

GENERAL AGREEMENT ON

RESTRICTED

SCM/M/52

17 September 1991

TARIFFS AND TRADE

Special Distribution

Committee on Subsidies and
Countervailing Measures

MINUTES OF THE MEETING
HELD ON 18 JULY 1991

Chairman: Ms. Angelina Yang (Hong Kong)

1. The Committee on Subsidies and Countervailing Measures ("the Committee") held a special meeting on 18 July 1991.
2. The Committee considered the following items:
 - A. United States countervailing measures on imports of fresh and chilled salmon - Request by Norway for conciliation under Article 17:1 of the Agreement (SCM/117).
 - B. Canadian countervailing measures against grain corn - Request by the United States for establishment of a panel under Article 18:1 of the Agreement (SCM/118).
 - C. Other business:
 - (i) European Community's request for information from Korea under Article 7 of the Agreement;
 - (ii) Request by Egypt for technical assistance.
3. The Chairman recalled that the purpose of the meeting was to review a matter referred to the Committee by Norway for conciliation under Article 17 of the Agreement (GATT/AIR/3210 and Add.1). This matter involved the imposition by the United States of countervailing measures on imports of fresh and chilled Atlantic salmon from Norway. Norway had submitted a detailed description of the specific issues in respect of which it had invoked the conciliation process under Article 17 of the Agreement (SCM/117).
4. She noted that in GATT/AIR/3210/Add.1, the United States had proposed the inclusion on the agenda of the meeting of its request for the establishment of a panel under Article 18:1 of the Agreement regarding the injury determination by Canada on grain corn from the United States (SCM/118). In addition, it was her understanding that the delegations of the European Community and Egypt would each like to raise a matter under "Other Business".
5. The Committee adopted the agenda as amended.

A. United States countervailing measures on imports of fresh and chilled Atlantic salmon - Request by Norway for conciliation under Article 17:1 of the Agreement (SCM/117)

6. The Chairman recalled that on 12 June 1991, the United States had indicated that it accepted Norway's request to consider the consultations under Article XXIII:1 of the General Agreement regarding the imposition of countervailing duties on fresh and chilled Atlantic salmon from Norway as consultations under Article 3:2 of the Subsidies Agreement (SCM/116). Subsequently Norway had requested conciliation on this matter under Article 17 of the Agreement (SCM/117).

7. The representative of Norway said that in mid-April 1991, the United States had imposed a countervailing duty of 2.27 per cent on fresh and chilled Atlantic salmon from his country. He claimed that together with anti-dumping duties averaging 23.8 per cent on the same item, this duty had the effect of an import embargo. The United States' imports of fresh and chilled salmon from Norway had decreased from 1,261 tons in May 1990 to only 24 tons in May 1991. In Norway's view, the countervailing duty was in contravention of the United States' obligations under the relevant provisions of the Subsidies Agreement and constituted a case of nullification or impairment of the benefits accruing to Norway. The measures taken had led to an almost complete disappearance of the largest supplier to the United States market. Significant economic interests were at stake for the Norwegian salmon industry, which consisted of a large number of small installations. He traced the developments of the case, details of which had been given in SCM/117.

8. Pointing out that material injury had been found by the US International Trade Commission (ITC) by a 3 to 1 majority, the representative of Norway quoted the opinion of the dissenting Commissioner (acting Chairman Brunsdale) that, "The majority's conclusion is unsupported by substantial record evidence and may well be contrary to law". He noted that consultations with the United States had not achieved a mutually acceptable solution, and mentioned several points which formed the basis for his country's request for conciliation under Article 17 of the Agreement.

