number of delegations had made some observations on the semi-annual report submitted by the United States for the period 1 July-31 December 1985. In the light of these comments it had been decided to revert to this report at the next meeting of the Committee.

108. No comments were made on this report.

E. Semi-annual reports of countervailing duty actions taken within the period 1 January-30 June 1986 (SCM/74 and addenda)

109. The Chairman said that an invitation to submit semi-annual reports under Article 2:16 of the Agreement had been circulated in SCM/74 of 18 July 1986. Responses to this request had been circulated in addenda to this document. The following signatories had notified the Committee that they had not taken any countervailing duty action during the period 1 January-30 June 1986: Austria, Brazil, Egypt, the EEC, Finland, Hong Kong, India, Israel, Japan, Korea, New Zealand, Norway, Pakistan, the Philippines, Sweden, Switzerland, Turkey, Uruguay and Yugoslavia (SCM/74/Add.1/Rev.1). Countervailing duty actions had been notified by Australia (Add.3/Rev.1), Canada (Add.2), the United States (Add.4) and Chile (Add.5). No report had been received from Indonesia and Spain.

110. The representative of Spain said that since Spain was a member State of the EEC, the report submitted by the EEC would cover any countervailing duty measures which might have been taken in Spain.

111. The Committee examined the reports in the order in which they had been circulated.

Canada (SCM/74/Add.2)

112. The representative of Canada said the undertaking mentioned in column 6 of the report concerning frozen boneless beef from the EEC had been terminated on 25 March 1986; subsequently the investigation had been continued.

113. No further comments were made on this report.

Australia (SCM/74/Add.3/Rev.1)

114. No comments were made on this report.

United States (SCM/74/Add.4)

115. The representative of Canada expressed his serious concerns over two countervailing duty investigations involving Canadian products in which the amounts of subsidization determined had been trivial. Firstly, in a preliminary determination concerning fresh cut flowers (SCM/74/Add.4, page 2) the amount of subsidization had been estimated at 0.52 per cent. The value of annual exports of cut flowers from Canada to the United States was only \$250,000. Secondly, in an investigation involving oil country tubular goods from Canada (SCM/74/Add.4, page 3), only one of the producers included in the investigation had been found to receive countervailable subsidies. In the final affirmative finding the amount of subsidization determined was 0.72 per cent. He considered that no one would seriously argue that the United States domestic industries were injured by imports of the products in question, particularly in view of the low levels of subsidization. Nevertheless, Canadian exporters were faced with the high cost and uncertainty associated with a countervailing duty investigation. In Canada's view this constituted a form of harassment of exporters. He expressed the hope that in the case of fresh cut flowers the United States would exclude the Canadian companies in the final stage of the investigation.

116. The representative of India raised a problem which had arisen in the context of an administrative review of a countervailing duty order on iron metal castings from India. This order had taken effect on 16 October 1980 (SCM/74/Add.4, page 9). On 7 October 1986 the United States Department of Commerce had published a preliminary determination in an administrative review of this order. In this preliminary determination the United States had assessed the amount of subsidization mainly on the basis of a programme that hitherto had not been taken into consideration, namely the International Price Reimbursement Scheme (IPRS). This programme had been in force since February 1981 and no changes had occurred in the administration of that programme since that time. He considered that the IPRS was in conformity with the Agreement and in this regard he referred in particular to item (d) of the Illustrative List of Export Subsidies. The essential purpose of the IPRS was to rebate to users of steel the difference between the domestic price and the lower international price of steel. Since the reference price used to determine the amount of a rebate was the international price of steel, he considered that the programme did not involve the provision of

steel to exporters on terms or conditions more favourable than those commercially available on world markets. Therefore the IPRS was permitted under item (d) of the Illustrative List. He considered that the treatment by the United States of the IPRS as a countervailable subsidy reflected a too narrow and rigid interpretation of item (d). Furthermore, he said that this case was also related to the more general issue of the implementation of the provisions in the Agreement which required that special consideration be given to the interests of developing countries. He concluded by saying that this matter was the subject of bilateral discussions between the United States and India and he reserved the right to revert to this issue at a subsequent meeting of the Committee.

117. The representative of the United States said that her authorities used a general rule to determine whether a subsidy was de minimis; if the subsidy was less than 0.5 per cent ad valorem it would be considered de minimis. She emphasized that it was important to have a general rule which could be enforced and applied by the courts. In the two cases referred to by the Canadian delegate the amount of subsidization had been above this de minimis rate. She further said that in the cut flowers case a final determination had not yet been made and that it was possible that in the final determination a different amount of subsidization would be found. With regard to the oil country tubular goods case she said that a number of Canadian producers had been excluded from the investigation. In response to the remarks made by the representative of India she stated that the decision referred to by the Indian delegate was a preliminary determination; bilateral consultations were taking place on this issue and in the final determination her authorities would take into consideration all timely comments. She said that the IPRS was a programme that had not been used at the time of the entry into force of the countervailing duty order. With respect to the reference made by the Indian delegate to item (d) of the Illustrative List of Export Subsidies she said that her authorities had indeed examined the applicability of this item to this particular case. It had, however, been found that the IPRS involved a rebate, and not a delivery by the Indian Government of goods and services as was provided for in item (d). The United States believed that, as the wording of item (d) was clear, this provision should be interpreted literally.

