

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

SCM/M/65

31 August 1993

Special Distribution

Committee on Subsidies and Countervailing Measures

MINUTES OF THE MEETING HELD ON 28-29 APRIL 1993

1. The Committee on Subsidies and Countervailing Measures ("the Committee") held a regular meeting on 28-29 April 1993.
2. The Committee adopted the following agenda:
 - A. Election of officers
 - B. Examination of countervailing duty laws and/or regulations of signatories of the Agreement (SCM/1 and addenda):
 - (i) Australia (SCM/W/281 and SCM/1/Add.18/Rev.1/Suppl.5)
 - (ii) Brazil (SCM/1/Add.26/Suppl.3 and 4)
 - (iii) Chile (SCM/1/Add.16/Rev.2)
 - (iv) Korea (SCM/1/Add.13/Rev.1/Suppl.2)
 - (v) Other legislation
 - C. Semi-annual reports of countervailing duty actions taken within the period 1 July-31 December 1992 (SCM/156 and addenda)
 - D. Semi-annual reports of countervailing duty actions taken within the period 1 January-30 June 1992 (SCM/148 and addenda)
 - E. Reports on all preliminary or final countervailing duty actions (SCM/W/279, 285 and 290)
 - F. Notification of subsidies under Article XVI:1 of the General Agreement
 - (i) New and full notifications (L/7162 and addenda)
 - (ii) Updating notifications due in 1991 and 1992 (L/6805 and addenda and L/6973 and addenda)
 - (iii) Full notifications for 1990 (L/6630 and addenda)
 - G. United States - Imposition of countervailing duties on imports of fresh and chilled Atlantic salmon from Norway - Report of the Panel (SCM/153)

- H. United States - Measures affecting imports of softwood lumber from Canada - Report of the Panel (SCM/162)
- I. United States - Definitive affirmative countervailing duty determinations on imports of certain hot-rolled lead and bismuth carbon steel products from France, Germany and the United Kingdom - and preliminary affirmative countervailing duty determinations on imports of certain cut-to-length carbon steel plate and of certain hot-rolled, cold-rolled and corrosion-resistant flat products from Belgium, France, Germany, Italy, Spain and the United Kingdom - Request for conciliation (SCM/167)
- J. United States - Countervailing duties on non-rubber footwear from Brazil - Report of the Panel (SCM/94 and SCM/96)
- K. German exchange rate scheme for Deutsche Airbus - Report of the Panel (SCM/142)
- L. EEC subsidies on export of wheat flour - Report of the Panel (SCM/42)
- M. EEC subsidies on exports of pasta products - Report of the Panel (SCM/43)
- N. Canada - Imposition of countervailing duties on imports of boneless manufacturing beef from the EEC - Report of the Panel (SCM/85)
- O. Other business
 - (i) European Community - Request by Australia for consultations under Article 12 on subsidies granted on the exports of glacé cherries
 - (ii) Workshop on Anti-Dumping and Countervailing Measures

A. Election of Officers

3. The Committee elected Mr. Andrés Espinosa (Colombia) Chairman and Mr. Michitaka Nakatomi (Japan) Vice-Chairman of the Committee.

The Chairman, on behalf of the Committee, expressed thanks to the outgoing Chairman and Vice-Chairman for their service to the Committee.

B. Examination of Countervailing Duty Laws and/or Regulations of Signatories to the Agreement

(i) Australia (SCM/1/Add.18/Rev.1/Suppl.5)

4. The Chairman recalled that in a document circulated on 20 October 1992, Australia informed the Committee that it had amended its countervailing duty legislation (SCM/W/281). Although Australia orally introduced these amendments to the Committee at the last regular meeting, the secretariat had not as of that date yet circulated the text of the amendments. These changes had now been circulated to the Committee (SCM/1/Add.18/Rev.1/Suppl.5).

5. The Chairman also noted that Australia had provided the secretariat with certain additional legislative amendments, specifically Customs Legislation (Anti-dumping Amendments) Act 1992 (No. 207) and Customs Tariff (Anti-dumping) Amendment Act 1992 (No. 206). These amendments would be circulated to the Committee shortly, and would be placed on the agenda for the next regular meeting of the Committee.¹

6. The representative of Australia stated that he would not repeat his explanation of the legislation notified in SCM/1/Add.18/Rev.1/Suppl.5, but would be interested in the comments of other delegations.

7. The representative of Finland reiterated the concerns raised by his delegation in the regular meeting of the Anti-Dumping Committee with respect to the same legislation (ADP/M/40, para. 21).

8. The representative of Australia stated that the second set of amendments mentioned by the Chairman had been circulated in the Anti-Dumping Committee, where it had been discussed. Australia would provide to the secretariat a copy of the statement it had made in the Anti-Dumping Committee for circulation to the Committee prior to the next regular meeting.

9. The Committee took note of the statements made and agreed that it had concluded its examination of the amendments which had been circulated to the Committee (SCM/1/Add.18/Rev.1/Suppl.5). The Committee further agreed that the text and statement of Australia regarding the second set of amendments would be circulated prior to the next meeting.

(ii) Brazil (SCM/1/Add.26/Suppl.3 and 4)

10. The Chairman recalled that changes to Brazil's legislation were circulated to the Committee in document SCM/1/Add.26/Suppl.3 dated 29 October 1992. In addition, Brazil in a document circulated to the Committee on 30 March 1993 (SCM/1/Add.26/Suppl.4) notified the Committee that it had established a Working Group to "safeguard the domestic market against unfair practices in international trade."

11. The representative of Brazil stated that SCM/1/Add.26/Suppl.4 had been circulated for the sake of transparency. To the same end, he noted that authorities of Mercosul countries responsible for anti-dumping and countervailing duty investigations had been meeting to assess the possibility of concluding a harmonized project of legislation in this area. As regarded its notifications, Brazil had not received any questions in advance of the meeting, but it would do its best to make preliminary replies to any questions.

12. The representative of Canada asked about Article 1 of Directive 974/91, which provided that the subsidy was to be calculated by taking the difference between the f.o.b. and an estimated price, taking as a reference the price received by the producer in the country of origin. This seemed to be deriving the amount of the subsidy on the basis of a calculation of the amount of dumping. With respect to Directive Article 3.I (a) and (b) of Directive 444/91, how did Brazil arrive at the percentages therein with respect to quantifying "significant quantities," a concept that appeared to represent a type of de minimis volume?

13. The representative of Brazil responded preliminarily, and requested Canada to follow up in writing. With respect to Article 3.I (a) and (b), they did represent a de minimis concept; until that threshold was reached, there would not be any investigation. This did not mean that an investigation automatically would be opened if that threshold were reached; other factors would have to be considered under the Agreement. The levels were derived on the basis of concrete elements after an extensive

¹These amendments were circulated to the Committee in SCM/1/Add.18/Rev.1/Suppl.6.

examination by many sectors in Brazil. Brazil had a National Council of Agricultural Policy which provided a forum for consultations between the private sector and the government. Actual imports to Brazil were examined in this process and these levels were determined to be appropriate. Regarding the first question, he did not have an answer but would report the question to his authorities and provide an answer as soon as possible.

14. The representative of the EEC noted that Brazil had general countervailing duty legislation which implemented the Agreement. What was the relation between the legislation involved here and Brazil's general legislation? Would this legislation be applied instead of the general legislation if the product was agricultural, or would it be applied at the same time, or did the authorities or complainants have a choice?

15. The representative of Brazil stated that all the legislation and regulations in Brazil on countervailing duties were before the Committee. Brazil incorporated international obligations simply by including as an annex to its legislation a translation of the text of the international obligations, which was to be followed in its entirety. Thus, Decree 93.962 of January 1987 incorporated the text of the Agreement into the Brazilian legislation (SCM/1/Add.26). All subsequent legislation gave additional guidelines on the application of that Decree. They all were of a lower level legally except Law 8.174, which was a more general law about agricultural policy and not about anti-dumping and countervailing duties. It applied the law specifically in the field of agricultural products. Theoretically, Law 8.174 was superior to a decree, but the law did not as a practical matter have any implication. The other Acts in SCM/1/Add.26/Suppl.3 were equal to or inferior to the 1987 Decree.

16. The representatives of the EEC and Canada agreed to submit their questions in writing, and Brazil undertook to make written replies.

17. The Committee took note of statements made and agreed that it would revert to this matter at its next regular meeting.

(iii) Chile (SCM/1/Add.16/Rev.2)

18. The Chairman noted that at the Committee's regular meeting on 1 May 1991 Chile had introduced amendments to its countervailing duty legislation (SCM/M/51, para. 27). Canada had submitted questions regarding those amendments in November 1991 (SCM/W/249), to which Chile replied in a document circulated on 28 April 1992 (SCM/W/260). Canada had submitted follow-up questions on 12 November 1992 (SCM/W/286), to which no reply had yet been received.

19. The representative of Chile stated she would now reply orally and would follow up in writing. The customs surcharge was provided for in national legislation and could be established when imports caused serious injury to national production. There was no discrimination based on the origin of the imported product. Chilean tariffs were bound almost in their totality in the GATT at 35 per cent. Thus, the National Tariff could only be 24 per cent ad valorem given that the General Tariff was 11 per cent. These surcharges applied when there was an uncompetitive international structure and there was every right to apply a countervailing duty. With respect to the second question, the Investigating Committee had never recommended simultaneously a customs surcharge and a countervailing duty. Regarding the third question, there might be cases where custom surcharges and not countervailing duties applied in certain special circumstances. Regarding the fourth question, the customs surcharge was not a preferred instrument to correct a distortion in the case of subsidies. To the contrary, Chile tried to find a specific solution to correcting the distortion. A countervailing duty remedy would be sought where a subsidy existed, and this was governed by the Agreement.

20. The representative of Canada stated that Chile's surcharge seemed to be in the nature of a safeguard measure. He looked forward to seeing the written response to the questions. Canada was prepared to see this item removed from the agenda, but reserved its right to return to this matter if it had further questions.

21. The Committee agreed that this item need not be continued on the agenda of the next meeting.

(iv) Korea (SCM/1/Add.13/Rev.1/Suppl.2)

22. The Chairman noted that Korea had submitted information regarding changes to its legislation (SCM/1/Add.13/ Rev.1/Suppl.2). These changes were circulated to the Committee on 2 September 1992.

23. The representative of Korea stated that the main purpose of these amendments was to make the regulations more rational and practical without violating relevant GATT provisions. The amendments also supplemented certain technical provisions of the Presidential Decree. Article 10(11) was revised to eliminate the apparent conflict between the introductory paragraph and subsection 1, thus providing greater clarity in the regulation. Article 4:5(1) of the Presidential Decree was revised to establish the legal basis for preliminary examination so as to clarify the nature of the investigation procedures. With the revision of Article 4:5(2), qualified experts could now be included in the investigation team if deemed necessary to improve investigative capabilities (of course, the obligation to maintain the confidentiality of interested parties would be secured by the concerned authorities before the experts joined the team). Article 4:5(12) was revised to simplify investigative procedures by entrusting the Chairman of the Customs and Tariff Deliberation Committee with the authority to extend the investigation period in the event of complex investigations. Article 4:6 introduced strict control in the event an exporter failed to abide by an undertaking, or refused a request to permit verification of pertinent data. If the exporter did not abide by the undertaking, did not submit the necessary data, or did not permit the requested verification of relevant data, the Minister of Finance was required to take provisional measures based on the facts available and to resume the investigation on the product concerned.

24. The representative of Canada had two questions similar to those posed in the Anti-Dumping Committee (ADP/M/40, para. 10), which he would provide in writing to the Korean delegation.

25. The representative of Korea preliminarily answered the questions posed by Canada in the Anti-Dumping Committee. Korea would impose penalties if experts broke their oaths. Korea had a law imposing penalties for such violations. Regarding the extension of the period of investigation from one to three months, three months were necessary to perform a satisfactory investigation, but the investigating team had to submit the results of investigations to the Customs and Tariff Deliberation Committee within six months after initiation. The Committee could then decide whether or not to take countervailing measures within three months, so that the investigation was completed within one year, as stipulated in the Agreement.

26. The representative of Canada clarified that his second question related not so much to the period of time as to why after an investigation had been suspended or terminated nonetheless there was a process to determine whether or not measures should still be applied to the product concerned.

27. The representative of Korea stated that he would submit an answer in writing.

28. The Committee took note of the statements made and agreed to revert to this matter at its next regular meeting.

(v) Other legislation

The Committee decided to maintain this item on the agenda for its next regular meeting.

C. Semi-annual reports of countervailing duty actions taken within the period 1 July 1992-31 December 1992 (SCM/156 and addenda)

29. The Chairman stated that an invitation to submit semi-annual reports under Article 2:16 of the Agreement was circulated in SCM/156. To date, Chile, Brazil, the United States, Canada and Australia had reported actions (SCM/156/add.2 through add. 6). Austria, Colombia, the EEC, Egypt, Finland, Hong Kong, India, Israel, Japan, Korea, New Zealand, Pakistan, Philippines, Poland, Sweden, Turkey and Yugoslavia had notified that they have taken no actions during the period. The following signatories had not yet notified under Article 2:16: Indonesia, Norway, Switzerland and Uruguay. It was very important that signatories make a report even if they had not taken any actions during the relevant period. All signatories which had not yet submitted a semi-annual report should do so promptly, as required by Article 2:16 of the Agreement.

30. The representatives of Norway, Indonesia and Switzerland stated that they had taken no measures during this period, and that they would submit written notifications to this effect.

31. Regarding the US notification, the representative of Sweden informed the Committee that his government had requested consultations with the United States under Article 3:2 of the Agreement concerning the US preliminary countervailing duty determination on imports of cut-to-length plate and certain corrosion-resistant flat steel products from Sweden. These consultations, and consultations under the Anti-Dumping Agreement, were to take place the following day. As set forth in SCM/165, Sweden's main concerns related to the US treatment of generally available subsidies, equity infusions, privatization programmes, and allocation periods. Sweden also had some reservations regarding the US injury determination. Sweden had previously expressed its serious concern about these cases in the Committee and in the Council, and the situation remained unchanged. The US measures were both unwarranted and excessive.