9. Regarding the standing of the petitioner, he said that instead of verifying that the request for the investigation had been made on behalf of the industry, the United States Department of Commerce (DoC) had only assumed that this was the case. The United States had ignored the provisions of the Agreement concerning the standing of the petitioner, and the investigations had consequently not been conducted in conformity with the Agreement. In this context, the representative of Norway cited the conclusions of the panel on the imposition of anti-dumping duties by the United States on imports of seamless stainless steel hollow products from Sweden (ADP/47) that the investigating authorities were required to satisfy themselves, before opening an investigation, that a written request had been made on behalf of a domestic industry within the meaning of the

provisions of the Agreement. He added that the petitioner in the salmon case, the "Coalition for Fair Atlantic Salmon Trade", was dependent on the financial support of one Canadian-owned company.

10. As to the determination of subsidies, the United States DoC had found that subsidy to Norwegian fresh and chilled salmon was conferred by programmes administered by the Regional Development Fund (RDF) in Norway. The programmes under the RDF were generally available to and widely used by many industries in the regions covered by this Fund. The main objective of these programmes was to alleviate disadvantages due to location in remote and rural areas. In Norway's opinion, the RDF programmes were in conformity with the Agreement. Such programmes and schemes operated in most, if not all, countries to encourage investment in certain areas. The RDF programmes did not distort competition, and for this reason the United States had not been able to demonstrate any injury due to these programmes. Since the RDF programmes did not lead to any distortion of trade, the determination of subsidies by the DoC was unjustified. Further, Norway contested several aspects of the determination, in particular the benchmark used in the calculation of the subsidy, and the United States' disregard of the tax effects in Norway which acted to offset the subsidy. These factors had contributed to the DoC's arbitrary method and calculation, and combined with a series of choices made to the detriment of Norwegian interests, had led to the unwarranted finding of subsidies.

11. With regard to determination of injury, he pointed out that the developments relating to Norway's export volume of fresh and chilled Atlantic salmon, and to consumption and prices of this item in the United States market, indicated that Norway's exports had not caused material injury to the United States industry.

12. Norway's export volume had begun to decrease in the period prior to the filing of the petition. By April 1991 when the final injury determination was made, the export volume had fallen to 15 tons, compared to 1,075 tons in April 1990. Though consumption of fresh and chilled Atlantic salmon in the United States had grown strongly during the period 1987 to 1990, Norway was the only country which had experienced a fall in market share during this period, from 75 per cent in 1987 to 60.2 per cent in 1989, and to 36.2 per cent in 1990. Detailing the time profile of imports, the Norwegian representative said that the United States had increased its salmon imports from all countries in the period 1987 to 1989, but imports from Norway had increased slower than imports from other countries. For the period 1987 to 1990, imports of fresh salmon from all countries, except Norway, had grown rapidly. The entire decrease in the United States' imports from Norway during 1989-90 had been more than offset by increased imports of salmon from Canada and Chile. Shipments of gutted Atlantic salmon by United States producers had tripled from 1987-88 to 1989-90. United States capacity and production had risen during most of the period 1987-90, and employment indicators showed growth during 1987-89.

13. Norway contested the ITC's finding that imports from Norway had significantly depressed prices for the like product. The available data showed that the gap between prices for United States and Norwegian salmon had widened since the middle of 1990, and at the time when the DoC had made its final determination, prices for Norwegian salmon were about 35 to 40 per cent above prices for salmon from the United States and Canadian producers, and even more when compared with Chilean salmon. Since the available data showed that Norwegian salmon had generally been sold at prices significantly above the prices for salmon from United States producers and main competing countries, Norway could not see how imports of its salmon had depressed prices to a significant degree in the United States market. Further, additional evidence of lack of injury due to imports of Norwegian salmon was that the virtual disappearance of this product from the United States market had led to no noticeable increase in the market share of the United States industry, nor in the prices for United States produced salmon. For all these reasons, Norway believed that the United States industry had not been materially injured by the imports of Norwegian salmon.