118. The representative of the EEC said that the issue of the precise interpretation of item (d) of the Illustrative List of Export Subsidies deserved further consideration by the Committee.

119. The Committee took note of the statements made.

Chile (SCM/74/Add.5)

120. No comments were made on this report.

121. The Chairman drew the attention of the signatories to his proposal for a revised standard form for the semi-annual reports (SCM/W/122). He said that experience had shown that the standard form agreed upon by the Committee in 1980 (SCM/2) was not sufficiently clear and might need some improvements. Some delegations had notified in the column on definitive duties the dates of final affirmative determinations of subsidization instead of the dates on which the countervailing duties actually took effect. In other cases the

initiation of a review had been notified as the initiation of a new investigation. He therefore proposed that the Committee agree to slightly modify the form along the lines suggested in SCM/W/122.

122. The representative of India asked whether reviews of outstanding measures would also have to be included in the semi-annual reports. He considered that it would be in the interest of transparency if the Committee took a decision that reviews should be notified.

123. The Chairman said that, while the Committee had never taken an explicit decision requiring the notification of reviews, a footnote on page 2 of his proposal indicated that reviews could be notified in column 3 of the form by using the symbol (R).

124. The representatives of the EEC and the United States said they supported the suggestion made by the delegate of India that reviews should be notified.

125. The Chairman said that as no objections had been raised to the suggestion made by the representative of India, the Committee could decide that future semi-annual reports should include review procedures. It was so agreed.

126. The Chairman suggested two possible methods for notifying reviews of outstanding measures. A first method was the one suggested in SCM/W/122, i.e. to list the measures being reviews in column 3 (initiation) and to use the symbol (R) in order to distinguish the reviews from the initiation of new cases. A second possibility was to specify in the annex containing the list of all outstanding measures which of those measures were the subject of a review procedure. He said that signatories would be free to choose between these two methods; what mattered was that the reviews would be notified.

127. The representative of Canada drew attention to a discrepancy between the French and the English texts of SCM/W/122. The French text referred in column 6 to "price undertakings" whereas the English text referred to "undertakings".

128. The Chairman said that the secretariat would make the necessary correction to the French text.

129. The representative of Yugoslavia suggested that the semi-annual reports should include the tariff classification of the products covered by investigations.

130. The representative of the United States said he understood the concerns of the representative of Yugoslavia; however he considered that the inclusion in the semi-annual report of information concerning the tariff classification would not be practical.

131. The representatives of Australia and Canada seconded the statement made by the representative of the United States.

132. The Chairman concluded the discussion by proposing that the Committee adopt the revised standard form circulated in SCM/W/122; it was so agreed (see document SCM/79).

F. Reports on all preliminary or final countervailing duty actions (SCM/W/103, 105, 118, 119 and addendum)

133. The Chairman said that notifications under these procedures had been received from Canada, Chile, the EEC and the United States.

134. The representative of Turkey asked whether his understanding was correct that the countervailing duty investigation by the United States of unfinished mirrors from Turkey (referred to on page 1 of SCM/W/105) had been terminated following a negative injury determination by the United States International Trade Commission made on 13 May 1986.

135. The representative of the United States replied that he was not in a position to confirm this information; his delegation would provide further information on this case to Turkey on a bilateral basis.

136. No further comments were made under this item of the agenda.

G. Report of the Group of Experts on the Calculation of the Amount of a Subsidy (SCM/W/89)

137. The Chairman said that at its last regular session in April 1986 the Committee had again reverted to the draft guidelines on the application of the concept of specificity in the calculation of the amount of a subsidy other than an export subsidy (SCM/W/89). Although many signatories had spoken in favour of the adoption of these guidelines, the Committee had decided, in view of the concern expressed by the delegation of the United States, to revert to this issue at its next meeting.

138. The representative of the United States stated that the United States agreed with the principle of specificity and applied it in its countervailing duty practice. However, because of certain political difficulties in the United States Congress his delegation continued to be unable to agree to the adoption of the draft guidelines laid down in SCM/W/89.

139. The representative of Canada expressed his disappointment about the fact that the United States was again not in a position to agree to the adoption of the draft guidelines on specificity. He noted, however, that the United States intended to apply the principle of specificity in practice and he hoped that this application of the specificity principle by the United States would take place in conformity with the criteria laid down in SCM/W/89. Finally, he urged all signatories to apply the specificity principle, pending a formal adoption of SCM/W/89 by the Committee.

140. The representative of Brazil said his delegation supported the draft guidelines on specificity contained in SCM/W/89.