32. The representative of Brazil stated that he would select two investigations from the US report to exemplify Brazil's difficulties with the US steel investigations, and would indicate those concepts and methods applied by the United States which were unwarranted and would probably lead to a massive response through the GATT dispute settlement system. With respect to the US investigation on circular welded non-alloy steel pipe, it was reported that no subsidy was found. This case was started during the VRA programme. Brazil and Mexico had asked the Anti-Dumping Committee to review this case. The Anti-Dumping Committee had been informed this week that an anti-dumping duty of 103.38 per cent was levied on Brazilian exporters this year, so the "no duty" indication in column seven did not mean the case was solved. With respect to the US investigation on hot-rolled lead and bismuth steel products, the provisional measure in the report was followed by a final countervailing duty on 27 January 1993. The exporter, which had a provisional duty of 23.56 per cent, had its final duty put at 19.19 per cent. Better yet, all other companies, which were estimated provisionally to have received subsidies at a level of 0.85 per cent, were subjected to a lower final duty of 0.67 per cent. But on the same day a final anti-dumping investigation established on the basis of the examination of records of the one solitary "mandatory" respondent that the dumping margin was 148.12 per cent for all companies.

33. The representative of Brazil stated that concepts used by the US investigators in countervailing duty investigations were highly objectionable. Regarding debt conversion, for example, Acesita was the Brazilian mill which was thought at first to be subsidized at 23.56 per cent, and in the final determination at 19.19 per cent. To reach that conclusion, the United States Department of Commerce determined that the debt conversion operation used by the mill was a countervailable subsidy despite the fact that such operations had been used by Brazilian companies in a variety of sectors. Second,

regarding equity infusions by the Banco do Brasil, the Department had ignored the privatization of Acesita during the investigation and held that rational and sound investment by the Banco do Brasil in the company in the period 1983 to 1985 in the form of what is called in Brazil "partes beneficiarias" was equivalent to a grant in 1989. The Banco do Brasil was a mixed-capital, profitable company with management that responded to business logic. As it had agencies in the United States and stock in the market for anyone who had money to buy it, it could be argued that US stockholders were at least potentially responsible for subsidizing Acesita. Regarding equity infusions, the Department had found that the privatization of Usiminas did not terminate the subsidies arising from government equity infusions made prior to the privatization, despite the fact that Usiminas was sold at an arms-length market price to new investors and the government surrendered control during the privatization. Further, the Department had changed its long-standing methodology for valuing government equity subsidies from the rate-of-return shortfall to the grant methodology. The application of the new methodology resulted in artificial and substantially higher margins of subsidization. Finally, with respect to development bank loans, the US had determined in the early nineteen eighties that Brazilian development bank loans did not constitute countervailable subsidies to the steel industry. It had now reversed its position and had found such lending to be countervailable because the steel industry had received a volume of loans disproportionate to its share of the Brazilian GDP. This was a strange concept of the rôle of a development bank.

34. The representative of Brazil stated that the privatization of Brazilian steel companies was being implemented on schedule. The Companhia Siderurgica Nacional ("CSN") was a symbol for many in Brazil. It was the first large steel mill established in Brazil in the nineteen forties, marking the Brazilian post-war industrialization. Many voices in the country raised fierce opposition to the privatization of CSN, but it was privatized this month. Four other former public sector mills already had been sold in fulfilment of the programme - Usiminas, Piratini, CST and Acesita. In 1993 Cosipa and Açominas would also be privatized, completing the programme. This programme involved great risks, in the face of severe economic, political and social difficulties in Brazil. Brazil could not accept or tolerate persistent harassment and hostility through flawed methodologies based on imperfect technical argumentation which were arbitrarily adopted and were overwhelmingly disputed by nearly all US trading partners.

35. The representative of New Zealand noted that the United States had made a preliminary affirmative determination in respect of corrosion-resistant flat steel products from New Zealand. The necessary conditions for this action were not present. The conditions required were that the goods be subsidized, and that the subsidization caused material injury to a domestic industry. The United States had found that the goods were subsidized despite the fact that the industry exporting the goods was in private hands and received no government assistance. It was unclear how a subsidy could exist in terms of Article 4:2 of the Agreement when there was no government involvement whatsoever and there had not been for a number of years. While the industry did some years ago have government participation in its ownership, any benefit was effectively extinguished when the government quitted its involvement and the industry was fully privatized. Since that time, the industry had changed private hands on a number of occasions, and it was unclear how any measures or practices could exist as required by Article 2:5 as grounds for the determination of a subsidy. The US approach appeared to be aimed at penalizing not only government involvement in an industry but also the removal of government involvement. This was a contradiction of policy objectives.

36. The representative of New Zealand stated that it was clear from Article 5:1 of the Agreement that provisional measures could be applied only where there was a finding that there was a subsidy and that there was sufficient evidence of injury as provided for in Article 2:1(a)-(c), and also that such action was necessary to prevent injury being caused during the period of investigation. This in turn required that there be a causal link between the subsidized imports and the alleged injury. How were these requirements met and how did the United States find that the effects of government involvement in a company during the 1980s, since sold several times at market value, in relation to exports which

in 1991 made up 0.3 per cent of the US market, could constitute material injury to the US industry and how it could cause injury during the remaining period of the investigation?

37. The representative of New Zealand stated that his country not only shared the objective of reducing and eliminating governmental involvement in the steel sector, but had acted positively to eliminate such involvement in New Zealand. It was particularly ironic that such an approach should be discouraged and penalized by the application of measures by the United States. This was not the right message to give to decision-makers that were considering more liberal trading arrangements, and it certainly discouraged those carrying out such policies. He hoped wiser counsel would prevail before the process ended.

38. The representative of Korea stated that Korea had already expressed on several occasions its concern with the US preliminary countervailing duty determination against certain Korean steel products. Korea strongly disagreed with the US position, which was based on a benchmark interest rate that took into account private curb market interest rates. In its preliminary countervailing duty determination last November, the US government asserted without grounds that the Korean government selectively approved foreign loans for its steel industry. He hoped that the final determination would be satisfactory to all parties.

39. The representative of Canada shared the concerns expressed by other delegations regarding the inclination of the United States to aggressively expand the scope of its countervailing duty legislation by changing the definition or measurement of a subsidy. The examples provided by Brazil in particular with respect to equity infusions and measuring subsidies on the basis of disproportionate use was a disturbing trend.

40. The representative of Australia was concerned at the spate of actions that the United States had initiated and the effects this was having on the confidence of the world steel market. Nevertheless, he urged countries to make a determined effort to conclude the MSA negotiations.

41. The representative of the United States stated that with respect to the injury determination on the New Zealand imports, the imports were increasing and were consistently present in the US market. Overall, the cumulated imports for the product - corrosion-resistant steel - were also increasing. In its preliminary determination the US International Trade Commission had indicated that it would look closely at this and other aspects of the case during their examination on final.

42. The representative of the United States stated that many of the issues raised here had also been raised with respect to the conciliation requested by the EEC, and he would not repeat himself regarding conceptual issues that would be addressed in that context. There were also fact-specific issues, such as the question of purportedly generally available subsidies. That issue related to information that had not been provided by respondents in the investigation. There was an assertion that certain programmes were generally available, but no information had been presented as to why that was the case. The United States had information on the record that the programmes at issue were in fact provided specifically to certain industries. It was thus important to distinguish between the two types of issues.

43. The representative of the United States stated that his authorities understood the seriousness with which these investigations were viewed by the industries and authorities in other countries. They were of equal importance and seriousness to the US authorities. He would communicate in full the Brazilian government's concerns. He would not address dumping margins in this Committee, but he hoped signatories would note, as the information pointed out by Brazil demonstrated, that in final determinations the Department of Commerce could and did change its mind on the basis of the arguments presented by the parties to the proceeding and the information presented to it.

44. The representative of the United States understood that privatization was a courageous policy. The US countervailing duty law was not administered with the goal of promoting or discouraging any policy objective in foreign countries or in the United States, with the exception of seeking to effectuate a neutral, objective and impartial analysis of whether or not a subsidy existed, and to offset the amount of such subsidy if subsidized imports caused or threatened to cause injury. The objective determination whether or not privatization extinguished the benefits of subsidies previously provided was wholly separate from whether or not privatization was a worthwhile goal to be pursued by any country.

45. Regarding the issues raised by Korea, the representative of the United States stated these would be among the most important issues examined for the final determination. Arguments presented would be taken fully into consideration. Regarding the Canadian comments, the notion of disproportionality was not new to the US legislation and it was a wholly appropriate aspect of determining specificity. He thanked the Australians for their comments regarding the MSA; the United States shared Australia's views on this matter.

46. The Committee took note of the statements made and agreed to maintain this item on its agenda for further examination at its next regular meeting.

D. Semi-annual reports of countervailing duty actions taken within the period 1 January-30 June 1992 (SCM/148 and addenda)

47. The Chairman reminded the Committee that, at the 28 October meeting of the Committee, Indonesia and Uruguay had indicated that they had taken no actions during the relevant period and would notify this in writing, but had not yet done so (SCM/M/62, para. 36). Also at the last meeting, in response to a query by the EEC, Australia had stated that, to the extent possible, it would amend its report to add additional information prior to the April meeting of the Committee (SCM/M/62, para. 38).

48. The representative of Australia stated that there were issues relating to confidentiality which posed problems regarding providing certain details of the reports. Most actions were taken against one or two companies in each country, and in that case the information was provided by them in confidence and any release of it or figures derived from it was contrary to Australia's confidentiality provisions. While the most recent report had a little more information, the situation was not likely to improve materially.

49. The representative of the EEC proposed to seek clarification bilaterally with Australia on this problem of confidentiality before raising the issue again in the Committee, if appropriate.

50. The representative of Australia agreed to discuss this matter with the EEC.

51. The Committee took note of the statements made and removed this item from its agenda.

E. Reports on all preliminary or final countervailing duty actions (SCM/W/279, 285 and 290).

52. The Chairman stated that notifications under these procedures had been received from the United States and Chile. At least two countries which had reported taking actions in the latter half of 1992 had not provided copies of their determinations or a translated summary thereof, and other countries might not be current. He urged all signatories to provide these reports promptly.

53. The representative of Brazil asked whether it was the first time that translated summaries of national documents had been proposed in the Committee? Had the Committee examined this issue

before? Brazil had addressed this in the Anti-Dumping Committee, and the Chairman of that Committee had announced that he would hold consultations on how to solve this problem.

54. The Chairman stated that there were three official languages in the GATT and summaries had to be submitted in one of these. It would also be good to have a copy in the original language. If this was the first submission, it might be the first time such summaries were asked for, but there were precedents for this.

55. The representative of Brazil was unclear regarding the Chairman's reply. Was this a ruling from the Chairman that from now on a signatory should present a summary of an investigation if its national language was not an official language of the GATT?

56. The representative of the Secretariat stated that the GATT often operated on a pragmatic basis, and certain things happened without any formal decisions being taken. The obligation to submit reports on all preliminary and final actions applied to all signatories. The problem was that for some signatories this involved submitting reports in their mother tongue while for others it implied translation into an official language of the GATT. In practice, the latter countries submitted their reports not in the form as published in their respective official journals but in the form of summaries. In some cases the summaries were quite detailed while in others they were very general and it was practically impossible to appreciate the basis for the determinations made. For this reason the Chairman of the Anti-Dumping Committee had proposed to conduct consultations to find a standard format for these reports, to ensure that the level of information received from all sources was more or less comparable.

57. The Chairman noted that there had been a discussion in the Anti-Dumping Committee on the format of reports. The Chairman of that Committee had made a proposal on the presentation of these reports. He proposed to hold consultations in this Committee as well, not only to improve the presentation of the reports but also to facilitate the task of signatories who did not have one of the three official languages as their mother tongue to present their reports.

58. The Committee so decided.

F. Notification of subsidies under Article XVI:1 of the General Agreement

(i) Full notifications due in 1993 (L/7162 and addenda)

59. The Chairman recalled that on 11 January 1993 the secretariat had circulated a request to all contracting parties to submit their new and full Article XVI subsidies notifications (L/7162). The document requested that notifications be submitted in January 1993. To date, notifications have been received from the following signatories: Hong Kong (Add.1), New Zealand (Add.2), Australia (Add.5), Canada (Add.6) Finland (Add.7) and Colombia (Add.8), and Chile (Add.9).

60. The Chairman reminded all signatories that the CONTRACTING PARTIES, pursuant to Article XVI, had established a procedure for notifying subsidies. The procedure for submitting every three years new and full subsidies notifications was adopted more than thirty years ago (BISD/11/S58). While all contracting parties were expected to submit Article XVI notifications, it was especially important that signatories of the Agreement respected and complied with this obligation. He urged all signatories that had not yet made their new and full notifications to do so promptly. These new and full notifications were particularly important because of the number of important signatories which had not made updating notifications in the previous two years.

61. The Chairman proposed that the Committee hold a special meeting towards the end of the year to consider the new and full notifications. This would require prompt and complete notifications by the signatories.

62. The Committee decided to maintain this item on the agenda for the next regular meeting of the Committee, and agreed to hold a special meeting at a date to be decided by the Chairman in consultation with delegations.

(ii) Up-dating notifications due in 1991 and 1992 (L/6973 and addenda, L/6805 and addenda)

63. The Chairman noted that to date only a few signatories had submitted updated notifications for 1991 and 1992 (requested in L/6805 and L/6973, respectively). Updates for 1991 have been received from Hong Kong, Japan, South Africa, Austria, Brazil, Chile and Australia. Updates for 1992 have been received from Hong Kong, Switzerland, Yugoslavia, Indonesia, New Zealand, Austria, Norway and Australia. Since the October meeting of the Committee, questions on updating notifications had been submitted by Australia on notifications of Norway (SCM/W/288) and Austria (SCM/W/287). Austria had replied in document SCM/W/291.

64. The representative of Norway apologized for his country's failure to respond to Australia's question, as it had not been able to gather the information necessary to respond. As Norway had informed Australia prior to the meeting, it would respond in writing in the very near future.

65. The representative of Australia thanked Austria for its response, which it had only received two days previously and had only had a chance to review this morning. Australia reserved its right to return to this matter.

66. The Committee **took note** of the statements made.

(iii) Full notifications due in 1990

67. The Chairman stated that at the meeting of 28 October 1992, Australia had indicated that it had posed questions to the EEC regarding the EEC's full notification for 1990 (L/6630/Add.27), particularly with respect to agricultural subsidies, and had asked whether the EEC had any further information regarding this (SCM/M/62, para. 24). The EEC delegate had stated that he would report back that Australia was interested in receiving responses to these questions (SCM/M/62, para. 25). Was the EEC in a position to respond orally to Australia's questions at this time?

68. The representative of the EEC stated that the EEC currently was working on its new full notification and was addressing also the matters raised by Australia. He hoped that any new notification would contain the information requested by Australia.