14. Regarding the requirement under the Agreement that a causal link be shown between subsidized imports and material injury, the representative of Norway noted that the ITC had made one collective determination for both anti-dumping and countervailing duty cases, rather than determining a specific causal link in the subsidy case. His delegation failed to see how an alleged subsidy of 2.27 per cent could cause any material injury. The United States had failed to demonstrate material injury through the effects of allegedly subsidized salmon. In Norway's view, if the United States industry had been injured, the reasons were not related to imports from Norway: the causes could include, inter alia, the annual huge landings of pacific salmon, problems due to mismanagement, the strong increase in lower priced imports from other countries, and the fact that the United States was not capable of marketing its product on a year-round basis, in contrast to the Norwegians.

15. Summing up, the representative of Norway said that the United States had not demonstrated any subsidization nor any material injury, nor a causal link between these required by the provisions of the Subsidies Agreement. Hence the countervailing duties imposed by the United States were in contravention of the United States' obligations under the relevant provisions of the Agreement and constituted a case of nullification or impairment of the benefits accruing to Norway.

16. In response, the representative of the United States said that since at least the early 1980s, the Norwegian Government had undertaken a large-scale and coordinated programme through a Regional Development Fund to support Norwegian business in a particular area. Since this area included the most fertile areas for raising salmon, there had been a striking increase in the production of Norwegian salmon. For example, Norway's production of salmon had doubled between 1988 and 1990, and Norway had sought markets abroad to unload the excess production. Shipments from Norway to the United States had grown from 18 million pounds in 1987 to

31 million pounds in 1989. The United States market was glutted and in 1988-89, though the market was expanding, the Norwegians had slashed prices by 40 to 50 per cent in order to sell their product. Since Norway dominated the market, others had to respond to the price moves or be out of the market. This had adversely affected the emerging United States industry which had been seeking to establish itself in the growing market and had earlier made substantial capital investments in anticipation of the 1987-1990 three-year growing cycle. Though production and capacity of the United States industry had increased due to these investments, the sharp fall in prices in mid-1988 had led to the United States firms selling their salmon before it was fully grown; the average weight of the United States shipments of adult salmon had declined substantially from 1988-89 to 1989-90. In addition, the industry had to sell earlier in the season, thus taking a price loss and having cash flow problems. These problems were amply reflected in the industry's performance in the period of investigation, i.e., there were lower revenues in 1989, substantial gross and operating losses, inability to cover costs, and most importantly, an inability to invest and achieve economies of scale which could re-establish profitability.

17. The representative of the United States said that even Norway did not contest the fact that it had provided regional business promotion subsidies. Norway's argument for special treatment of these subsidies was based on Part II of the Agreement. He pointed out that leaving aside the question of interpreting Part II, countervailing duties had to be imposed consistent with Part I of the Agreement which did not mention any special treatment for regional development or other domestic subsidy programmes for the imposition of such duties.

18. In the United States' view, its fresh and frozen salmon industry had been unquestionably injured, and imports from Norway were the cause of this injury, in light of the role these imports played in the market. Regarding injury, the delegate of the United States identified three contentions of Norway. First, that Norwegian imports were not the sole cause of injury suffered by the United States industry. He said that the Agreement did not specify this as a requirement for imposing countervailing duties. The Article 6 standard in the Subsidies Code was virtually identical to the standard in the Anti-Dumping Code. Article 16:5 of the current Anti-Dumping Code explicitly denounced the 1967 Anti-Dumping Code's higher standard of injury causation. Both the Anti-Dumping and Subsidies Codes contained language different even from that employed in Article XIX of the General Agreement relating to safeguard actions.

19. Second, Norway had pointed out that the import volumes had peaked in 1989 and then declined in 1990. While the data did show that import volume had declined in 1990, this decline had occurred upon the filing of the case and the imposition of provisional measures by the United States authorities. The Agreement provided that the purpose of the provisional measures was to prevent injury from being caused during the period of investigation, and this is what the provisional measures had achieved.