141. The Chairman said the Committee would revert to this matter at its next meeting.

142. The Chairman informed the Committee of the status of work in the Group of Experts on the Calculation of the Amount of a Subsidy. Concerning paragraphs 4(a) and 4(b) of document SCM/W/74/Rev.1 which had not been included in the guidelines on physical incorporation adopted by the Committee

(SCM/68), he said that on this issue some progress had been made but that in view of the concerns expressed by one delegation the Group had agreed to revert to this issue at its next meeting. Other issues which were the subject of discussion in the Group of Experts were subsidies granted for research and development purposes, export restrictions, indirect subsidies and equity. The Group had agreed not to continue its discussion of the problem of criteria for distinguishing between subsidies and other measures having a possible trade distorting effect, and of aspects of drawback systems which might constitute a subsidy. The Chairman said that the work of the Group progressed very slowly, if at all, which was due to two major difficulties: disagreement on the basic methodology to be used in the calculation of the amount of a subsidy, ("cost to government" approach versus "benefits to the recipient" approach) and the failure to adopt the draft guidelines on specificity. He concluded that without a resolution of these difficulties the possibilities to make meaningful progress in the Group would remain very limited.

143. No further comments were made on this item

H. Uniform interpretation and effective application of the Agreement
(SCM/53 and SCM/56)

144. The Chairman recalled that at its meeting in April 1986 the Committee had continued its discussion of problems which had arisen regarding a uniform interpretation and an effective application of the Agreement but that the Committee had been unable to agree on a common approach of those problems. At the meeting in April one signatory had reiterated its position that some of the issues raised in SCM/53 went beyond a simple interpretation of the Agreement and that it would be inappropriate to engage the Committee in a negotiating exercise which could be prejudicial to global negotiations on agriculture. Some signatories, while agreeing on the global character of future negotiations on agriculture, had taken the view that the Committee should nevertheless continue its task of clarifying the existing rules within the normal framework of the Agreement. Some other signatories had considered that the Committee had the right and the competence to undertake an exercise aiming at the clarification of the existing provisions of the Agreement and to make those provisions more effective, including those relating to agriculture. Those signatories had argued that the Committee had well-defined responsibilities regarding subsidies and that the signatories were under an obligation to ensure that these responsibilities would be discharged effectively in the Committee. The Chairman said he wondered whether there was much more the Committee could do than to report this regrettable situation to the CONTRACTING PARTIES.

145. The representative of New Zealand stated that his country remained concerned about the situation which had been described by the Chairman. In his view it was important that the Committee continue its efforts to arrive at a uniform interpretation and effective application of the Agreement. If this proved impossible, the Committee should report to the CONTRACTING PARTIES that it had been unable to make progress in its attempts to solve the issues concerned. However, such a report should clearly indicate the main reasons why the Committee found itself in this situation. He therefore requested the Chairman to identify the main problems which had arisen in the context of the efforts made in the Committee to ensure a uniform interpretation and effective application of the Agreement.

146. The representative of the EEC said that if, as requested by the representative of New Zealand, the Chairman would provide a list of all sensitive issues which had arisen in the Committee's past discussions on this subject, one central element had to be taken into account which had been forgotten by the Chairman in his introductory remarks. This was the Ministerial Declaration adopted in Punta del Este which stated, inter alia, that negotiations on agriculture should aim at bringing all measures affecting export competition under strengthened and more operationally effective GATT rules and disciplines. This task of strengthening and making more operationally effective the GATT rules and disciplines regarding export competition on agriculture was precisely what the Committee had been trying to do in the context of its discussions on uniform interpretation and effective application. It was however absolutely clear that this task had been entrusted by the Ministers in Punta del Este to the negotiation group on agriculture; the Ministerial Declaration provided that this group would have primary responsibility for all aspects of agriculture. When the group on agriculture started its work it would take into consideration all suggestions which had been made with respect to the issues concerned. All those suggestions had been listed in a document prepared by the Committee on Trade in Agriculture. This document included the approach put forward in SCM/53 which had been the subject of discussions in the Committee on Subsidies and Countervailing Measures. He therefore considered that the Ministerial Declaration adopted in Punta del Este had considerably clarified the situation as regards the competent body to discuss problems concerning trade in agricultural products. If the Committee took this essential element into consideration it would be very simple to present a report to the CONTRACTING PARTIES on the Committee's work on the issues raised in SCM/53.

147. The representative of the United States said it was quite clear that certain decisions had been taken in Punta del Este, including the decision to establish a negotiation group on subsidies and countervailing measures. It was clear from the Ministerial Declaration that a broad discussion of subsidy issues would take place in the Uruguay Round. He further pointed out that the rules of the General Agreement and the Agreement on Subsidies and Countervailing Measures distinguished between primary and non-primary products and not between agricultural and non-agricultural products.

148. The representative of Uruguay said that while important decisions had been taken in Punta del Este with regard to the establishment of a group on agriculture and a group on subsidies, the Committee still had its own responsibilities. He therefore considered that the suggestion made by New Zealand was a useful suggestion which remained valid.