69. The representative of Australia stated that he presumed from the EEC's statement that it would eventually respond.

70. The representative of the EEC stated that eventually Australia would know what it wanted to know, he hoped.

71. The representative of Brazil stated that Brazil was disappointed with the EEC's response. The EEC was in the process of preparing a new full notification yet it had not yet replied to Australian questions regarding the present notification. He was not reassured they would get a response.

72. The representative of the EEC noted the concerns of Brazil but had no further reassurance to offer.

73. The Chairman asked the EEC whether it was going to answer the questions.

74. The representative of the EEC said he had already answered this question regarding questions by Australia. Brazil had expressed concerns regarding the EEC's lack of response. He understood those concerns and had taken note of them.

75. The Chairman stated that since the October meeting of the Committee, supplemental questions had been submitted by Australia on notifications of the United States (SCM/W/283) and Korea (SCM/W/284). No replies had been received.

76. The representative of the United States stated that he would look into this matter and endeavour to respond at an early date.

77. The representative of Korea stated in response to Australia's questions that the programme did not aim to restrict imports of livestock products, but to alleviate excessive price falls or increases. For example, when market prices dropped significantly due to the rapid increase of livestock products imports, the producers association, the National Livestock Cooperatives Federation (NLCF), would autonomously purchase the livestock products to stabilize the price. Through this mechanism, imports had effects on this programme. With respect to the government's plans regarding this programme, it was operated autonomously by a private organization, and it was up to the organization whether to abolish or continue it.

78. The representative of Australia asked that this matter be kept on the agenda until its questions were answered in writing.

79. The Committee took note of the statements made and agreed to maintain these items on the agenda pending written responses to the questions.²

80. The Chairman stated that not only was there was a commitment in the General Agreement concerning notifications on subsidies under Article XVI, but there was also a right for signatories to put questions to other signatories who had the obligation to answer them. He requested the co-operation of all those signatories who were in this situation. The signatory who was posing questions today might have to answer questions tomorrow.

81. The representative of New Zealand noted that Article 7:2 of the Agreement contained explicit obligations about these questions, and was interested in observing the evolving interpretation of the words "as quickly as possible."

G. United States - Imposition of countervailing duties on imports of fresh and chilled Atlantic salmon from Norway - Report of the Panel (SCM/153)

82. The Chairman noted that the Committee at a special meeting on 26 September 1991 had established a Panel pursuant to Article 18:1 of the Agreement at the request of Norway (SCM/123

²The questions to Korea were subsequently answered in writing in SCM/W/293 and Corr.1.

and Add.1). The Report of the Panel was circulated on 4 December 1992 (SCM/153).

83. The Chairman of the Panel, Mr. Janusz Kaczurba, stated that the dispute before the Panel concerned the imposition of definitive countervailing duties by the United States on 12 April 1991 on imports of fresh and chilled Atlantic salmon from Norway. The Panel was requested by Norway to find that the imposition of these duties was inconsistent with the obligations of the United States under the Agreement. In support of this request, Norway presented arguments pertaining to: (1) the initiation of the countervailing duty investigation; (2) the imposition of countervailing duties in respect of Norwegian regional development programmes; (3) the method of calculating the amount of subsidies; (4) the determination of the existence of material injury caused by the allegedly subsidized imports from Norway; and (5) the continued imposition of the countervailing duties.

84. The Panel met with the parties on 23-24 January, 5-6 March and 1 October 1992. The Panel submitted its findings and conclusions to the parties to the dispute on 23 October 1992. The Panel circulated its full report to the Committee on 4 December 1992, after having been informed by the parties that they had not arrived at a mutually satisfactory solution. In examining the issues before it, the Panel had carefully considered the submissions of the parties and information regarding the factual basis upon which the United States' authorities had made their determinations.

85. The Panel had been faced with a number of important questions of a preliminary nature regarding the admissibility of certain claims of Norway. The United States had argued that some claims of Norway were not within the Panel's terms of reference and had not been raised during consultations and/or conciliation. The United States had also argued that one claim of Norway was not admissible because the issue had not been raised before the investigating authorities in the United States. The Panel's conclusions on these preliminary objections were summarized in paragraph 349 of its report.

86. The Panel's conclusions on the merits of the issues before it were summarized in paragraphs 350-353 of its report. The Panel found that: (1) the initiation of the countervailing duty investigation was not inconsistent with the obligations of the United States under Article 2:1 of the Agreement; (2) the imposition of countervailing duties in respect of regional development programmes was not inconsistent with the obligations of the United States under Article 11 of the Agreement; (3) the United States had not calculated the amount of subsidies inconsistently with Article 4:2 of the Agreement, and (4) the final determination of the existence of material injury caused by allegedly subsidized imports from Norway was not inconsistent with the obligations of the United States under the Agreement. The Panel therefore concluded (paragraph 353) that the imposition by the United States of a countervailing duty order on imports of fresh and chilled Atlantic salmon from Norway was not inconsistent with the obligations of the United States under the Agreement.

87. Following the submission of the Panel's findings and conclusions to the parties, the Panel had received a request from Norway for a reconsideration of specific aspects of its findings. The text of Norway's letter, and the Panel's response thereto, appeared in an Annex to the Panel's report (SCM/153, page 140). This was done only in the interest of transparency.

88. The Chairman of the Panel considered that with the circulation of its report on 4 December 1992 to the Committee the Panel had fulfilled its mandate, as defined at the Committee's special meeting held in September 1991. Mr. Kaczurba thanked both parties for their co-operation with the panel. He also expressed his warm appreciation to the secretariat for the outstanding services rendered to the panel proceedings by the GATT Rules and Legal Affairs Divisions.

89. The representative of Norway stated that this case concerned Norwegian domestic, general regional support programmes, aimed at providing incentives for establishing businesses in remote and scarcely populated areas. The United States considered six such programmes to confer subsidies, and imposed countervailing duties of 2.27 per cent ad valorem on imports of Norwegian salmon. The

Panel concluded that the imposition of this countervailing duty order was not inconsistent with the obligations of the United States under the Agreement. Although the imposition of a countervailing duty of 2.27 per cent ad valorem was rather insignificant, some of the Panel's conclusions raised issues of principle. The Panel had erred in its interpretation of certain GATT requirements. The Panel's views could have significant ramifications for the international trading system. The significance of a countervailing duty of 2.27 per cent ad valorem also had to be considered in light of the fact that it was in addition to high anti-dumping duties imposed by the United States on imports of fresh and chilled Norwegian salmon. The cumulated effect of these duties had been to virtually halt Norwegian exports of fresh salmon to the United States. Canadian and Chilean exporters had taken over the Norwegian market share.

90. The representative of Norway stated that his government's main concerns with the Report were as follows. First, some of the Panel's conclusions deviated from a number of previous panel recommendations and practice followed by the CONTRACTING PARTIES, in particular with respect to Article VI of the General Agreement, and the standard for initiation of investigations. Second, the Panel based itself on a loose interpretation of the requirements expressed in Article VI concerning the obligations incumbent upon a party invoking exceptions to the general GATT obligations, instead of the narrow interpretation accepted in conformity with practice followed by the CONTRACTING PARTIES, and in a number of previous panel reports. Third, the Panel Report significantly weakened the Agreement's standard for initiation of subsidy investigations. It allowed the authorities in the importing country to initiate investigations merely based on a statement by a petitioner's lawyer claiming support from the domestic industry, instead of requiring the investigating authorities to take affirmative steps to ascertain that a sufficient proportion of the domestic industry supported the request for an investigation. Fourth, the Panel Report substantially cut back on Agreement's injury requirements, and eviscerated its causation requirements. The Panel interpreted the Agreement in a manner which permitted the investigating authorities to assume causation as long as injury was found, thus enabling investigating authorities to disregard the "through the effects" requirement of the Agreement, and to attribute injury to allegedly subsidized imports which is in fact caused to the domestic industry by other factors. Fifth, the Panel Report allowed investigating authorities, having determined injury, to apply that injury determination both in anti-dumping and subsidy cases without separate causation findings as foreseen by the respective GATT Agreements. The investigating authorities then could disregard the requirement in Article 6:4 to demonstrate trade effects of the subsidy, i.e. "that the subsidized imports were, through the effects of the subsidy", causing injury within the meaning of the Agreement. It followed from this injury approach that the mere existence of a domestic support programme was considered by the Panel to be sufficient also to impose countervailing duties. Finally, the Panel Report could have considerable impact on countervailing duty cases, by allowing importing countries to impose a duty in excess of the subsidy until a methodology was agreed by all Signatories.

91. The representative of Norway stated that, with respect to the Panel's interpretation of the General Agreement's Article VI, the Panel had improperly shifted the burden of proof from the United States to Norway. GATT panels had repeatedly found that since the application of anti-dumping or countervailing duties under Article VI was an exception to the basic GATT principles of most-favoured-nation treatment and bound tariffs, the burden was on the party taking action under this Article to demonstrate that it had acted in conformity with Article VI. This had been the rule set by adopted panel reports since 1955, cf. the report of the panel on Swedish anti-dumping duties, as well as in the New Zealand - Electrical Transformers Panel, and the United States - Pork Panel.

92. The representative of Norway stated that, with respect to the standard of initiation, the Agreement required investigating authorities to take affirmative steps on their own initiative to ascertain that a sufficient proportion of the domestic industry requested an investigation. In Swedish Steel and Mexican Cement, two Panels found that, prior to initiating an investigation, the administering authority, on

its own initiative, had to take affirmative steps to assure itself that a petition was filed on behalf of the domestic industry. The Salmon Panel established a much looser approach, which contradicted previous panel findings, by allowing the US investigating authorities to base their initiation of the investigation on a statement by the petitioner's lawyer claiming support from the US salmon industry.

93. The representative of Norway stated that the Panel had failed to address Norway's argument that the Agreement required signatories to consider the trade effects of subsidies prior to imposing countervailing duties. The Panel did not provide any reason why the United States' failure to consider the trade effects of the subsidies was consistent with the Agreement. The Panel thus endorsed the US practice whereby trade effects of an alleged subsidy were not considered. According to the Panel, it was sufficient for the investigating authorities, in addition to the subsidy finding, to find that a regional development programme entailed a subsidy in order to be able to countervail the programme. In Norway's view, the Agreement was written in terms that looked at the trade effects of the regional development programme at issue rather than just at its existence. The requirement had been endorsed in previous adopted panel reports, most recently in Grain Corn, where the panel found that Canada had not properly considered the effects of the subsidized imports on the domestic industry. The Grain Corn panel noted that a finding of an overall depression in prices of the subject commodity was insufficient, and that Canada had to demonstrate that the subsidy had a specific effect on the Canadian industry - not just that such subsidies existed. Also in the Salmon case prices were falling in the international markets. And in the Pork panel case, the Panel rejected the notion that the mere existence of a subsidy was sufficient to justify imposition of countervailing duties.

94. The representative of Norway argued that the Panel, in its report, stated that since the signatories had not developed an understanding setting out the criteria for calculating the amount of the subsidy, signatories were free to use any methodology they wished (paragraphs 245 and 246). This opened opportunities for signatories to impose duties in excess of the per unit level of subsidization. By accepting the US method for calculation of the interest rate benchmark, the Panel also endorsed a practice which allowed double-counting of alleged subsidies (paragraph 251), and assessment of duty including the full amount of a partial payroll tax exemption, with no deduction for the significant increase in income tax calculations entailed (paragraphs 243-246). The Panel failed to address the central principle of Article 4:2 of the Agreement as it concerned the US calculation of the actual level of subsidies. Article 4:2 did not permit a signatory to levy duties in excess of the actual level of subsidization, even though the signatories had not developed a single, agreed-upon calculation methodology. Whatever criteria a country used, the countervailing duty could not exceed the amount of the subsidy.

95. The representative of Norway stated that the Panel's interpretation of Article 6:4 of the Agreement eliminated the need for that paragraph altogether, and eviscerated the causation requirement in the Agreement's injury standard. This was contrary to the fundamental principle of treaty interpretation that every term be given meaning. Further, the first sentence of Article 6:4 required the investigating authorities to determine that injury was being caused "through the effects of the subsidy". The Panel's interpretation of the first sentence of Article 6:4 effectively deleted that sentence from the Agreement, thereby making the Agreement's causality requirements considerably more lax. According to the Panel, the negotiators, having inserted the first sentence of Article 6:4, then changed their minds, but rather than delete the sentence, decided to add a footnote, which after intricate analysis led the Panel to the conclusion that the sentence in the text was meaningless. This was speculation, and was merely the Panel's supposition. The Panel had raised the footnote to the pre-eminent position in Article 6:4's causation requirements and ignored the rest of the language found in the text of this paragraph.

The representative of Norway stated that the Panel's interpretation of the second sentence of Article 6:4 of the Agreement, addressing the impact of other factors on the causation determination, was legally incorrect. When coupled with the Panel's interpretation of the first sentence of Article 6:4 of the Agreement, it eviscerated the causation requirement in the Agreement's injury standard. The

Panel's view thus made it easier for investigating authorities to attribute to the allegedly subsidized imports injury to the domestic industry caused by other factors. Further, the Panel did not address how a determination that there was past injury satisfied the Agreement's requirement that the administering authorities find present injury. The issue was whether the investigating authorities found that the effects of the alleged subsidization were presently causing injury. The Agreement required the investigating authorities to consider whether the domestic industry was being injured by the present effects of subsidization at the time of the injury determination.

96. The representative of Norway concluded that his country had serious concerns with respect to questions of principle in the Panel Report. In Norway's view, the way in which the Panel had addressed a number of the most contentious issues could easily result in the present GATT restraints on application of the countervailing duty instrument becoming less stringent in the future than they presently were. Use of very lax, unreasonable or manifestly unfair internal rules, regulations and practices in subsidy investigations might proliferate without violating the Agreement's requirements as they would then be interpreted. The inducement to apply the countervailing duty instrument for protectionist purposes would clearly be present, as the Agreement would in practice contain but a few, rather formal and easily overcome barriers to such application. If the Panel's view on some of the matters of principle were to prevail, any programme used for the promotion of social and economic policy objectives in specific regions ran the risk of being countervailed, without any consideration of trade effects of the programme, and irrespective of whether the programme was general, non-discriminatory and not aimed at export promotion. In Norway's view, further consideration of the Report was required.