20. Third, Norway had argued that the United States industry had asked for help too late, i.e., by the time the enquiry had been completed, some key indicators of injury had improved. Acknowledging that some data showed improvement over 1988-89, the delegate of the United States argued that critical indicators of future performance and ability to compete, e.g., capital investment, had shown no abatement of injury. Furthermore, the Agreement did not require that injury be found over a specific period of time or at any particular moment in time. He pointed out that the United States examines the question of injury over three years to fully assess the situation in an industry, a practice which he said accurately reflected the Agreement's letter and intent. In view of all these points, the United States was confident that the legal standards established by the Agreement had been amply satisfied.

21. The representative of Canada said that while his delegation was reflecting on a number of issues identified in Norway's submission (SCM/117), he would comment on the standing issue. This was an important matter for his country, and he recalled that Canada had raised this issue in this Committee and in other fora. His delegation shared Norway's concerns relating to standing, provided the DoC had not verified that the petition was made on behalf of a major portion of the domestic salmon industry. The same concern had been raised earlier by Canada in a third party submission to the panel on the imposition of anti-dumping duties by the United States on imports of seamless stainless steel hollow products from Sweden (ADP/47). In Canada's view, verification of standing was required under the Subsidies Code and the Anti-Dumping Code. Canada reserved the right to return at a later date to this and other issues identified in SCM/117.

22. The representative of Japan expressed his country's interest in this case which dealt with the core issues of countervailing duties such as standing, and the determination of subsidy and injury. His country shared most of the concerns expressed by Norway, particularly about standing and determination of injury. He quoted Article 2:1 of the Subsidies Code regarding the standing requirement and said that his delegation doubted the conformity of the United States' measures with its obligations under the Code if the United States Administration had not conducted any determination satisfying the stipulated condition. Concerning determination of injury, he mentioned Norway's claim that its share in the United States market for salmon had decreased substantially. If such had been the case, Japan's view was that it would not correspond to the significant increase required under Article 6 of the Subsidies Code. He emphasized the need in the process of conciliation for a careful examination of the data.

23. The representative of Brazil sought clarification on whether the comments of the United States delegation implied that there should be any limit on generally available public support.

24. The representative of the United States referred to Norway's statement that the RDF programmes were available in the regions covered by the RDF. The region covered by the RDF did not constitute Norway as a whole, and therefore the DoC had found that these programmes were limited to a specific group of recipients on the basis that they were a regional subsidy. He said that this finding was entirely consistent with the United States' obligations under both the General Agreement and the Subsidies Agreement. While the rules and obligations concerning the use of subsidies as well as dispute settlement procedures were contained in Part II, i.e. Article 11 of the Agreement, a signatory's obligations with respect to the conduct of countervailing duty investigations and the imposition of countervailing duty measures were contained in Part I. He reiterated that none of the conditions in Part I of the Agreement relating to the imposition of countervailing measures required signatories to take account of the objectives noted in Article 11 or otherwise to accord any special treatment to domestic subsidy. He further said that the imposition of countervailing duties did not require a demonstration that individual subsidy programmes had led to a distortion of trade. The requirement was that the subsidized imports be shown to have caused or to have threatened to cause material injury to the domestic industry "like product". Thus, notwithstanding whether Norway's RDF aimed to promote certain social or economic policy objectives, the United States believed it was well within its rights to impose a countervailing duty on imports benefiting from such subsidies when, as was the case here, these imports caused injury to the United States industry.

25. The representative of Brazil said that the United States' reply had implications for the question of generally available subsidies to disadvantaged regions. Brazil would further reflect on this.

26. The representative of Norway said that when his country, a market economy which was dependent on exports, developed an industry and related technology, it was natural that this industry would also start exporting. Regarding price reductions in 1990, he said that exchange rate developments were partly responsible. Commenting on the United States' claim that the fall in Norway's export volume had been a result of the imposition of preliminary duties, he pointed out that the only Norwegian exporter not subjected to the countervailing measure had also experienced a fall in exports to the United States. He said that the market in the United States had been developed by the Norwegian exporters, and that the United States industry was not competitive for a number of reasons set out by him earlier and contained in SCM/117. The difficulties experienced by the United States industry were due to these reasons and not the subsidization of Norwegian exports to this market. He said that the benefits of the RDF programmes were available to all industries in large areas of Norway, particularly in northern Norway which faced difficult natural conditions. If the United States' interpretation of the RDF programme prevailed, it would have dramatic consequences and be against the spirit of the Code which had been invoked by the United States in other cases.