149. The representative of New Zealand said the only purpose of the suggestion he had made was to have a more precise indication of the nature of the difficulties which had led to the situation summarized by the Chairman in his introductory remarks; his suggestion had in no way been intended to affect the negotiation process launched in Punta del Este.

150. The representative of Australia said that while it was clear that the negotiating group on agriculture, provided for in the Ministerial Declaration adopted in Punta del Este, had a substantial responsibility for agricultural matters, it was also quite explicit that relevant issues could be raised in other groups; in particular, matters relating to subsidies could be raised

in the group on subsidies. He further pointed out that at some stage the Committee would have to consider what would be its rôle in the longer term. In his view many of the unresolved substantive issues which had been raised in the Committee would be considered in the context of the Uruguay Round. However, there remained the important task for the Committee of administering the Agreement.

151. The representative of Egypt stated that the group on subsidies, envisaged in the Ministerial Declaration, needed to have a certain input from the Committee to facilitate the work of the group.

152. The representative of Canada said that while he agreed that in the Uruguay Round some of the problems which had been discussed by the Committee under this item of the agenda would in the first instance be considered in the group on agriculture, this would not preclude other competent groups to consider those issues as well. In addition, he was of the view that the Committee was also not precluded from discussing agricultural subsidy issues which might arise in the context of the implementation of the Agreement in the future.

153. The Chairman presented a list of problems which had been experienced in the implementation of the Agreement. He emphasized that this list went beyond the particular issues discussed by the Committee at its most recent meetings under the item "uniform interpretation and effective application of the Agreement" and that its purpose was to identify the main problems which had arisen in the field of subsidies and countervailing duties during the period of the operation of the Agreement.

154. With regard to the operation of the Agreement with respect to subsidies, the Chairman pointed to the following problems: improvement of notifications under Article XVI:1 of the General Agreement; application of Article 8 of the Agreement including disciplines to prevent subsidies from causing serious prejudice; increased disciplines under Article 10 (including effective definition of "more than an equitable share", "special factors" and "previous representative period"); application of Article 9 to primary components of processed products, and export credits.

155. Regarding the operation of the Agreement with respect to the application of countervailing duties, the Chairman distinguished the following problems: definition of countervailable subsidies (in particular the treatment of generally available programmes, so-called natural resource subsidies and indirect subsidies); basic rules for the calculation of the amount of a subsidy ("cost to government" versus "benefits to the recipient" approach); the need to have more precise definitions of concepts such as injury (including the issue of cumulation), industry and sale, and the problem of the use of alternative measures such as undertakings.

156. Finally the Chairman mentioned the problem of the blockage of the dispute settlement process.

157. The Committee took note of the statements made.

I. European Economic Community - Subsidies on Export of Wheat Flour - Report by the Panel (SCM/42)

158. The Chairman recalled that this report had been submitted by the Panel to the Committee on 21 March 1983. The Committee had discussed the report at its meetings of 22 April, 19 May, 9-10 June 1983, 10 May 1984 and 22-23 April 1986. The Committee had been unable to adopt this report and had agreed to revert to it at this meeting.

159. The representative of the EEC stated that his delegation had made it clear at the meeting of 22-23 April 1986 that it was ready to agree to the adoption of the wheat flour report; this position had not changed.

160. The representative of the United States said that his authorities were not seeking adoption of the report by the Panel on wheat flour because, as had also been pointed out by his delegation at the meeting of 22-23 April 1986, the Panel had failed to address the questions which it had been requested to answer. He reminded the Committee that his delegation had submitted a proposal concerning the action to be taken by the Committee in relation to this report (SCM/W/54); in addition the Chairman of the Committee had tabled a proposal (SCM/Spec/20). The United States still viewed these proposals as possible ways to resolve this dispute and remove this item from the agenda of the Committee.

161. The Chairman said that the Committee would revert to this matter at its next meeting.

J. European Economic Community - Subsidies on Export of Pasta Products - Report by the Panel (SCM/43)

162. The Chairman recalled that the Panel had submitted its report to the Committee on 19 May 1983. The Committee had discussed the report at its meetings of 9-10 June 1983, 10 May 1984 and 22-23 April 1986. The Committee had not been able to adopt the report and had agreed to revert to it at this meeting.

163. The representative of the United States reminded the Committee of the statement he had made on this report at the meeting held on 22-23 April 1986. His delegation considered that this dispute should be resolved through the adoption of the report by the Panel.

164. The representative of the EEC said the views of his delegation on this matter were well known. The Panel had rendered a divided opinion and this divergence of views within the Panel also existed in the Committee. His delegation was therefore not in a position to agree to the adoption of this report.

165. The Chairman said the Committee would revert to this matter at its next meeting.

K. United States - Definition of industry concerning wine and grape products - Report by the Panel (SCM/71)

166. The Chairman recalled that this report had been submitted to the Committee by the Panel on 24 March 1986 and that it had been discussed by the Committee at its meeting held on 22-23 April 1986. The Committee had been unable to adopt the report and had agreed to revert to it at this meeting.