97. The representative of the United States stated that he had made extensive remarks in the Anti-Dumping Committee on the Report of the Panel on the United States Imposition of Anti-Dumping Duties on Salmon (ADP/M/40, paras. 156-157). He did not intend to repeat those comments here, but hoped they could be incorporated by reference. All the points made by the representative of Norway were raised in the panel proceeding. They were adjudicated there. The United States preferred not to re-argue its case, whether it had won or lost on any particular set of points, before the Committee. However, several delegations had asked the United States whether its position on certain issues had changed because they were not expressly refuted before the Committee. The answer was no: the United States simply did not desire to repeat all its arguments, which were clearly espoused in its briefs, which he would gladly make available to signatories. The United States did, however, want to address a few points of particular importance.

98. The representative of the United States noted Norway's argument that Article VI of the General Agreement was an exception to GATT rights and obligations. There was no legal foundation for this argument. The United States in its briefs had discussed in extenso all the cases cited by the representative of Norway. Referring to a handbook on GATT dispute settlement, the representative of the United States noted that the table of contents divided GATT provisions into four categories: (1) elimination of discrimination in international trade; (2) reduction of trade barriers; (3) regulation of unfair trade practices; and (4) the general exceptions to GATT obligations. Part 3 discussed, inter alia, provisions on anti-dumping and subsidies and countervailing measures. In Part 4 Articles XX and XXI were discussed. Article VI was not discussed as an exception because it was not an exception.

99. The representative of the United States referred to the interpretation of Article 6:4 of the Agreement. Article 6:4 stated that "It must be demonstrated that the subsidized imports are, through the effects of the subsidy, causing injury ..." A number of delegations, including Norway, had offered various interpretations of what that meant. But its meaning was established clearly and expressly in the language of the Agreement itself, which provided in footnote 19 that the effects of the subsidy were defined as those "set forth in paragraphs 2 and 3 of this Article." Paragraphs 2 and 3 directed the

administering authorities to look at the volume and price effects of the imports and their impact on the domestic industry. It was suggested in the Anti-Dumping Committee that "through the effects of the subsidy" meant that if any other cause was in any way responsible for injury that might be suffered by the domestic industry, it could not be found that subsidized imports also were responsible for the injury to the domestic industry. This interpretation might be upheld if an importing country decided to take action on that basis, but it was not founded in the language of the Agreement. The US interpretation differed from that and was expressly found in the language of the Agreement.

100. The representative of the United States stated that his government had grave concerns about the Panel Report. The Panel micro-managed a number of the issues that were presented to it, i.e. went into a level of detail and examination that exceeded what was appropriate for a panel examining a country's adherence to the provisions of the Agreement. The United States had strong reservations in this regard. The Report set a poor precedent for future panels. The United States was concerned about the Panel's decision with respect to the exhaustion of administrative remedies. This was an important point for his government. The Panel in this case conceivably opened a door in future dispute settlement that might be difficult to close. In sum, the Report presented a number of very troubling questions. At the same time, the Panel had, in rejecting arguments of the United States and of Norway, attempted to come to its own determination of the meaning of the obligations under the Agreement and to craft a path for future dispute settlement that would lay a solid foundation. The United States did not believe that this was the way the foundation should have been laid. Nonetheless, the United States would not oppose adoption of this Panel Report. Although both parties lost any number of points, the United States encouraged Norway to support adoption so that this dispute settlement matter could be put to rest, the work of the Committee proceed, and a dialogue continue on these important questions.

101. The representative of Finland, on behalf of Finland and Sweden, stated that the concerns expressed by Finland and Sweden in the Anti-Dumping Committee on the Panel's reasoning regarding the scope of its mandate also applied to this report (para 208). It was too inflexible to exclude from examination, in all cases, any matters that had not been identified in the written statements referred to in the terms of reference. However, they welcomed and shared the Panel's conclusions (para 200) that the scope of the dispute settlement was not limited to the matters raised in the domestic procedures. The representative of Finland stated that it had difficulties with the Panel's reasoning (para 260). The Panel needed, in order to perform its rôle in the settlement of disputes, to have the power to conduct its own independent review of the factual evidence going to the issues and make its own judgements whether the signatory had fulfilled the Agreement's mandatory obligations in its determinations. His remarks concerning initiation in the anti-dumping case also applied for this report. This interpretation led to weaker criteria for initiation of investigations.

102. The representative of Finland did not share the Panel's interpretation of Article 6 of the Agreement. That Article required that it had to be proven that subsidized imports were a cause of injury. The effects of other factors that might have caused injury to the domestic industry had to be separated from those cause by subsidization. Article 6:4 required the investigating authority to assure itself that the alleged injury was caused by the subsidized imports only. This requirement had not been sufficiently recognized by the Panel. He also had concerns with the Panel's conclusion (para 339 and 340) there was no basis for the USITC to distinguish between the effects of the subsidized imports and the effects of the dumped imports under investigation. The use of only one injury determination but two remedies (countervailing and anti-dumping duties) could easily lead to margins that exceeded the levels needed to offset the injury. In this context, he asked the United States the following question. The anti-dumping finding was based on a constructed normal value. In the construction of the normal value, no account was taken of whether the production costs were covered by subsidies or by other sources of income. That constructed normal value was compared with the export price to determine the dumping margin. That implied that the subsidy had been included in the constructed normal value. It had not been separated and singled out from other sources of revenues to cover the production costs. If that were true, it followed that the anti-dumping duty covered the

whole margin of dumping including the subsidy. That would be tantamount to a double imposition which was prohibited under Article VI:5 of the General Agreement.

103. With regard to the Panel's conclusions on regional subsidies (paras 238-241), the representative of Finland stated that the Panel did not take sufficiently into account the motivations and reasonings behind the permissibility of subsidies under Article 11 to achieve certain policy objectives. In order for Signatories to pursue generally accepted socio-economic policies they needed a minimum degree of certainty that measures used to achieve these goals would not be questioned. These concerns had been reflected in the Uruguay Round negotiations, which hopefully would bring clarity by defining what was prohibited, what was permitted and what was actionable. Clear and unambiguous rules were in the interest of all participants.

104. The representative of Japan stated that this Panel Report had serious problems. First, the Panel subverted the rule in Article 6:4 of the Agreement that the subsidized imports were, through the effects of the subsidy, causing injury. The Panel's conclusion was to treat "the effects of the subsidy" in the first sentence of Article 6:4 to mean the effects of the subsidized imports set forth in Articles 6:2 and 6:3, thus did not judge whether the subsidized imports were actually causing injury by the effects of the subsidy. This interpretation denied the true meaning of the first sentence of Article 6:4. The proper interpretation of this provision was that circumstances could arise where subsidized imports, although causing injury, were not causing injury through the effects of subsidies, and therefore did not fall within the permitted scope of countervailing duty measures. Second, Japan wanted to raise concerns on the treatment of factual issues (para 275 and 276). The Panel disregarded the conclusions of previous panels, misinterpreted Article 18:1 and created a new criterion for judging the findings of national authorities. The Panel said that it was not properly within a panel's task to make a judgement on the relative weight to be accorded to facts. The Panel thus just reviewed whether the investigating authorities had considered all information and avoided reviewing the facts of the matter itself in regard to injury issues. This was a totally unacceptable conclusion. Third, in para 245, the Panel refused to look at secondary tax effects, because no understanding had been developed among signatories on criteria for calculation of the amount of subsidy. Japan shared the concerns of Norway on this point.

105. The representative of the EEC stated that the Report raised many issues concerning countervailing duty methodology, injury, and causality. The EEC needed more time to fully digest the Report. The EEC's positions on many of these issues might or might not correspond to those expressed by the two parties or the findings of the Panel. Nevertheless, the EEC shared at least some of Norway's concerns regarding the way countervailing duty investigations were being conducted in the United States. The EEC wanted to make one specific point. While the Panel said that Article 4:2 of the Agreement did not require that any specific calculation method be applied, the EEC did not believe that the Panel said that any method could be applied. This was unthinkable. Lack of a precise prescription of a particular method could not mean that there were no limits to whatever method for the definition and the calculation of a subsidy a signatory could choose.

106. The representative of Canada stated that most of the issues except that relating to the calculation of the amount of the subsidy were similar to those in the Report discussed in the Anti-Dumping Committee. He requested that the comments he made in the Anti-Dumping Committee be registered in this Committee. (ADP/M/40, paras. 161-164) Regarding the methodology used in the calculation of subsidization, he associated himself with the comments of the EEC delegation. Canada had concerns regarding the US methodology for the calculation of a subsidy. Just because the Agreement did not set out a precise method for calculation this did not mean that anything went.

107. The representative of Brazil stated that the fair and effective settlement of disputes was an indispensable condition to ensure the improvement of the multilateral trading system. Brazil was a

resolute advocate of an effective dispute settlement system in this Committee and in the GATT. That was not to say this Committee could waive its responsibility to consider in full the conformity of the Report with the rules of the Agreement and the consequences that the adoption of a report might have on the concrete interests involved. "Rubber stamping" should not be a function of this body. The Committee had not only the right, but the duty, to consider the contents of a report critically, as explicitly stated in Article 18.9 of the Agreement.

108. The representative of Brazil stated that the questions of principle that were the basis of this Report were of significant importance. Others had addressed them. Brazil shared their concerns. The methods used in the United States in these investigations and the ceremonial attitude of this Panel in relation to the information it could or should have examined in relation to, for instance, upstream subsidies and the specificity of regional subsidies, were a matter of the greatest concern to Brazil.

109. The representative of Hong Kong stated that its comments on this Report were similar to those it had expressed in the Committee on Anti-Dumping (ADP/M/40, paras. 167-170). Hong Kong fully shared the view of Norway that Article VI of the General Agreement was an exception to the general m.f.n. principle and as such was to be interpreted restrictively. It was up to the signatory taking action under this Article to prove that the conditions justifying the exception were fulfilled.

110. The representative of Australia stated that he did not believe that Article VI of the General Agreement, which allowed signatories to impose countervailing duties, was an exception to the General Agreement. It was a right which had equal status with other rights under the General Agreement. Therefore, Australia could not accept in principle that this provision on countervailing duties should be interpreted any more tightly than any other provision in the Agreement. In addition, Australia could not accept the argument advanced by the United States that issues should not be taken into account by panels unless they were raised before the domestic investigating authorities. As a small country, Australia would have difficulty in following the procedures asked for by the United States. It therefore strongly agreed with the Panel's conclusion on this aspect as set out in paragraph 220 of the Panel's Report.

111. The representative of Austria stated that his government had some reservations in regard to the Report. Article 11:2 of the Agreement stated that certain domestic subsidies might have an impact on trade. It followed that there were also domestic subsidies that had no effect on trade. Before examining the impact and value of a subsidy it should be determined whether such a subsidy had an effect on trade. If less than the whole of the subsidy had an effect on trade, then a certain number of deductions should be made. Another problem was the reversal of the burden of proof. Article 6:4, which stated clearly that the authorities had to demonstrate that there was injury due to the application of the subsidy, seemed to be extremely clear.

112. The representative of the United States stated that, with respect to the question posed by Finland, Article VI:5 provided that "No products of a contracting party shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization." The logic behind that was that export subsidies permitted or enabled dumping. It did not deal with domestic subsidies and there was no provision of the Agreement that dealt with how domestic subsidies should be treated in a constructed value situation.

113. The Committee took note of the statements made and agreed to revert to this matter at future meetings of the Committee.

H. United States - Measures affecting imports of lumber from Canada - Report of the Panel (SCM/162)

114. The Chairman noted that the Committee at a special meeting on 16 December 1991 established a Panel pursuant to Article 18:1 of the Agreement at the request of Canada (SCM/M/56). The Report of the Panel was circulated on 19 February 1993 (SCM/162).

115. A member of the Panel present in Geneva, Mr. David Hayes, introduced the Panel Report. The Chairman of the Panel had asked him to present to this Committee the Report of the Panel in document SCM/162. The matter before the Panel arose from certain actions taken by the United States in October 1991 on imports of softwood lumber products from Canada. These measures were taken after Canada terminated a bilateral understanding with the United States on trade in softwood lumber. This understanding had been entered into by Canada and the United States in December 1986. A reference to this bilateral understanding appeared in a Panel Report adopted by the Committee in June 1987 (SCM/83). Upon the termination of this bilateral understanding, the United States on 4 October 1991 imposed contingent duties and bonding requirements on imports of softwood lumber from Canada. This action was taken under the authority of Section 304 of the United States Trade Act of 1974. On 31 October 1991, the United States self-initiated a countervailing duty investigation on imports of these products. The Panel was requested to make findings on the consistency with the Agreement of both these actions of the United States.

116. The Panel met with the parties to the dispute three times, on 18-19 March, 20-21 May and 15 June 1992. The Panel received a written submission from Japan which had reserved its right to intervene as interested third party. The Panel carefully examined the arguments and information provided by the parties in considering the issues before it. In particular with regard to the question of the self-initiation of the countervailing duty investigation, the Panel had to undertake a detailed examination of a large number of factual issues on which the parties to the dispute disagreed. In this regard, it was necessary for the Panel to set forth its views as to the application of the standard of "sufficient evidence" in Article 2:1 of the Agreement. These views were expressed in paragraphs 330-336 of the report.

117. The Panel's conclusions were set out in paragraph 412 of the report: "(a) the interim measures taken by the United States on 4 October 1991 with respect to imports of softwood lumber from Canada were inconsistent with Article 5:1 and could not be justified on the basis of Article 4:6 of the Agreement; and (b) the initiation of a countervailing duty investigation by the United States on 31 October 1991 with respect to imports of softwood lumber from Canada was not inconsistent with the requirements of Article 2:1 of the Agreement."

118. The Panel's recommendation was in paragraph 415 of its report: "The Panel therefore recommends to the Committee that it request the United States, with respect to imports of softwood lumber from Canada, to terminate the bonding requirement, release any bonds, refund any cash deposits and terminate the suspension of liquidation of entries made during the period of application of the inconsistent interim measures imposed in October 1991 under the authority of Section 304 of the Trade Act of 1974."

119. The Panel submitted its findings and conclusions to the parties on 7 December 1992. The Panel circulated its full report to the Committee on 19 February 1993, after having been informed by the parties that no mutually satisfactory solution of the matter had been reached. When on 7 December 1992 the Panel provided the parties with its findings and conclusions, it also transmitted to them a copy of a letter to the Chairman of the Committee. This letter was subsequently circulated to the Committee in document SCM/163, 19 February 1993. In this letter the Panel drew the Committee's attention

to certain concerns which had arisen during the course of the Panel's proceedings. These concerns related not least to the issue of the evidence required under Article 2:1 of the Agreement for the initiation of a countervailing duty investigation. Since time was short, he would not dwell on the detail of the letter, but he urged all members of the Committee to read it. The Panel expressed the hope, *inter alia*, that "the points addressed in this letter will assist in future efforts regarding the further development of disciplines on the initiation of investigations."