27. The Chairman encouraged the delegations of Norway and the United States to make further efforts to reach a mutually satisfactory solution consistent with the Code.

28. The representative of Norway, recognizing that the parties involved should attempt to arrive at a solution at any stage of the proceedings, remarked that his country had difficulty seeing how this case could be solved without a panel. Mentioning the United States' general concern for speedy solutions, he said that if a solution to this matter was not found in the near future, Norway would have to formally ask for a panel.

29. The representative of the United States noted that, as mentioned in the United States' letter of 3 July 1991 to the Chairman, many of the detailed factual legal issues raised by Norway in the context of this meeting had either not been raised or had been raised in a cursory fashion at the second consultation held in early May 1991. At this consultation the United States had present a number of experts from the DoC and the ITC, but the meeting had lasted only half an hour. The Code directed that the process of consultation and conciliation be used to attempt to reach a mutually satisfactory resolution of the problem. In the case at hand, the United States considered that this process had not to date been well served to date. The Norwegian submission (SCM/117) raised issues which had never been raised in the consultations, for example, the interpretation of Article 6:4 of the Code. The United States supported the right of the parties to use the dispute settlement process expeditiously, and had always followed the Code provisions for consultation, conciliation and panel establishment whether it was plaintiff or defendant. In this case, however, he reiterated the need for additional consultation with Norway during the period of the conciliation to frame and discuss the issues fully before dispute settlement began.

30. The representative of Norway expressed surprise at the comments of the United States. Consultations had been held on 15 March and 2 May 1991. At the latter meeting, Norway had given a list of questions to which replies were received on 8 June 1991. Norway had requested another consultation, for which the United States had fixed a meeting on 4 July 1991. Norway had prepared for this consultation, but the consultations were not held at the request of the United States which had invoked a number of reasons including that a solution was not likely to be found in the consultations. The United States had wished to go into the conciliatory phase. Thus the representative of Norway could not understand the claim of the United States that the consultations had not been held in a satisfactory manner, and that further consultations were required.

31. The representative of the United States said that there were some differences of understanding of the facts and circumstances, which he would not like to debate with the representative of Norway. He noted that the United States' letter of 3 July 1991 stated its understanding, and he regretted any differences which had arisen on this issue.

32. The Chairman recalled that Article 17:2 of the Agreement provided that signatories shall make best efforts to reach a mutually satisfactory solution throughout the period of conciliation. This case was now in the process of conciliation, and it was up to the two parties concerned to try to find the best possible solution before considering other avenues of action. If one party requested consultations with the other party, these consultations would not be considered as being under Article 3:2 but as part of the conciliation process.

33. The Committee took note of the statements.

B. Canadian countervailing measures against grain corn - Request by the United States for establishment of a panel under Article 18:1 of the Agreement (SCM/118).

34. The Chairman recalled that since 1987, and most recently on 29 June 1989, the United States and Canada had held numerous consultations regarding Canada's injury determination on grain corn from the United States. On 2 October 1989, the United States had made a request for conciliation under Article 17 of the Agreement (SCM/95) and on 11 July 1991 had requested the establishment of a panel under Article 18:1 of the Agreement (SCM/118).

35. The representative of the United States said that the main points of this case were given in SCM/118. This was a matter of some significance to his country and had prompted the request for the establishment of a panel to adjudicate a matter of legal interpretation under the Subsidies Agreement relating to the specific Canadian case involved. The legal matter was whether the Agreement required that material injury be caused by subsidized imports and not simply by the existence of a foreign subsidy programme.