167. The representative of the EEC requested the Committee to adopt the report by the Panel.

168. The representative of the United States said that, for reasons which were well known to the Committee, his delegation was not in a position to agree to the adoption of the Wine Panel Report as long as the Committee had not adopted the report by the Panel on Pasta.

169. The representative of Australia said it was regrettable for the dispute settlement processes of the Agreement that the Committee had been unable to take any definitive action on the three panel reports which had been submitted to it. He urged signatories to continue to seek solutions for these disputes in order to preserve signatories' rights under the Agreement and considered that in the absence of any resolution of these disputes the Agreement would become inoperable.

170. The representative of the EEC drew the attention of the Committee to the fact that the United States had explicitly established a linkage between adoption of the report on pasta and adoption of the report on wine.

171. The representative of India asked whether Section 612(a)(i) of the United States Trade and Tariff Act of 1984 had expired in September 1986 as had been announced by the delegation of the United States at the meeting of 22-23 April 1986 (SCM/M/31, paragraph 155). He also recalled that at the same meeting the representative of the EEC had stated its concerns that it was not yet clear whether this provision of the United States law would be extended in one form or another; moreover the EEC had pointed out that even if it would expire in September 1986 it would continue to be applicable to petitions filed before the date of expiry (SCM/M/31, paragraph 156). He requested further information on these points. Finally, he reiterated that his authorities were supporting the adoption of the Wine Panel Report.

172. The representative of the United States confirmed that Section 612(a)(i) of the Trade and Tariff Act of 1984 had expired on 30 September 1986; petitions filed after that date would not be covered by this provision.

173. The Chairman concluded the discussion by saying that the Committee would revert to this report at the next meeting.

L. Report on the first meeting of the Working Party to examine obstacles which contracting parties face in accepting the Agreement

174. The Chairman recalled that at the meeting held in April 1986 the Committee had established a Working Party to examine the obstacles which contracting parties face in accepting the Agreement on Subsidies and Countervailing Measures. He informed the Committee that this Working Party had held its first meeting on 13 June 1986. At that meeting the Working Party had requested the secretariat to prepare a background paper on the application of Article 14:5 and Article 19:9 of the Agreement. This paper had been circulated in SCM/W/116 and would be examined by the Working Party at its next meeting.

175. The representative of Uruguay asked when the next meeting of the Working Party would take place.

176. The Chairman replied that he would hold consultations with interested delegations concerning the date of the next meeting of the Working Party.

M. Countervailing duty investigation by Canada on boneless manufacturing beef from the EEC - Request by the EEC for the establishment of a panel under Article 17:3 of the Agreement (SCM/77)

177. The Chairman said that at its meeting of 1 August 1986 the Committee had considered a request from the EEC for conciliation under Article 17:1 of the Agreement; this request concerned a countervailing duty investigation conducted by Canada of boneless manufacturing beef from the EEC. The Committee had heard the different views expressed by interested signatories and it had encouraged the two parties concerned to intensify their efforts to develop a mutually acceptable solution which would be consistent with the Agreement. Unfortunately no such solution had been found and the EEC had requested that a panel be established in accordance with Article 18:1 of the Agreement (SCM/77).

178. The representative of the EEC said that at the conciliation stage the EEC had invited Canada to make proposals for a resolution of the dispute. As no such proposals had been made by Canada, even after an extension of the time-limit set by the EEC, the EEC had been left with no other choice than to request the establishment of a panel. He emphasized that although the EEC had serious concerns about a number of aspects of the countervailing duty investigation, the request for conciliation had been limited to two main issues which were similar to the questions involved in the dispute between the EEC and the United States concerning the definition of industry in the case of wine and grape products: the definition of industry for the purpose of standing to file a petition, and the definition of industry for the purpose of a determination of injury. In view of the evident similarity between this case and the wine dispute he considered that the mandate and composition of the panel requested by his delegation could be the same as in the wine dispute.

179. The representative of Canada said that the conciliation process could only be successful if both parties to the dispute made an effort to find a solution; however, Canada had not received any proposal from the EEC regarding a possible solution of this dispute. He further pointed out that this case and the dispute between the EEC and the United States concerning wine were two distinct cases which raised different issues.

180. The representative of the United States said that the definition of the concept of industry raised important conceptual problems in countervailing duty or anti-dumping duty investigations involving processed agricultural products. He therefore requested that, if the Committee would decide to establish a panel, the United States be allowed an opportunity to appear before the panel and state its own views on this case.

181. The representative of the EEC, replying to the comments made by the representative of Canada, said that in this dispute the EEC was the party which considered that its interests had been harmed by actions taken by Canada. It was therefore logical to expect that Canada would take the initiative in the conciliation process. He further pointed out that while the facts of this case obviously were not the same as in the wine dispute,

the issues of interpretation of the Agreement raised by the two cases were essentially the same. In response to the remarks made by the representative of the United States he said that while his delegation did not object to intervention by the United States before the panel, he hoped that the United States would adopt the same positive attitude if the EEC made a request to put its views to the Panel established in the dispute between Canada and the United States concerning the conduct by the United States of a countervailing duty investigation of Softwood Lumber in which a number of essential points relating to the Agreement were at stake.