120. The Panel considered that with the circulation of its report on 19 February 1993 it has fulfilled its mandate, as defined by this Committee at its special meeting on 16 December 1991. He thanked the two parties for their co-operation, and the secretariat for its assistance.

121. The representative of Canada had a number of detailed comments to make on this report. He would summarize them only and make the complete statement available for further consideration by other signatories.

122. The representative of Canada stated that the Panel's examination of the unilateral application of a bonding requirement under "section 301" of the US Trade Law of 1974 demonstrated the inconsistency of such action with the Agreement. This was the first time that a panel established within the GATT had found the application of Section 304 of the Trade Act of 1974 to be inconsistent with US international obligations embodied in the GATT. Adoption of this decision would send an important message from the signatories of the Agreement to the US: Section 301 of the 1974 Trade Act was not to be used in circumvention of the provisions of the GATT and its Codes. Canada agreed with this recommendation of the Panel and looked forward to the early implementation by the US of the recommendation of the Panel.

123. Concerning the obligations of signatories who initiate countervailing duty investigations and the rights of signatories to be free of the harassment of unjustified initiations, Canada was disappointed with the ultimate decision of the Panel. The Panel was sufficiently troubled with this aspect of this case that it saw fit to submit to the Committee a letter setting out its own concerns. These related to the threshold of the initiation standard under Article 2.1 of the Agreement in light of its intended anti-harassment function and to multilateral scrutiny of an initiation decision of a signatory. While Canada agreed with the views expressed in the letter on these points, it considers that these concerns should have found expression in the Panel Report proper and should have been reflected in the Panel's conclusions and recommendations. They were not. As such, they merited careful consideration by the members of the Committee, in particular as regarded the consequences of their omission from the Panel Report for the proper interpretation of the initiation requirements of the Agreement. Canada disagrees with the Panel finding that the US self-initiation was justified by the existence of "special circumstances" based on the legal termination of the MOU. Under this reasoning, without the consent of the US, Canada could not exercise the termination provision of the MOU without creating special circumstances within the meaning of Article 2:1. In Canada's view, the simple rarity of self-initiation by the US could not be the intended meaning of special circumstances under Article 2:1. The termination of the MOU did not create any circumstances that prevented the well financed and organized industry from protecting its interests by submitting a petition. The use of self-initiation on behalf of well-organized industries that had elicited strong political pressures, as were exerted in this case within the US Congress, undermined the intended anti-harassment function of the Article. In its letter to the Committee, the Panel saw considerable merit in many of Canada's criticisms. It recognized serious shortcomings in data and methodologies used by the US. It saw questions with respect to evidence addressed by Commerce. It noted certain facts which arguably should not have been ignored. When one measured such comments against the conclusions of the Panel, one was reminded of Scottish criminal law which provided for a verdict of "Not Proven", that is, acquittal but with a stigma of guilt attached. If initiation was justified even in the face of such recognized shortcomings, it is difficult to imagine when multilateral scrutiny could find initiation to be inconsistent with Article 2:1.

124. Regarding whether the pricing of government-owned in situ natural resources could be evidence of subsidies, the representative of Canada stated that while clearly the Panel did not rule that stumpage was a subsidy, Canada had serious concerns with elements the Panel considered relevant to its examination. Canada's fundamental argument was that an unharvested, in situ natural resource was not a "good", and that the pricing of access to such resources did not confer a subsidy. The Panel's conclusion that "opportunity costs" could be included in the meaning of "cost to government" was problematic, and not supported by the Code or the General Agreement. Further, the use of price comparisons (as a measure of "opportunity cost") was not evidence of the existence of a cost to government and thus not a subsidy. For example, the US used a comparison of prices in one jurisdiction with those in another jurisdiction as evidence of a subsidy. To accept this principle could result in the absurd conclusion that evidence of a subsidy in one jurisdiction could be manufactured from pricing changes enacted by other governments over which the first jurisdiction had no control. Furthermore, the difference between two different administered prices for in situ natural resources was not evidence of the existence of a subsidy, as such a difference is not a valid measure of "cost to government".

125. The representative of Canada noted that the Panel also found that initiation based on threat of injury could not be justified on the sole grounds that a government had the legal latitude to introduce the alleged subsidy, but had not yet done so. However, the Panel then found that should there be a reason for investigating authorities to believe that a government could introduce the alleged subsidy at some point in the future, then this would constitute evidence of threat of injury. It should be of concern to signatories that the Panel found that the "threat of subsidy", which is presumably inherent in all governments, was sufficient to find "threat of injury".

126. The representative of Canada stated that the inclusion of measures affecting the export of logs in the US investigation illustrated US attempts to expand the range of measures subject to countervailing duties to areas beyond subsidies. Canada was disappointed that the Panel decided not to examine whether measures affecting the export of logs were per se subsidies. The US is now collecting millions of dollars of duties annually based in part on the alleged subsidy element of these export measures. While the Panel determined that these measures were not included as a basis for self-initiation on the date of initiation, it ignored that the expressed intention of Commerce in the self-initiation document was to include these measures at a later date, subject to further information. Neither did the Panel attach significance to the fact that its terms of reference set out in document SCM/133, referred to the facts and specific issues, including these measures, raised in Canada's request to the Committee for conciliation. This ruling was a good illustration of the Panel's own concerns about the "practicality of providing meaningful multilateral scrutiny of an initiation decision" in that it would require a second panel to examine an issue clearly subsumed in the terms of reference of this Panel. Canada looked forward to receiving comments from signatories on the issues raised in the written statement, before considering adoption of this report.

127. The representative of the United States stated that the United States was still reviewing this extensive document, and would have further full comments in the near future. However, he wanted to take this occasion to comment on a few aspects of the Panel Report.

128. With respect to the Panel's decision concerning the US imposition of a temporary bonding requirement and a suspension of liquidation following the Government of Canada's termination of a bilateral agreement, the representative of the United States noted that the Panel concluded that the United States was obliged to take specific action, that is, to relinquish the bonds and refund any moneys that had been collected. This Panel came to a somewhat different discussion of that issue in its conclusions. Nonetheless, it called for a specific remedy that caused the United States grave concerns, as the United States had noted in the Anti-Dumping Committee with respect to the Swedish Pipe and Tube Panel Report (ADP/M/40, para. 130-132). The United States was preparing a paper addressing

these issues and hoped to share it with the members of the Committee at an early date. There was no other forum in the GATT where panels had seen fit to order specific remedies. It was important in the context of the development of a multilateral dispute settlement process that there be consistency among proceedings and panel reports. This was an important issue to the United States and to others. The Panel should not be entering into this area.

129. With respect to the substance of the decision, the representative of the United States stated that the first part of the Panel Report concerned the US action when the Government of Canada decided to terminate a bilateral memorandum of understanding concerning softwood lumber. The United States disagreed strongly with the conclusion of the Panel that the US actions were not consistent with the actions expressly authorized by the Agreement when a termination understanding that had been entered into between two parties was exited by one of the parties. At that time the Agreement explicitly authorized the taking of measures that were far more severe than what the United States had in fact taken. The United States used its authority under Section 301 of the Trade Act of 1974 simply because its countervailing duty law did not give the United States the authority to act in the termination undertaking context, but only in the suspension undertaking context. This was the only authority available to take the very limited action that was taken, i.e., the suspension of liquidation and the imposition of a bonding requirement, with the proviso that there be possible imposition of duties if at the Department of Commerce's conclusion of its countervailing duty investigation it found that subsidies had been provided, and if the US International Trade Commission found there was injury as a result of subsidized imports.

130. The United States regretted this dispute because it believed it was entirely unnecessary. The two countries had entered into a bilateral agreement that had been in force for a number of years. At a certain moment in the Panel proceedings, he recalled, one of the members of the Panel asked how the memorandum of understanding between the United States and Canada had been operating. The Canadian forestry expert described some of the difficulties in terms of monitoring and data collection, but nothing particularly severe. A Panel member then asked the two delegations why they exited the agreement. Things seemed to have been working relatively alright. There was no sufficient answer to the question.

131. Regarding the question of initiation, the United States was heartened by the conclusion of the Panel that the initiation was consistent with the Agreement. However, it was dismayed by the reasoning the Panel used to get there. This was one of the most thoroughly substantiated initiations with respect to all aspects of the evidence required under the Agreement. The case produced hundreds of pages of argumentation, at least as much as cases in which the United States has participated regarding final determinations, as well as a 150 page reasoned decision. The United States would compare the initiation of this investigation to any by any government in any countervailing duty or anti-dumping investigation. The United States had provided the Panel with a number of initiations by Canada that were based on a small fraction of the information the US authorities had in front of them when they initiated this investigation. It was strongly disturbed by the level of scrutiny and discussion both in the Panel Report and in the attached letter. The initiation requirement of the Agreement was essential to ensure that no frivolous investigations be commenced. However, members of the Committee should pause and reflect on a proceeding where the question of initiation was as thoroughly litigated as that of a final determination. The Committee should also consider the standard of proof alluded to by Canada in Scottish criminal law. The comparison between an initiation standard which was one of sufficiency, i.e., enough evidence so that the authorities could begin an investigation and reach their own conclusions, and a standard of proof when a final determination was made, was disturbing the United States, and illustrated the sharp difference of view between the United States and Canada in this proceeding.

132. The representative of Australia stated that it did not wish to discuss this specific case, but it did desire to make a general comment of principle. There was an increasing tendency in panel reports to make specific recommendations as to precisely what steps a sovereign country had to take to comply

with its GATT obligations. In particular, panels were recommending that duties which had been collected should in some cases be reimbursed. Until recently panels had not made such recommendations. Such recommendations were outside the application of the Agreement and involved the sovereign rights of a country between its government and its importers and its citizens. Consequently, Australia recommended that the Committee examine closely whether or not guidelines should be set down for future panels in regard to the issue of reimbursement of duties.

133. The representative of Japan welcomed the Panel's conclusion that the interim measures under Section 301 taken by the United States with regard to imports of softwood lumber from Canada were inconsistent with the Agreement and could not be justified. However, Japan was concerned that the Panel Report did not provide general conditions under which special circumstances for self-initiation under Article 2:1 of the Agreement would be deemed to exist. Special circumstances which allowed self-initiation should be limited to circumstances under which the affected domestic industry was unable to prepare a proper request for the initiation of an investigation.

134. The representative of Canada noted in response to the United States that his memory of the meeting differed from that of the US representative. What in his view were simple administrative difficulties with the Memorandum of Understanding were viewed differently by Canada. The Memorandum of Understanding had nothing to do with the US countervailing duty law and therefore its termination or otherwise should not have been seen as giving rise to any right in that respect. The Panel so found. Canada was not entirely comforted by the United States' assurances that the softwood lumber initiation was one of the most thoroughly substantiated US cases, having had sufficient experience with those cases.

135. The Committee took note of the statements made and agreed to revert to this matter at future meetings of the Committee.

I. United States - Definitive affirmative countervailing duty determinations on imports of certain hot-rolled lead and bismuth carbon steel products from France, Germany and the United Kingdom and preliminary affirmative countervailing duty determinations on imports of certain cut-to-length carbon steel plate and of certain hot-rolled, cold-rolled and corrosion resistant flat products from Belgium, France, Germany, Italy, Spain and the United Kingdom - request for conciliation (SCM/167)

136. The representative of the EEC stated that the reasons for requesting conciliation were set out in the EEC's request and, in much greater detail, in the document which had been made available to delegations today. Since the beginning of these investigations by the United States the Community had followed them with attention and great concern. Clearly these cases were not routine ones: the massive nature of these actions (84 petitions were filed within a period of a few weeks, and there were now even more cases), their timing (the first petition was filed against the Community only a few weeks after the expiry of VRAs which had been in place for ten years), and other elements clearly indicated that these cases were part of a large-scale, carefully concerted and designed operation, aimed at putting pressure on the US Government, the Community, the EEC steel industry, and other governments and steel industries, in order to obtain continued protection for the US steel industry. In other words, legitimate trade policy instruments were being used by the petitioners for a purpose going far beyond that for which they were intended. In such circumstances, it would have been the duty of the investigating authorities to take a very conservative and prudent attitude in the conduct of these cases, so as to meet the express requirement of the Preamble to the Agreement "that countervailing measures do not unjustifiably impede international trade ...". On the contrary, on a number of cases, the United States had stretched the concept of a countervailable subsidy even further than in the past, finding

subsidies where none existed and overstating (sometimes very substantially) the amount of those which had been granted. The impression that one was left with was that greater attention was paid (to say it politely) to the views of petitioners than to the arguments put forward by defendants. Regarding changes in practice, while it was perfectly legitimate for a government to change its mind, it was highly significant that practically all the changes in past practice made in these cases went in the direction of the demands of the petitioners.

137. The EEC had already raised these concerns in this Committee in the past, but it seemed that its appeal to treat these cases with the utmost attention, in order to avoid even the mere suspicion of an "unjustifiable impediment to trade", had not yielded much in practice. Moreover, although many of the investigations initiated by the United States had not yet concluded, the preliminary decisions available in this respect, as well as the final determinations concerning the first cases, appeared to confirm the EEC's concerns. Thus, further bilateral consultations, at least in the present circumstances, were not likely to yield positive results. For this reason, the EEC had felt it necessary to bring these cases before the Committee. In doing so, it had chosen, for the time being, to request conciliation in respect of certain issues concerning the methodology employed by the United States to identify the existence of a subsidy and calculate its amount. It maintained all the other objections it had already raised in bilateral consultations, and in particular those concerning injury determinations, and entirely reserved its rights under the GATT and the Agreement on these issues.