36. The representative of Canada said that his delegation's views about the matter had not changed since the last time this issue had come before the Committee in October 1989. Canada continued to disagree with the position of the United States set out in SCM/118, and considered the injury determination made by the Canadian Import Tribunal in the case of grain corn from the United State to be in full agreement with the provisions of the Subsidies Agreement. Furthermore, on 5 July, the Canadian International Trade Tribunal, pursuant to the sunset provisions of the Canadian legislation, had given notice that the injury finding on United States grain corn was scheduled to expire on 5 March 1992. The Ontario Corn Producers Association, which had brought the original complaint, had announced that it would not seek a renewal of the countervailing duty. This duty would be removed no later than March 1992, except in the unlikely event of other requests for a review of this case.

37. Regarding the United States' request for the establishment of a panel (SCM/118), he said that it was his country's understanding that the United States was requesting that the panel be asked to examine whether Canada had acted in a manner consistent with its obligations under Article 6 of the

Subsidies Code in making a determination that the subsidization of United States grain corn had caused, was causing and was likely to cause material injury to Canadian corn producers. He sought confirmation that this was the issue which the United States wanted the panel to examine.

38. The representative of the United States confirmed that this was his delegation's understanding as well.

39. The representative of Canada said that given the agreed understanding on the issue to be examined by the panel, Canada would have no objection to the United States' request for a panel based on the earlier consultations and conciliation related to Canada's grain corn injury determination and based on standard terms of reference.

40. The representative of the EEC reserved the Community's rights to intervene in these proceedings after it had the time to examine these issues.

41. The Chairman noted that the delegation of Canada did not oppose the establishment of a panel to review this matter, and proposed that in accordance with the provisions of Article 18 of the Agreement, the Committee agree to establish a panel which shall review the facts of the matter referred to the Committee by the United States in SCM/118 and, in light of such facts, shall 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. In accordance with Article 18:3 of the Agreement, the Chairman proposed that the Committee authorize her to decide, after securing the agreement of the parties concerned, on the composition of the panel.

42. The Committee agreed to the Chairman's proposals, and took note of the statements.

C. Other Business

- (i) European Community's request for information from Korea under Article 7 of the Agreement

43. The representative of the EEC recalled that his delegation had earlier requested information under Article 7 of the Agreement from Korea and Australia (SCM/111 and SCM/112, respectively). While a reply from Australia had been provided, indicating a willingness to discuss the matter further if necessary, no reply had been received from Korea. He asked whether a reply could be expected from the Korean authorities, and within what time-frame the request could be met.

44. The representative of Korea said that he would convey the Community's concern to his authorities and that there was no intention on the part of his country to delay the fulfilment of its obligations under the Agreement.

45. The representative of the EEC said that he took note of Korea's statement, and awaited eagerly the receipt of the information. On receiving the information, the Community would pursue the matter bilaterally with Korea, and not subsequently raise the matter multilaterally under Article 7 of the Agreement. The Community wished to have the required information as quickly as possible.

46. The representative of Korea said that as soon as he received the information from his capital, he would contact the Community on a bilateral basis.

47. The Committee took note of the statements.

(ii) Request by Egypt for technical assistance

48. The representative of Egypt informed the Committee that his Government, in the context of pursuing trade liberalization policy, intended to set up a countervailing duty system. This instrument would be used as and when necessary in conformity with GATT rules and principles. Setting up such a system would require experience and practical knowledge; therefore, as a signatory to the Subsidies Code, Egypt asked for appropriate assistance from other signatories, and expected a positive response to this request.

49. The Chairman said that the request by Egypt deserved the Committee's full support. She was certain that every signatory approached by Egypt with a specific request would respond in a spirit of co-operation. She emphasized that any appropriate assistance at this stage would be of great importance for the implementation of the Code by Egypt, and it was in the interest of all signatories that Egypt's countervailing duty system be set up in full conformity with the Code. At the Committee's next meeting in October, she would invite the representative of Egypt to inform the Committee about the results of his request for technical assistance.

50. The Committee took note of the statements.