182. The representative of Australia said that if the Committee were to establish a panel, his delegation might wish to make a submission to the panel.

183. The Chairman said that the Committee had considered the request by the EEC for the establishment of a panel and had noted the statements made by interested signatories. He proposed that, in accordance with Article 18:1 of the Agreement, the Committee establish a panel to review the facts of the matter referred to the Committee by the EEC in SCM/75. It was so agreed.

184. The Chairman said the EEC had suggested the terms of reference of the panel and he proposed that the Committee authorize him to decide, in consultation with the parties to the dispute, on the final wording of the terms of reference. It was so agreed.

185. The Chairman further proposed that the Committee authorize him to decide, after securing the agreement of the signatories concerned, on the composition of the panel. It was so agreed.

N. Countervailing duty action by Canada concerning pasta products exported by the EEC - Request by the EEC for conciliation under Article 17:1 (SCM/78)

186. The Committee had before it document SCM/78 containing a request by the EEC for conciliation under Article 17:1 of the Agreement regarding a countervailing duty investigation on pasta products from the EEC carried out by Canada.

187. The representative of the EEC said that the views of his delegation on the issues involved in this case had been stated in SCM/78. At this stage the EEC felt it necessary to emphasize two points. The first related to the requirements under the Agreement which must be met before provisional measures can be taken. Under Article 5:1 it was clear that provisional measures could be taken only after a preliminary affirmative finding of subsidization and sufficient evidence of injury had been made. In this case the Canadian authorities had apparently taken provisional measures without having shown that there was sufficient evidence of injury, as was required by Article 5:1 of the Agreement. Provisional measures had been taken on the basis of evidence of injury presented by the petitioner which did not constitute sufficient evidence as required by the Agreement. In this respect he cited various statements in the Statement of Reasons of the Canadian Department of National Revenue (SCM/78, page 2). He further stated that in the period January-June 1986 the total volume of exports of Italian pasta to Canada had been 4,836 tonnes which represented a decrease by 16.75 per cent compared to the corresponding period in the preceding year.

He therefore wondered how it had been possible to conclude that these exports were causing injury. He concluded by saying that the Canadian authorities should reconsider the provisional measures they had taken.

188. The representative of Canada said his authorities did not accept the view expressed by the EEC in document SCM/78 that the Canadian countervailing duty investigation on dry pasta was not being conducted in conformity with the provisions of the Agreement. The properly documented complaint which had led to the initiation of this investigation had been filed by the Canadian Pasta Manufacturers Association which was composed of the five major pasta producers in Canada. Four of these producers, who accounted for more than ninety per cent of Canadian production of pasta had actively participated in the complaint. The fifth producer, while not actively participating in the complaint had in fact supported it as had been confirmed in the preliminary determination notice issued on 30 September 1986. As required by the Agreement, the complaint had contained evidence of subsidization and of consequent material injury which had been determined to be sufficient to justify the initiation of an investigation. The complaint had alleged two programmes operated by the EEC which the preliminary investigation had recently identified to be countervailable subsidies.

189. With respect to the question of evidence of injury, the representative of Canada said that the decision to initiate this investigation had been based on a large amount of data, including confidential information, substantiating the producers' allegations of material injury and causality. This information had been summarized in the Statement of Reasons released at the time of initiation of the investigation. The factors relating to injury included issues such as increased market operations, price suppression, reduced profitability and employment, and loss of orders. Following the initiation of the investigation the Canadian authorities had received additional information on injury from the producers; in addition, they had gathered information from independent sources. On the basis of all the information analysed they had concluded that there continued to be sufficient evidence of material injury caused to the Canadian producers by the subsidized exports, which had justified proceeding with the investigation and applying provisional duties. He expressed the surprise of his authorities at the concern of the EEC on the injury aspect of this case; neither the EEC nor its exporters of dry pasta had chosen to avail themselves of the right provided under Canadian legislation to refer to the Canadian Import Tribunal (CIT) the question of whether there had been sufficient evidence to justify the opening of this investigation. Under Canadian law, any interested party had such a right within thirty days following the initiation. That right existed to deal with concerns, such as those of the EEC in this case, which parties might have at the initiation stage of an investigation on the injury issue. If the EEC felt so aggravated by the decision to initiate the investigation, one would have expected that it would have used the right to refer the matter to the CIT. However, it had not done so. The representative of Canada further noted that, as a result of the recent preliminary determination, the case had been referred to the CIT for the formal injury enquiry. The EEC or its exporters would have an opportunity to present views they felt relevant to this enquiry. The CIT would hold public hearings in respect of this case commencing on 5 January 1987.