138. The EEC strongly believed that the successive developments of the US methodology on the question of the identification of the existence of a subsidy and of the calculation of its amount had brought it to the point where there could not be any doubt about its inconsistency with the provisions of the Agreement. Article 4:2 of the Agreement stated that "No countervailing duty shall be levied on any imported product in excess of the amount of the subsidy found to exist, calculated in terms of subsidization per unit of the exported product." Footnote 15 to this provision further stated that "An understanding among signatories should be developed setting out the criteria for the calculation of the amount of the subsidy." It was true that such an understanding had not been developed. However, the "understanding" referred only to the calculation of the amount of the subsidy, and not to its definition, and the provision of Article 4:2 still stood, and with it the obligation to identify the existence of a subsidy and its amount, which was a necessary precondition to the prohibition to impose countervailing duties in excess of that amount. Even though there had been, and there continued to be differences of view as to when a subsidy existed, it was unthinkable that signatories' latitude to choose criteria for the identification and the calculation of a subsidy had no limits at all. This would render Article 4:2 meaningless, and such an occurrence would be patently against fundamental principles of legal interpretation. At the very least, a signatory to the Agreement, when choosing criteria it believed were appropriate to interpret and apply the provision of Article 4:2, had to ensure that such criteria were consistent with logic, with economic reality, and with the facts of the case under investigation.

139. The EEC representative stated that resort to hypotheses and assumptions must not lead to decisions based on speculations or subjective judgements, and such assumptions could never override objective and verifiable facts. The point was not to countervail subsidies at all costs. The point was to countervail subsidies which benefited the exported products and which caused injury. One of the reasons behind this determination, instead, seemed to be the conviction that it was unthinkable that subsidies might go "uncountervailed", regardless of whether, in fact, they had any effect on the production and export of the products under investigation.

140. 15 years allocation period. So-called "non-recurring" subsidies (e.g. grants), which in the past may have been provided to Community steel companies, had been allocated by the US authorities over 15 years (the so-called amortization period). This method of calculation was not compatible with Article 4:2 of the Agreement and with the guidelines on amortization and depreciation as adopted by this Committee on 11 July 1985. The principle that certain subsidies should be allocated over time, as such, was not disputed by the Community (although this was without prejudice to the issue of which

subsidies should be allocated over time, on which some differences exist). However, the allocation of this kind of subsidies over a period of 15 years was arbitrary. The guidelines stipulated that any allocation period "shall be based on reasonable and generally accepted financial and accounting principles" (point 2) and that, as a general principle (point 3.2), "The investigating authority should select a reasonable period for the firms being investigated". The guidelines supplied various alternatives to allocate subsidies arising from a loan or from a grant, but none of these seemed to cover the method which the United States had used. The common thread running through the Guidelines appeared to be that any method selected by investigating authorities should moreover reflect the reality of the industry being investigated. The US method of an across the board application of a 15 year amortization period for the allocation over time of "non-recurring" subsidies granted to the EC steel industry was arbitrary, was not supported by the factual evidence submitted by EC companies to the US investigating authorities, did not reflect economic reality and was not based on generally accepted accounting principles for the firms being investigated. In these circumstances the US method could not be seen as 'reasonable' as the guidelines required, and it led to a countervailing of past subsidization whose effects, by "all generally accepted financial and accounting principles", had ceased a long time ago.

141. Recalculation of subsidies in excess of the amount granted by the government. Non-recurring subsidies had been recalculated in such a way that the total amount countervailed over time exceeded largely the amount of subsidy granted by the government. By this method countervailing duties had been levied in excess of the amount of the subsidy found to exist, in violation of Article 4:2 of the Agreement. Given the choice to treat equity infusions by public authorities in "unequityworthy" companies as if they were grants, this methodology had been applied throughout these decisions. The so-called "grant methodology" employed by the United States violated Article 4:2 of the Agreement because any method chosen by a signatory had to respect the obligation of Article 4:2, based on the objective facts of the case and not on speculation or subjective elements. The recalculation of the amount of a grant in such a way that the amount finally countervailed exceeded the sum paid by the government and received by the beneficiary company failed to respect this obligation.

142. Allocation of subsidies over production. The benefits of subsidies which the United States found to be provided to a French holding company with both domestic and foreign subsidiaries engaged in the production of steel, were only allocated over the domestic production of that holding company. Subsidies which were not linked to a specific production unit or to production based in a particular region or country, had to be considered as "untied", i.e. benefiting a company's activities in general. Certain subsidies, by their very nature, favoured the holding company in toto. If the total amount of such subsidies was nevertheless allocated only over a part of the production of the holding group, an apparent mathematical error was made, resulting in an overstating of the effect of the subsidy on the countervailed products. The US would not accept any other allocation of these subsidies unless given a "clear reason to believe" that such subsidies did not benefit only domestic production, and clearly put the burden of proof on the defendant company. This resulted in an impermissible and unnecessary shifting of the burden of proof and it actually imposed a higher standard of proof on the defendants than the United States imposed on itself. The final result was the imposition of a countervailing duty which exceeded the amount of the subsidy found to exist, if calculated in terms of subsidization per unit of the subsidized and exported products (Article 4:2 of the Agreement).

143. Privatization and sale of assets. In these investigations the United States had changed its position on what happened to subsidies granted to a government-owned company when it was privatized. In the past, the United States had considered that true privatization, that is, the sale of a company (whatever the legal form of this sale) to a private investor for a fair market value, "extinguished" subsidization which took place prior to the sale. The new position taken by the US could be summarized by saying that whoever owned a company (the government or a private investor), the benefit of a subsidy stayed with that company unless and until it was repaid to the government, especially if that subsidy was used

to purchase assets. This position had consequences for two kinds of situation, closely interlinked, yet logically and factually distinguishable: (1) the privatization of a government-owned company, that was, the transfer of the entire company in the hands of a private investor; (2) the sales of productive assets by a government-owned company to a private investor.

144. Privatization of a government-owned company. The issue here was whether subsidies received by a government-owned company were "extinguished" by the privatization of that company, that is, by the sale of the government's ownership interest in the company to private investors.

145. Sale of assets by a government-owned company to a private investor. The issue here was whether subsidies received by one company could be attributed to a second, independent company because the latter owned some assets which were once owned by the former. Conceptually, this second issue was quite different from the first (the privatization of a government-owned company). Some of the arguments raised by petitioners, and some of the reasoning followed by the US Department of Commerce, however, appeared to establish some sort of link between them (as would be shown later). One of the most overstriking features of this second issue is that, despite having found that the company exporting to the US had not itself received subsidies, despite having found that this company was independent from the company which had been subsidized in the past and from which it had purchased the assets (British Steel), despite having found that whatever assets had been transferred from British Steel to the exporter, this had been the result of an arm's length transaction (that is, the assets were sold at full market value), according to the United States a portion of the subsidies was nevertheless somehow "inherent" to the assets and "travelled" with them "to their new home".

146. "Equity-worthiness" and "Credit-worthiness" methodology. The United States had developed a methodology which purported to determine whether a company was "credit worthy" or "equity worthy" or not. This methodology had led on several occasions to an unjustified finding of subsidization in relation to equity infusions and loans made by public authorities. For the sake of simplifying the discussion at this stage, the Community would not, at least for the time being, raise the issue of the proper standard of a "reasonable investor" or, more precisely, of what could be called a "reasonable public investor". It would be recalled, however, that the long-standing position of the Community on this question included: (a) the conviction that governments had non-financial reasons to invest, and that all that could be asked of them was that their investment decisions did not distort competition in the market place, and that they could not be asked to seek to maximize profits; and (b) that the existence of a subsidy, in whatever form, pre-supposed a cost for the government. The Community would focus, at this stage, on the standard chosen by the United States in these cases, that is, the "reasonable private investor" (or, in other words, whether the investment was "consistent with commercial considerations"). A signatory to the Agreement, when choosing criteria it believed were appropriate to interpret and apply the provision of Article 4:2, had at least to ensure that such criteria were consistent with logic, with economic reality and with the facts of the case under investigation. The methodology employed by the United States to determine whether an equity infusion or a loan made by public authorities constituted a subsidy or contained an element of subsidization was fundamentally flawed. Even if one accepted, for the sake of argument, the assumptions on which it was based, this methodology was nonetheless inconsistent with plain logic, with economic reality, and with the facts of the cases investigated. For these reasons, this methodology was liable, in certain cases, to result in findings of subsidies where none existed, and in other cases in an exaggerated calculation of the amount of the subsidy, thus violating Article 4:2 with the imposition of countervailing duties in excess of the amount of existing subsidization.

147. Debt forgiveness by private banks. The United States had countervailed debt forgiveness provided by private banks to a steel company. There was no justification for countervailing such actions by a private party, taking into account that there had been no financial contribution at all from the granting authority. The United States had argued that the banks' action had been brought about by the government intervention, but nowhere had it been demonstrated that this was case. The governments

might have made the initial approach to request the private creditors to forgive a part of this company's debt. The governments were also prepared to act to safeguard its own interest in the company's survival. However, this could not mean that the action of the banks was required or mandated by the government, nor that it was anything other than an independent commercial decision to forgive part of their debt in order to protect their interests as creditors of the company. In these circumstances there existed no justification for a finding of subsidization as far as the debt forgiveness by private entities is concerned.

148. While the representative of the EEC had deliberately not gone into the same detail as in the EEC's written submission, it could be seen that these issues were extremely technical and complex. But as always, in these matters, the reality that lay behind these technicalities was far simpler. There were in the Agreement two basic requirements: (1) The imposition of countervailing duties is conditional upon a finding of the existence of a subsidy, and a finding that the subsidized imports were, through the effects of the subsidy, causing material injury to the domestic industry of the like product; and (2) No countervailing duty should be levied on any imported product in excess of the amount of the subsidy found to exist, calculated in terms of subsidization per unit of the subsidized and exported product.

149. In the view of the EEC, the United States had, over the years, unilaterally developed a methodology for establishing the existence of subsidization and the amount of such subsidization, aimed entirely at extending the concept of subsidy, even in the absence of a financial contribution by the government, and at stretching the amount of the subsidy far beyond the amount of money actually provided by the state. In order to achieve this result the US Department of Commerce had resorted to interpretation and constructions more and more sophisticated, more and more abstract and which no longer bore any relationship whatsoever with the basic requirements indicated above, nor with economic realities or simple logic. In the present cases the United States Department of Commerce had in a number of issues taken its methodology even further in this direction. The result was that: (a) on a number of issues the DOC had come to decisions that defied all common sense; for instance, on privatization; and (b) the system had become horrendously complex and arbitrary with the consequence that its own authors had obvious difficulties in mastering it, as shown by the fact that the same argument was sometimes used to arrive at opposite conclusions. So one could easily imagine the difficulty of the task faced by respondents and their lawyers, when confronted with such an artificial intellectual construction, the more so given the strong tendency of the Department of Commerce to shift the burden of proof to the respondents.

150. In the view of the EEC, the United States attitude in this field could best be summarized by a quotation from a little character from a famous French book for children: that is that "if you cross the boundary, there are no longer any limits". The boundary in this case was quite clear if one accepted certain basic concepts contained in the Agreement and common sense notions, such as that a subsidy is the amount of money disbursed by the government, and not several times that amount. Unfortunately the United States, in its desire to make the CVD statute punitive, rather than remedial, contrary to the intent of the GATT; had chosen to ignore this boundary and launched itself into developing an artificial methodology, ever more far-reaching, arbitrary and unreasonable, the expansion of which seemed to have no bounds. The United States authorities were thus acting in clear violation of the Agreement and it was high time to put a stop to this. The members of this Committee should support the Community in its efforts to do so.

151. The representative of the United States stated that his delegation had listened attentively to the issues and concerns outlined by the EEC. The United States understood that these cases carried great sensitivity and importance to the EEC, as other steel cases carried to other signatories. They were of equal importance to the United States. They concerned a significant amount of trade and

involved a significant amount of subsidization. The US authorities did not use instruments for political purposes. They should be used in an objective, impartial and neutral manner, and that was how these investigations had been conducted. The United States had satisfied the standard set forth by the Subsidies Agreement and the General Agreement. It fully respected the EEC's right to bring this matter before the Committee for the purpose of conciliation. The United States was disappointed that the EEC saw no better outcome as a result of bilateral consultations. The United States had welcomed the opportunity to consult and hoped that, at a minimum, consultations had furthered the parties' mutual understanding of their positions.

152. The representative of the United States noted that many of the issues raised by the EEC in some cases were subject to final determinations and in other cases to preliminary determinations. In the latter cases, which were judged on the record of those cases, the US Department of Commerce had to digest the arguments made by the parties and was conducting public hearings. All sides had the opportunity to make their arguments known in full. In those cases, final determinations had yet to be reached. This did not mean that necessarily decisions made on the facts of other cases would be reversed, but it did mean there was still some analysis to be done.

153. The United States had noted with interest the explanations and observations of the EEC and other signatories regarding Article 4:2 of the Agreement and the footnote thereto. The US delegation agreed completely that Article did not provide license to any signatory to create subsidies out of whole cloth. But they were nonetheless generally expressed rules. Thus, so long as there were reasonable and reasoned analyses underlying the decisions of the investigating authorities, that interpretation should be respected. Other signatories had developed their own interpretations of those provisions, and the United States respected those interpretations, but the Agreement did not prescribe specific guidance on all of the issues raised by the EEC. The United States did not necessarily take issue with the standard expressed by the EEC, relating to economic reality, analysis of the facts, and logic. All of those principles were fully respected in these investigations.

154. The United States was relieved that the EEC acknowledged that for certain subsidies the economic effects extended beyond the point in time at which the subsidy was provided, and that as a result it was necessary for investigating authorities to determine an appropriate period over which to allocate benefits arising from those kinds of subsidies. The Agreement offered no guidance on how to do this. The Committee had developed guidelines which recognized that there was no universally established financial and accounting theory or practice on which to go by and that some general guidelines therefore had to be followed. On the basis of those guidelines, the United States had developed a practice that relied on the average useful life of a firm's renewable physical assets as reflected in the 1977 Class Life Asset Depreciation Range System as developed by the US Internal Revenue Service. The United States was puzzled by EEC claims that this was outdated and defied economic reality. The system was developed in the 1960s following an exhaustive study of depreciation experience in thousands of corporations, a variety of engineering studies and a comparative analysis of foreign tax depreciation methods. It was revised and reviewed on many occasions since, most recently in 1984. The EEC attached some importance to the fact that the US Internal Revenue Service might not rely on these guidelines currently for purposes of tax depreciation, but that did not mean these guidelines were no longer reasonable or reflective of general financial and accounting practices. They continued to be used as a reference point by a number of companies. Evidence presented on the record of the investigations showed that a significant number of US steel producers for purposes of their own financial reporting used depreciation guidelines which were consistent with those applied in the IRS schedules, and steel companies in at least two of the EEC Member States also were applying average depreciation periods consistent with the amount of time referenced in these guidelines.