190. Regarding the comments made by the EEC in SCM/78 on the method used by the Canadian authorities to calculate the rate of subsidization, the representative of Canada said that the rates of export restitutions for the month of September 1986 had not been selected because they were the highest but because they were the most recent and were likely to be the most representative of the amount of the subsidy on pasta to be imported during the period of application of provisional measures. In this connection he pointed out that in the course of the investigation the Canadian authorities had found that during the period September 1985-June 1986 the amount of restitution provided by the EEC to pasta exporters had been changed frequently. While there had been occasional downward fluctuations, the clear trend during this period had been steadily and substantially increasing amounts of restitution for durum wheat, soft wheat and eggs used in the production of pasta. In the light of this clear upward trend, the Canadian authorities had decided that a weighted average rate, based on increasingly out of date information, would not have been representative. He further stated that the calculation of the subsidy in this case was not inconsistent with any of the provisions of the Agreement and that it represented an attempt to establish a representative rate, given the aforementioned trend of restitution payments during the course of the investigation. He added that had the Canadian authorities followed the method suggested by the EEC, the subsidy rates would still have been over 50 per cent.

191. By way of conclusion the representative of Canada stated it was the view of his authorities that the investigation had been conducted in full conformity with the relevant provisions of the Agreement. He repeated that the case had been referred to the CIT for a final injury investigation. In the meantime, the Canadian authorities would continue the final stage of their subsidy investigation and they remained prepared to discuss the latter issue with the EEC.

192. The representative of the EEC said that he had noted with interest that the Canadian authorities remained prepared to discuss this case with the EEC. In those bilateral consultations his delegation would react to the points made by the Canadian representative, in particular to the comments made by the Canadian representative on the issue of the selection of the appropriate rate of restitution. At this stage he limited his comments to one issue, namely the remark made by the representative of Canada that the EEC or its exporters could have referred to the CIT the question of whether the evidence of injury justified the initiation of the investigation. In this respect he said he doubted that it was proper for any importing country to force an exporting country to subject itself to the jurisdiction of a quasi-judicial body. Moreover, even if the EEC or its exporters had used the right to refer the matter to the CIT this would not have provided effective protection of its interests because Section 34 of the Canadian Special Import Measures Act provided that the question which could be referred to the CIT was whether the evidence disclosed "a reasonable indication of injury"; this criterion was less strict than the one contained in Article 5:1 of the Agreement which required that provisional measures were only permitted after a preliminary finding had been made that a subsidy existed and that there was "sufficient evidence of injury".

193. The representative of Canada said that a government of an exporting country was of course free to decide not to use the right to refer the injury issue to the CIT at the initiation stage of the investigation; no one was

forcing such a government to bring the case before the CIT. He emphasized that this right could also have been used by the exporters in the EEC. With respect to the remarks made by the delegate of the EEC on the effectiveness of an appeal to the CIT, he said it seemed that the EEC was putting into question the integrity of the Canadian position. In this regard he stated that many cases had been rejected by the CIT on the ground that there had not been sufficient evidence of injury.

194. The Chairman said the Committee had heard and reviewed the facts of the matter and he encouraged the signatories involved to step up their efforts to find a mutually acceptable solution which would be consistent with the Agreement.

0. Other business

(a) Terms of reference and composition of the Panel on the initiation by the United States of a countervailing duty investigation of softwood lumber from Canada

195. The Chairman said that the terms of reference of the Panel, which had been established by the Committee at its meeting on 1 August 1986, were as follows:

"To review the facts of the matter referred to the Committee by Canada in SCM/73 and, in the light of such facts, present to the Committee its findings concerning the rights and obligations of the signatories party to the dispute under the relevant provisions of the General Agreement as interpreted and applied by the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade."

196. The Chairman informed the Committee that the composition of the Panel was as follows:

Chairman: Mr. Michael D. Cartland

Members: Mr. Ulrich Mohrmann
Mr. Luzius Wasescha

(b) Statement made by the EEC concerning its intention to make a submission to the Panel on the initiation by the United States of a countervailing duty investigation of softwood lumber products from Canada

197. The representative of the EEC said that at earlier meetings of the Committee, in particular the meetings held on 14 July and 1 August 1986, the EEC had indicated that it had a substantial interest in the matter which was being examined by the Panel. He informed the Committee that the EEC was considering submitting comments on this case to the Panel.

198. The representative of the United States considered that the request by the EEC to intervene in the softwood lumber case was troubling because it was untimely and could disrupt the work of the Panel. He said that at the time the Committee had discussed the establishment of this Panel, the EEC had not made a formal request to be allowed to present its views to the Panel. The

United States had not been aware of the intention of the EEC to intervene and had therefore not objected to a member of the EEC delegation being selected as a panelist. If the EEC intervened in this case, this member of the Panel would be placed in an extremely difficult position as he would have to decide in a case on which his authorities had formally expressed their views.

199. The representative of the EEC said he could not accept the contention that his delegation had not indicated on earlier occasions that it had an interest in the general questions of interpretation of the Agreement involved in the dispute on softwood lumber between Canada and the United States. He could think of no procedural rule which would prevent the EEC from making its views known to the Panel. He further stated that there was no conflict between the fact that a national of one of the EEC member States served on the Panel and the fact that the EEC wanted to intervene in the dispute. Panelists served on panels in their personal capacity and were not acting under instructions from their governments. He added that in a number of disputes to which the EEC had been a party, nationals of the EEC member States had been panelists. This had never given rise to difficulties.