155. The United States noted that the EEC suggested in the alternative that the United States should have used the experience of the industry of the country under investigation, and that was a possible reasonable alternative. The Department had declined to do so in the past because the amortization

periods involving the same product in the same period in two different countries under investigation might be different, and a finding in two factually identical situations that a subsidy lasted for a different period of time might result. That might be overcome by the weight of persuasiveness with respect to the experience of a particular industry in a particular country, but it was not necessarily a better or more reasonable method than that followed by the United States in terms of seeking a predictable, consistent standard applicable to all. The EEC also had stated that US courts had consistently held that the use of a 15-year allocation period was not in accordance with US law. There was a court decision stating that the 15-year period had to be explained vis-à-vis the facts of the particular case in hand. The Department did not necessarily share the view of the first reviewing court, and might at the appropriate time choose to appeal that decision. In any event, that did not say that the use of a 15-year period was in and of itself unreasonable.

156. With respect to the so-called recalculation of the amount of non-recurring subsidies, the representative of the United States stated that the Department had developed a methodology to calculate the benefit to the recipient of a subsidy according to a recognition that the nominal amount of money might not represent the value of that subsidy over time to the recipient of the subsidy. In the context of allocating over an extended time period for non-recurring subsidies the amount of the subsidy benefit, and to make sure that for each sub-period over which that benefit was allocated the accumulated amount did not exceed the face value of the subsidy, the Department applied discount rates that reflected the ability of the company under investigation to raise capital on its own. This did not produce a subsidy calculated in excess of its amount, it simply produced a subsidy calculated to reflect its true value. This might not be satisfactory to the EEC in light of its discomfort with the benefit to recipient valuation standard, but it did not transgress US obligations under the Agreement.

157. With respect to the allocation of subsidies over production, the representative of the United States stated that the case in hand raised a fairly unique issue which the Department had not previously faced. In light of that, the Department had deemed it necessary to evaluate the nature of the subsidy programmes to determine whether they were or were not largely benefiting domestic production. On the basis of its analysis, which did not suggest that the burden of proof should be shifted but was mainly an analytical approach towards a collection of facts that were placed before the Department, the Department determined that the subsidies in question were largely aimed at benefiting domestic production. They sought to promote domestic social policies and economic activities. The EEC essentially was asking the Department either to pretend that certain subsidies did not exist or to presume that the Government of France intended to subsidize production outside of France. The former alternative did not reflect economic reality and the second was nonsensical. If it could have been shown on the basis of information requested by the Department that subsidies actually were tied to production outside of France, the Department might have taken a different approach. This issue was under consideration in the flat-rolled products investigation and would be reconsidered on the basis of the facts presented in that case.

158. Regarding the treatment of subsidies provided to firms prior to privatization, the representative of the United States considered it important to distinguish between the desirability of privatization per se and how the act of privatization should be considered in the context of the examination and treatment of non-recurring subsidies provided prior to the privatization. The second question was factual, and should not be skewed one way or the other by subjective analysis as to a philosophical question on the wisdom of privatization. Article VI of the General Agreement and the Subsidies Agreement both spoke of subsidies provided upon the manufacture, production or export of merchandise. They did not speak to subsidies provided to owners of firms. In light of this emphasis on the merchandise itself, the Department determined it was appropriate to view subsidies as attributable to products manufactured by the subsidy's recipient, that is, the company or productive entity, and not to the owners of the company, which were distinct from the company itself. This concept had been applied for years in other contexts, such as where shares were available on the market and the government bought those

shares. The distinction was made between any benefit to the company and benefit to the shareholders who owned those shares previously. This was a complex and difficult issue, and was the subject of extensive analysis and argument by the US investigating authorities. The Department relied heavily on its past experience administratively and on arguments placed on the record by the parties. It was subject to ongoing investigations. The additional arguments being made by the parties would be fully considered. The issue was important to various signatories, and the attention to the issue would fully reflect that importance. But it was not a new practice followed by the Department. The issue had arisen in detail in only a couple of previous cases, and the old practice alluded to by the EEC was a preliminary determination in an administrative review. The decision in that review was considered in these cases. This was not a black and white issue. The Department believed its determination reflected economic reality and the provisions of the GATT, and would reflect further on this in the ongoing investigations.

159. Regarding determinations of equityworthiness and creditworthiness, the representative of the United States stated that its written statement went into great detail on Department practice. The reason for this standard was the recognition that a government infusion of money into a company was not in and of itself necessarily a subsidy, and that it had to be judged on the basis of commercial principles. The EEC believed the US methodology was flawed regarding the short-term nature of the financial indicators that were considered, describing three years of information as short-term. While three years of data was not necessarily a short-term analysis, the Department asked whether the investment in and of itself was a commercially reasonable one, and whether the particular company under consideration did well or badly ten or fifteen years ago might not be very useful in determining whether the investment today was a commercially reasonable one. The three-year standard was outlined in the Department's proposed regulations, which emphasized that other factors could also be raised by the parties. The EEC argued that an inside investor might take other factors into consideration than those of an outside investor and yet reflect sound commercial decision-making. The analysis of the Department did not focus so much on whether all of the reasons behind an investor's decision to invest made sense, but whether the investment made sense from a commercial perspective. Returning to the theme of economic reality, it was apparent on the record of these investigations that economic reality was not monolithic on this issue. The parties had alluded to various economic studies and textbooks which argued whether or not an inside investor really had a different perspective vis-à-vis a particular investment. The signatories should look at the issues included in the US statement. It was debatable whether economic reality was on the side of the EEC position on this point. In any event, the US perspective was not inconsistent with the Agreement. The investment under consideration, and not the motivations of the investor, were considered. The fact that the investor might already be a partial or complete owner and might or might not have suffered considerable losses in the past from an economic reality perspective did not say much about whether or not a reasonable private investor would make an investment at that particular juncture.

160. The representative of the United States stated that, regarding the forgiveness of debt in the context of a steel company restructuring plan in the Federal Republic of Germany, the Department requested information from the parties to the proceeding on this matter, and on the basis of that information it drew certain logical conclusions reflective of economic reality. The recipient of the subsidy had a considerable amount of debt forgiven as a result of the action of the Governments of the Federal Republic and of Saarland. The question whether either of those Governments coerced private bank creditors into forgiving a portion of their debt might or might not be relevant. This situation represented at a minimum a situation where as a result of explicit and concerted government action an amount of money was forgiven, and that provided a benefit to the recipient. The EEC said there had been no financial contribution from the government with respect to some portion of the funds forgiven. That was true, but there was no financial contribution requirement in the Agreement, as referred to in a panel report discussed earlier today. The economic reality was that as a result of government action a totality of money had been forgiven.

161. The representative of Japan stated that the investigation of Japanese steel products related only to anti-dumping. However, massive CVD and AD investigations were not warranted in light of GATT provisions. Japan shared the concerns of the EEC and other countries on CVD investigations. Steel trade with the United States had been restricted for many years until last March. Under these circumstances, the allegation that steel exports had caused injury to the US steel industry was not warranted. Japan hoped the United States would respond to the EEC's concerns in a responsible manner.

162. The representative of Brazil stated that Brazil subscribed to virtually all of the EEC's presentation, with a few exceptions. With respect to the US presentation, the explanations did not dispel Brazil's concerns. The representative of the EEC had quoted from a book for children. The situation reminded the representative of Brazil of another book, Lewis Carroll's "Alice in Wonderland"; of each move a player made, the rules of the game changed. Brazil referred to debt conversion, equity infusions, change of methodology from rate-of-return shortfall to grant, development bank lending, how debt affected the calculation of subsidies and the effects of privatization. In regard to each of the elements, the approach taken by the US authorities was so high-handed that Brazil had a feeling that further steps to reach a mutually satisfactory situation in the investigations would be useless. The US methodologies was based on imperfect technical organization, was arbitrarily adopted, and was overwhelmingly disputed by nearly all US trading partners. The US authorities had taken an enormous burden on their shoulders by using these methodologies. Brazil supported the EEC request.

163. The representative of Finland, speaking on behalf of the Nordic countries, stated that the scope and vastness of the US action and its impact on the international steel market gave reason for serious concern. The timing and unprecedented scope of the complaints and of the US action constituted a large-scale design to turn off steel imports to the United States at competitive prices. While Article 4:2 of the Agreement did not give any detailed guidelines for individual cases, it should not be concluded from this that there was carte blanche go above and beyond the principles clearly expressed in the Agreement. Regarding equity infusions being treated as grants, there was no economic rationale for this approach. Regarding the allocation period, it should reflect economic reality and be specific to the firm. The methodology applied by the United States, however, appeared to reflect administrative convenience. Regarding privatization, the US methodology led to double counting of the bestowed subsidy. He fully supported the EEC arguments and its request for conciliation.

164. The representative of Canada did not agree with all the EEC's comments, but was concerned with certain aspects of the US methodology in the cases. The implications went far beyond steel. The proposed treatment of "pre-privatization subsidies" was a matter of particular concern. He viewed this as an issue of pass-through of subsidization. The US approach was akin to creating a scarlet letter for every subsidy so that no matter where the subsidy went it would forever be tagged with a stigma. This abstracted the meaning of subsidy from the laws of the market which the United States professed in using its countervailing duty law. It entirely contradicted the concept of benefit to the recipient.

165. The representative of Austria provisionally stated that some of the problems and measures mentioned by the EEC also concerned Austria. Austria reserved the right to make further reference to these issues.

166. The representative of the EEC welcomed the statement by the US delegate that the Agreement required the investigating authorities to base their decision on a fair and reasonable manner on the basis of the facts and consistent with the general rules of the Agreement, as well as his agreement to the standard expressed in the EEC's statement. The EEC found the US determinations inconsistent with such a standard. As for the possibility that the US Department of Commerce could rethink its conclusions based on new or different information, what was the place in this respect of information and arguments

provided during the consultations? Would they be part of the record on which the decision would be made?

167. The representative of the United States responded that the determinations had to be based on evidence on the record of the investigations. Information provided in the context of consultations with the EEC was not information on the record of the investigation, unless the EEC as a party to the countervailing duty proceedings chose at the appropriate time, which might have already passed given the statutory deadlines, to place such information on the record in the case. Regarding arguments surrounding the appropriate interpretation of facts that were on the record, US authorities would not ignore such arguments in making up their minds. However, it was the information on the record of the case and the Department's analysis of it that had to form the basis of its determination.

168. The representative of the United States stated that it was very easy to express disagreement with the US methodology. However, it was necessary to show that that methodology was not consistent with the Agreement. This the EEC had not done.

169. The representative of Canada understood the US view to be that a matter could not be brought before a GATT panel unless it had been raised before the domestic authorities. Yet now it stated that comments made by the EEC during consultations would not form part of the investigative record. This was a "catch 22." The Salmon panel therefore was correct in dismissing the US view.

170. The representative of the EEC was concerned by the response of the United States. It was the duty of all signatories in cases concerning the EEC to take account of arguments and facts discussed in consultations under the Agreement and decide on them if warranted. This separation between the GATT process and the internal US domestic process was seriously disturbing.

171. The representative of the United States stated that no "catch-22" existed. The problem perceived by Canada was a red herring. The information presented on the record of the investigation provided the basis for the US determination. This did not mean that those arguments could not be raised in the context of the case or that arguments presented to the US authorities on the interpretation of provisions of the Agreement in consultations would not form a part of the analysis of the facts of the particular case. These concerns elevated form over substance.

172. The representative of Brazil noted that the US had stated it would not take into account information given in bilateral consultations. He did not understand what would be taken into account or not. It was very difficult to separate information from argumentation. He was doubtful as to the usefulness of the bilateral consultation session Brazil had with the United States.

173. The representative of the EEC stated that if the information and arguments provided during consultations were not the basis for the decision then consultations under the Agreement were rendered meaningless.

174. The representative of the United States stated that the consultations in these cases had been constructive and had played a role in the decision-making and analysis of the US authorities. At the same time, all of the parties which had spoken today (except Canada, which was not subject to countervailing investigation) had placed the arguments also raised in the consultations before the authorities. No new argument was raised in consultations that had not been raised in the context of the investigations. The concerns being expressed were exaggerated.

175. The Chairman encouraged the parties to this dispute to continue to make efforts to reach a mutually satisfactory resolution, as provided by Article 17:2 of the Agreement.

176. The Committee took note of the statements made.

J. United States - Countervailing duties on non-rubber footwear from Brazil - Report of the Panel (SCM/94 and 96)

177. The Chairman noted that the Report of the Panel was circulated on 4 October 1989, and had been examined at seven meetings since that time. At the meeting of 28 October 1992 the Committee agreed to revert to this matter at its next regular meeting (SCM/M/62, para. 81). As this Panel Report had remained before the Committee for quite a long time, he hoped that the Committee would be in a position to take action on it at this meeting.

178. The representative of the United States noted that this report had been before the Committee for a long time and hoped that Brazil would be in a position to agree to its adoption. The United States had promptly permitted the adoption of a report on this same matter in the GATT Council.

179. The representative of Brazil recognized that the United States had agreed to adoption of a panel report in the Council. However, there had been no new developments with regard to the underlying concrete issue. Brazil had not given up hope that there would be a result on the basis of that panel report of June of last year. The panel report found that the United States had violated the most-favoured-nation requirement of Article 1:1 of the General Agreement, which was a pillar of the General Agreement. It would be inappropriate to adopt the panel report being examined by this Committee, as it would not contribute to a resolution of the concrete dispute and would lead to misunderstandings.

180. The representative of United States deeply regretted that Brazil again was unable to permit the adoption of this Report, and had offered no reason why the Report should not be adopted by the Committee.

181. The representative of Brazil stated that the records of the Committee showed that Brazil and several other countries had at length explained why they could not accept the contents of the Report. Further, the GATT was for solving concrete issues. In adopting the Panel Report in the Council the CONTRACTING PARTIES found that the United States was violating Article 1 of the General Agreement. As there were no specific remedies in that report, Brazil had heard on several occasions with great dismay that the United States was reluctant to solve the concrete issue because it was not told to do anything, while it had stated in the Anti-Dumping Committee and in this Committee that it could not accept specific remedies.

182. The Committee took note of the statements and agreed to revert to this matter at a future meeting.

K. German exchange rate scheme for Deutsche Airbus - Report of the Panel (SCM/142)

183. The Chairman stated that the Report of the Panel was circulated on 4 March 1992, and had been examined at various meetings since that time (SCM/142). At its meeting of 28 October 1992 the Committee had agreed to revert to this matter at future meetings (SCM/M/62, para. 90).

184. The representative of the United States stated that this item had been on the agenda for some time. The United States stated that both the Panel Report itself and its subject matter - a prohibited export subsidy - were matters of great importance to the continued administration of the Agreement and to the work of the Committee. He hoped that the EEC would permit the adoption of the Report.

185. The representative of the EEC stated that at a meeting of 28 April 1992 the EEC had expressed its very serious problems with this Panel Report and in particular with the legal reasoning followed by the Panel. This legal reasoning was seriously flawed, would have disastrous consequences for the

interpretation of the Agreement, and would interfere most seriously with the "constitutional" affairs of the EEC. But regardless of this, the reasoning in terms of purely multilateral rules was in contradiction with basic truths of international law and of the multilateral trading system. The German Government had taken unilateral steps to take care of the underlying commercial side of the dispute.

186. The representative of the United States regretted that the EEC was unable to permit the adoption of this important report.

187. The Committee took note of the statements made and agreed to revert to this matter at a future meeting.

188. The Chairman stated that, before entering into a specific discussion of the next three items, he wanted to make a clear expression of his concern at a situation before the Committee which should be of equal concern to each and every member and observer of this Committee. The record of the Committee with respect to the adoption of panel reports was abysmal. Although the Committee recently had made some progress through the adoption of reports on Grain Corn and Wine, the fact remained that five of the seven panel reports submitted to the Committee over its nearly fifteen year history had neither been adopted nor otherwise disposed of (this did not include the two panel reports presented to the Committee today). This situation undermined the credibility of the dispute settlement system under the Agreement. To what purpose did the dispute resolution system serve if panel reports remained unadopted? It was of no use either to the parties to the dispute nor to signatories who might hope that some legal points could be clarified through the reports. This called into question the dispute resolution system which was an integral part of the Agreement. Almost two years ago the Committee had focused on this issue. In a meeting of 1 May 1991, every signatory that spoke on this matter, and that included virtually all of them, had energetically condemned the stalemate in adoption of panel reports in the strongest terms (SCM/M/51, para. 76-93). Nevertheless, the situation was little changed today. In light of the clearly expressed view of the Committee that action should be taken on these reports, the Committee had to tackle this situation. This situation could not remain as it was today. While he was concerned about all unadopted panel reports, the following three reports were as much as ten years old and were still before the Committee and still unadopted.

L. EEC subsidies on exports of wheat flour - Report of the Panel (SCM/42)

189. The Chairman noted that the Report of the Panel in this matter was circulated on 21 March 1983, more than ten years ago. This Report was of a distinct nature from other panel reports that this Committee had considered. Unlike other unadopted reports, this Report neither proposed solutions with respect to the particular dispute at hand nor resolved any questions of legal interpretation of the Agreement. Accordingly, he proposed that the Committee take note of this Report and remove it from the agenda.

190. The representative of the EEC did not disagree with the decision to treat these three panel reports separately. But they had been dealt with together because of linkages between them which the EEC had not created. Today at least some of these linkages no longer existed, but in the minds of many the histories of these three cases remained inextricably linked. The EEC had begun a review process of the unadopted panel reports to determine whether it could change its position or not, but this process had not yet been concluded. The EEC could not therefore agree that the Committee take note of the Report at this stage.

191. The Chairman noted that he had proposed to take note of the Report and to remove it from the agenda. For clarification did the EEC agree to remove the Report from the agenda without taking note of it?

192. The representative of the United States asked for clarification regarding the difference between the Committee taking note of an item and taking it off the agenda and the Committee not taking note of an item and taking it off the agenda.

193. The Chairman stated that it was a matter of whether or not the panel report was acted on. Regarding the remarks of the EEC, while it was true in the past that these panel reports had been linked with the aim of finding a single solution, the EEC itself had recognized that perhaps these linkages no longer existed. Regarding the EEC's review process, what solution was the EEC prepared to offer to the Committee?

194. The representative of the EEC could not see how he could object to removing the Report from the agenda without taking note of it. On the other hand, it was an unusual procedure. What would it mean? As for not agreeing to taking note, nobody knew the legal consequences of taking note of a report. The EEC review process was still under way, and the EEC did not have a solution to propose.

195. The Chairman clarified that when he referred to the difference between taking note and deleting a report from the agenda, he was not making a proposal. He was asking a question to understand the EEC's position.

196. The representative of the Brazil was also unclear regarding the Chairman's proposal or question to the Committee. Brazil shared the Chairman's concerns regarding the effectiveness of the dispute settlement system. On the other hand, in light of Article 18:9 of the Agreement, if the Chairman were hypothetically proposing to take note of a report without the Committee making a recommendation, Brazil did not understand how this related to the functions of the Committee. As Brazil had stated earlier in this meeting, it did not believe the Committee could waive its responsibility to consider in full the conformity of reports with the Agreement. The Committee should not perform a rubber-stamping function. The fact that the Committee did not automatically adopt reports was not abhorrent to Brazil as it seemed to be the Chairman. It was the duty of the Committee to examine the contents of reports and make recommendations to the parties.

197. The Chairman stated that taking note and removing a report from the agenda was quite different from simply removing a report from the agenda. If the Committee did not take note of the report, there would be no record of it in the meeting. There were precedents in the Council for considering, taking note and taking no action on a report. So taking note was an integral part of the proposal.

198. The representative of Hong Kong did not understand what the Chairman's proposal was intended to achieve. Whether a report was on or off the agenda did not affect the status of a report. In any case, it could be put back on the agenda. Regarding taking note of the report, he believed that the Committee should already have done so when the report was presented to the Committee.

199. The representative of Australia shared Hong Kong's confusion. If the Chairman was suggesting that all the old unadopted reports be removed from the agenda rather than go through the procedural motion of raising them at each meeting when realistically nothing would happen, there would be some sense in this from the perspective of the practical operation of the Committee. It would always be the case that the interested parties could have the reports put back on the agenda or raised under other business if there were a basis on which for the interested parties to move. This would not alter the fundamental role of the Committee to make recommendations in order to resolve the issue addressed

in the panel. If the Chairman were proposing to put this and other reports "in the cupboard" in this manner, Australia would have no difficulty with it. If he was suggesting more than that, it needed to be clarified. Would the proposal regarding wheat flour also be put to the Committee in relation to the other four panel reports that were in a similar position in terms of non-adoption?

200. The representative of Brazil stated that his delegation would need some time to reflect on the Chairman's proposal. He proposed that the item be kept on the agenda until the next meeting.

201. The Chairman stated that his proposal referred only to this report on wheat flour, which had no solution proposed in its text or legal interpretation of the Agreement, so that its legal value was different from the panel making a recommendation to the parties or interpreting a given provision of the Agreement. In other words, this Committee might very well take note and eliminate this panel from the agenda because it contained no recommendations, no solution and no interpretation of the Agreement. There was no consensus to do so, however.

202. The representative of Hong Kong reserved the right to comment on the statements of the Chairman regarding the legal effects of panels.

203. The Committee took note of the statements made and agreed to revert to this matter at future meetings of the Committee.

M. EEC subsidies on exports of pasta products - Report of the Panel (SCM/43)

204. The Chairman noted that the Report of the Panel was circulated on 19 May 1983. Like the previous panel discussed by this Committee, it had been before the Committee for almost a decade. While agreement had been reached between the parties to the dispute regarding the trade effects of the practices involved, there has been no legal settlement. Accordingly, he proposed that this Report be adopted.

205. The representative of the EEC stated that this panel also was subject to an EEC review process. While there was a factual difference between this report and the previous one, the EEC had substantial problems with the legal reasoning in this report which made it even more sensitive to the EEC. He could not agree to its adoption.

206. The United States welcomed the Chairman's efforts to have this report adopted and regretted this would not be the case.

207. The Committee took note of the statements made and agreed to revert to this matter at a future meeting.

N. Canada - Imposition of countervailing duties on imports of boneless manufacturing beef from the EEC - Report of the Panel (SCM/85)

208. The Chairman stated that the Report of the Panel was circulated on 13 October 1987, approximately 5 1/2 years ago. In this case, the situation was perhaps even more serious than with respect to the previous item. The Panel Report in question concluded that a countervailing duty had been imposed that was not in conformity with a signatory's obligations under the Agreement. No agreement has been reached that would limit the trade effects of that action. Thus, in the absence of any alternative proposals to solve this dispute, he proposed that the Committee adopt the Report of the Panel.

209. The representative of Canada stated that the position of his Government on the issue had not changed for reasons that had been fully enumerated before the Committee.

210. The representative of the EEC pointed out that this case differed from the previous one. There had been no solution to the trade issue underlying this report. Since 1986 not a kilo of beef had been imported into Canada from the EEC because of these countervailing duties. Did Canada envisage that at some point a solution to the trade aspects of this dispute might be found?

211. The representative of Australia stated that the report was flawed in a number of important respects. The interpretations in the report highlighted a major deficiency in the Agreement in respect of the imbalance between the rights and obligations of export subsidies between unsubsidized and subsidized agricultural producers. This report was only one among a number on the outstanding list. There was no reason to highlight this report when other signatories had been able to avoid the spotlight by reaching bilateral accommodations on other unadopted reports.

212. The representative of Brazil repeated that it was the responsibility of the Committee to examine the contents of reports. This was an example of a case where a report presented an important issue of relevance to all of the signatories. It was the duty of the Committee to take that into account. Subsidization was a serious problem. This report was flawed. There should not be automatic acceptance of the report.

213. The representative of Canada stated that Canada remained committed generally, despite its views on the question of adoption of this report, to the dispute settlement system. Canada was prepared to examine, in whatever context, the possible solutions to the problem, including the trade aspects. Canada could not provide a specific answer as to when that might be done.

214. The representative of the EEC stated, with respect to Australia's comments, that it was not a matter of avoiding the spotlight. It was a matter of taking seriously the dispute settlement process. One could disagree very strongly with the legal reasoning of a panel report, but a country should try to do something about a trade dispute. The EEC had done so in the past and hoped it would be done in all cases. Regarding Brazil's comments, subsidization might be a serious problem - although it had to be demonstrated to be so - but unlawful countervailing duties were as serious a problem.

215. The Chairman underlined the importance of seeking a solution to these unadopted reports. Co-operation of the parties involved would be necessary. These reports had been examined on various occasions in the past. He proposed to continue the necessary consultations with the parties involved in these disputes, bearing in mind that the opinion of almost all signatories, and of the Chairman, was that these reports should be adopted.

216. The Committee took note of the statements made and agreed to revert to this matter at its next regular meeting.

O. Other business

(i) EEC - Alleged export subsidization of glacé cherries - request for consultations by Australia

217. The representative of Australia stated that Australia had sought consultations under Article 12 of the Agreement with the EEC regarding the payment of an export subsidy on glacé cherries. This subsidy was inconsistent with Article 9 of the Agreement. Notification of the request was circulated

to the Committee in SCM/166 of 21 April 1993. The EEC had agreed in spite of short notice to hold consultations the following week, when relevant officials would be in Geneva for the meeting of a panel on the same product.

218. The representative of the EEC confirmed that the EEC had agreed to consultations on alleged export subsidization. It would endeavour to supply as much information as it could. The topic was complicated and this might be only the first meeting.

(ii) Workshop on Anti-Dumping and Countervailing Measures

219. The Chairman noted that most delegates had attended the meeting of the Anti-Dumping Committee earlier this week at which this Workshop was discussed. In recent years, an increasing number of developing countries, both signatories of the Subsidies Agreement and non-signatories, had begun to use countervailing measures. That, of course, was the right of every contracting party. Nevertheless, because these investigations were complicated, new users might require special training in order to avoid mistakes and to conduct investigations in the efficient, fair and transparent manner envisioned by the GATT and the Subsidies Agreement.

220. The Chairman noted that the secretariat had recently held a workshop for developing countries with the goal of providing this type of training. Sixteen administrators from eight developing countries had participated, but due to lack of space and funds many other countries were excluded. This type of workshop met an unfilled need. It would be useful for the Committee to encourage further such workshops. He suggested that the Committee support the decision adopted in the Anti-Dumping Committee, and that it support workshops for developing countries and others in a similar situation. He hoped the developed countries signatories to the Agreement would be in a position to assist the secretariat in regularly holding such workshops, through financial contributions or by providing experts to serve as lecturers. SF 60,000 per year were necessary in order to cover basic costs for two Workshops per year. This would allow various developing countries to participate in these courses.

221. The representative of Brazil believed this was an important question which countries should have the time to consider. He regretted it had not been included on the regular agenda. The Agreement did not divide developed and developing countries on the countervailing side. It was assumed that developing countries would have the same standards of rigour and fairness in their investigations, and this was the case. Investigating authorities in developed countries also needed to be trained so they could apply the Agreement in a fair manner, and this was not always the case. In other words, he was concerned with who would teach what to whom. Nevertheless, Brazil gave its preliminary support to this idea. He understood that financial and human resources were needed and we would therefore give that support. He would inform his Government and see if Brazil had other views on this matter.

222. The Chairman stated that when he referred to developed countries as those that might make financial contributions, this was because their per capita GNP was higher than that of developing countries. If developing countries also would like to make financial contributions, or to provide technical experts, that would be welcomed. This training programme was for countries that had no yet fully implemented their systems.

223. The representative of Brazil clarified he had not intended to refer to the financial aspect but to the content of these Workshops.

224. The representative of the United States supported the Chairman's proposal. He noted that the United States had made a proposal in terms of the possible avenue of funding in the Anti-Dumping Committee, and he reiterated that proposal here.

225. The representative of Australia stated that his delegation did not speak on this matter in the Anti-Dumping Committee because it could not add to the chorus of support for the proposal. Australia fully supported this proposal. Australia had on a bilateral basis supplied such training to several south-east Asian countries, and arrangements were in place for others to participate in such training. These programmes were complementary. On one such case, two officers were in Australia for ten weeks, working directly alongside Australian officers.

226. The representative of Canada supported the programme. He noted Brazil's point. Canada did not pretend that its system was perfect, but it was prepared to provide technical expertise in order to explain the basic aspects of the system. Canada was not trying to promote a Canadian system in other countries. But the basic principles underlying any system remained the same. Canada also had received a number of delegations bilaterally at their request from Latin American countries seeking technical advice.

227. The representative of Japan stated that his Government supported the proposal. As the Chairman had correctly noted, some developed countries were not correctly carrying out the countervailing investigations.

228. The Committee took note of the statements made.

Date of the next regular meeting

229. The next regular meeting of the Committee will take place in the week of 25 October 1993.