200. The representative of the United States said it was clear from the minutes of the meetings held on 14 July and 1 August 1986 that although the EEC had made a number of comments on the case, it had never expressed its intention to state its views before the Panel. He considered it to be a generally accepted practice in GATT and in the MTN Agreements that a request by an interested third party to intervene in a dispute should be made when the Panel was being constituted. This generally accepted practice had been respected by the United States when it had requested that it be allowed to state its views before the Panel which had just been established by the Committee on the dispute between Canada and the EEC on beef. On the issue of the composition of the Panel he said that he did not want to question the integrity of the panelist concerned; nevertheless, he considered that the request by the EEC placed this panelist in a very difficult situation where there could be a conflict between his own individual views on the case and the interests of his authorities. In this connection he referred to Article 18:3 of the Agreement which provided that it was understood that citizens of countries whose governments were parties to a dispute would not be members of the panel concerned with that dispute.

201. The representative of the EEC said he was not aware of any rule which would require a third party to indicate its intention to intervene in a dispute at the time of the establishment of a panel. He referred in particular to paragraph 6(iv) of the Annex to the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance which stated that "Panels have also heard the views of any contracting party having a substantial interest in the matter, which is not directly party to the dispute, but which has expressed in the Council a desire to present its views." He therefore considered that the decision by the EEC to present its views to the Panel on softwood lumber was consistent with customary practice. With respect to Article 18:3 he said that his provision was not relevant in this context because the EEC was not a party to the dispute.

202. The representative of the United States reiterated that under the established GATT practice a request by third parties to intervene in a dispute should be made at the time of the constitution of a panel. His

Government would certainly not accept panelists from countries which had indicated they wanted to state their views before the panel because this would create a potential conflict of interest. In this regard he considered it to be irrelevant that the EEC was not a party to the dispute; what mattered was that the EEC had an interest in the issues involved in this dispute.

203. The representative of Canada said that, as he had no specific instructions from his authorities on this issue, he could make no comments.

204. The Chairman concluded that the Committee had taken note of the statements made by the EEC and the United States; he would inform the Chairman of the Panel on softwood lumber of the discussion. In view of the fact that the Panel had already started its work and adopted its procedures, the Chairman suggested that the EEC would contact the Chairman of the Panel to enable the latter to determine under what procedures the EEC could be allowed to present its views.

205. The representative of the United States said that the request by the EEC had come as a surprise. It had raised a new procedural issue on which he would need further instructions from his authorities. He therefore reserved the position of the United States on this request and also reserved the right of the United States to reconsider its position on the composition of the Panel.

206. The representative of the EEC said that he could accept the conclusions of the Chairman. As the EEC had a right to present its views to the Panel, no decision needed to be taken by the Committee. His delegation would contact the Chairman of the Panel. He assumed that the intervention by the EEC in this dispute would not disrupt the work of the Panel.

207. The Committee took note of the statements.

P. Annual review and report to the CONTRACTING PARTIES

208. The Committee adopted its report (1986) to the CONTRACTING PARTIES (L/6089).

Date of the next regular meeting

209. The Chairman informed the Committee that, in accordance with a decision taken by the Committee at its meeting in April 1981 (SCM/M/6), the next regular meeting of the Committee would take place in the week of 4 May 1987.

ANNEX

The delegation of the United States has requested that the following statements, relating to paragraph 21 of the report (L/6089), be included in the Minutes of the meeting:

- (a) Statement by the representative of the EEC: "Mr. Chairman, if you assume the responsibility of making comments as a Chairman, you are free to do so but then allow me to point out that the Community wants its comments in connection with this list to be included in the report. I have told you about the difficulties we have with this. If you consider that there are some problems that have not been resolved during the period of the operation of the Agreement, this means implicitly that you consider, as a Chairman, that these are issues which normally should be dealt with by this Committee, and the Community cannot agree with this point of view. Under no circumstances can the Community accept this. For this reason I wish to warn you, you can do what you want as Chairman, but then the Community will add a sentence saying that this cannot be deemed a list of subjects falling under the competence of this Committee, nor under this chapter - Uniform Interpretation and Effective Application of the Agreement. There is no reason, in our opinion, to introduce such a paragraph in this report whereas this had not been included in the last two years and this hasn't been discussed; you were replying to a question asked by a delegate, you have replied in this manner, you have read out this list, this reflects your personal point of view, thank you sir."
- (b) Statement by the representative of the United States: "I would like to say that I am glad that I came to this meeting because now I have heard that there is actually somebody on the Community delegation who will say something as outrageous as 'it is not the competence of the Subsidies Committee to consider matters relating to Articles 8, 9 and 10 of the Subsidies Code.' That is incredible to me. We all know that the Community has refused to talk about these things, but to say that the Committee has no right to talk about Articles 8, 9 and 10 of its own Code is absolutely ridiculous. Thank you."