

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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Committee on Subsidies and Countervailing Measures

MINUTES OF THE MEETING HELD
ON 28 APRIL 1994

Chairman: Mr. O. Lundby (Norway)

1. The Committee on Subsidies on Countervailing Measures ("the Committee") held a regular meeting on 28 April 1994.
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) Brazil (SCM/1/Add.26/Suppl.3)
 - (ii) Colombia (SCM/1/Add.29/Suppl.1)
 - (iii) Korea (SCM/1/Add.13/Rev.1/Suppl.2)
 - (iv) Other legislation
 - C. Notification of subsidies under Article XVI:1 of the General Agreement
 - (i) Updating notifications due in 1994 (L/7375 and addenda)
 - (ii) Full notifications due in 1993 (L/7162 and addenda)
 - (iii) Full notifications due in 1990 (L/6630 and addenda)
 - D. Semi-annual reports of countervailing duty actions taken within the period 1 July 1993-31 December 1993 (SCM/180 and addenda)
 - E. Reports on all preliminary or final countervailing duty actions (SCM/W/302 and 306)
 - F. United States - Countervailing duties on certain carbon steel flat products from several member states of the EC - Request for the establishment of a panel (SCM/182 and Corr.1)
 - G. Brazil - Imposition of provisional and definitive duties on milk powder and certain types of milk from the EEC - Report of the Panel (SCM/179 and Corr.1)
 - H. United States - Imposition of countervailing duties on imports of fresh and chilled Atlantic salmon from Norway - Report of the Panel (SCM/153)
 - I. United States - Countervailing duties on non-rubber footwear from Brazil - Report of the Panel (SCM/94 and 96)

- J. Germany Exchange Rate Scheme for Deutsche Airbus - Report of the Panel (SCM/142)
 - K. EEC subsidies on exports of pasta products - Report of the Panel (SCM/43)
 - L. EEC subsidies on exports of wheat flour - Report of the Panel (SCM/42)
 - M. Canada - Imposition of countervailing duties on imports of boneless manufacturing beef from the EEC - Report of the Panel (SCM/85)
 - N. Other business
 - O. Date of the next regular meeting
- A. Election of Officers
- 3. Mr. Ole Lundby was elected Chairman. Mr. Asaf Ghafoor was elected Vice-Chairman.
- B. Examination of countervailing duty laws and/or regulations of signatories of the Agreement (ADP/1 and addenda)
- (i) Brazil (SCM/1/Add.26/Suppl.3)
- 4. The Chairman noted that the EC had submitted written questions to Brazil regarding changes to Brazil's legislation in document SCM/W/300. Brazil had provided preliminary oral replies to the questions at its last regular meeting and had recently submitted answers which were circulated to the Committee as SCM/W/307.
 - 5. The delegate of the EC thanked Brazil for its responses to the EC's questions.
 - 6. The Committee concluded its examination of Brazil's legislation.
- (ii) Colombia (SCM/1/Add.29/Rev.1)
- 7. The Chairman recalled that changes to Colombia's legislation had been circulated in document SCM/1/Add.29/Rev.1. The EC had submitted written questions to Colombia in document SCM/W/299. Colombia had provided oral replies at the last regular meeting.
 - 8. The delegate of the EC thanked Colombia for its written responses.
 - 9. The Chairman recalled that on 25 January 1994 Canada had also submitted written questions to Colombia in document SCM/W/304.
 - 10. The delegate of Colombia noted that answers to Canada's questions had been submitted recently but had not yet been circulated to the Committee.
 - 11. The Committee decided to revert the item at its next regular meeting following the circulation of written answers to the questions posed Canada.

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

12. The Chairman recalled that Canada had posed questions to Korea similar to those Canada had posed to Korea in the Anti-Dumping Committee, in relation to changes to Korea's legislation notified in SCM/1/Add.13/Rev.1/Suppl.2. Korea had responded to the questions in ADP/W/334 in a document circulated to the Anti-Dumping Committee in ADP/W/356.

13. The delegate of Canada noted that the answers provided by Korea were sufficient but asked that those answers be circulated as an SCM document to the Committee.

14. The Committee took note of the statements made and concluded its consideration of Korea's legislation.

(iv) Other legislation

(a) Uruguay (SCM/M/67, paragraphs 42-44)

15. The Chairman recalled that the EC had, in writing, and at the last regular meeting of the Committee, posed certain questions to Uruguay regarding a decree that had not been notified to the Committee. Uruguay had provided preliminary answers and had indicated that detailed information would be submitted to the Committee.

16. The delegate of Uruguay noted that the Executive Decree dated 6 July 1993 enabling the Ministry of the Economy of Uruguay to fix minimum export prices for imported products would be notified to the Committee. A transitional/provisional decree taking into account the commitments undertaken in the new Agreement on Subsidies and Countervailing Measures had also been enacted recently. The first mentioned decree was announced in the Trade Policy Review Meeting in June 1992 and involved the total elimination of reference prices and the gradual elimination of minimum export prices. He noted that the minimum export prices that existed now only applied to a very limited number of tariff lines, and had no significant effects or impact on trade. The delegation of Uruguay was willing to provide any further information concerning the decrees on a bilateral basis to any delegation.

17. The Chairman noted that the Uruguayan delegation would notify the Committee in writing of the Decree.

18. The Committee took note of the fact that Uruguay would provide written notification to the Committee. The Committee decided to revert to the matter at the next regular meeting of the Committee.

(b) Israel (SCM/M/67, paras 44-45)

19. The Chairman recalled that at the last regular meeting Canada asked Israel whether it intended to notify certain legislation which had not been notified to the Committee. The Chairman had indicated that he would inform Israel of the question posed to it by Canada as no representative of Israel was present at the last meeting. The previous Chairman had sent a letter to the Ambassador of Israel on 25 November last year in that respect.

20. The delegate of Canada appreciated the Chairman's efforts to try to elicit a response from Israel. Canada remained interested in a response.

21. The Chairman observed that he understood Israel had legislation in place and had produced an unofficial translation of the legislation. The Chairman noted that the time that had elapsed between 1991 and the meeting should be sufficient to obtain an official translation.

22. The Committee took note of the statements made and decided to revert to the matter at the next regular meeting.

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

(i) Updating notifications due in 1994 (L/7375 and addenda)

23. The Chairman noted that in accordance with the decision of the CONTRACTING PARTIES at its twelfth session, every contracting party should submit an updated response to the questionnaire on subsidies. An invitation to provide such responses had been circulated on 11 January 1994. Only Hong Kong in Add.1 to L/7375, Sweden and Australia had responded to that invitation. Due to the recent receipt of the latter two notifications, they had not yet been circulated to the Committee. He encouraged all signatories to promptly notify their subsidies as requested in document L/7375 and required by Article XVI:1 of the General Agreement.

24. The Committee decided to revert to the item at its next regular meeting.

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

25. The Chairman noted that in accordance with the decision of the CONTRACTING PARTIES at the twelfth session, each contracting party should submit every third year new and full responses to the questionnaire on subsidies. An invitation to provide such responses had been circulated on 11 January 1993 (L/7162). Notifications had been received from Hong Kong (Add.1), New Zealand (Add.2), Peru (Add.4), Australia (Add.5), Canada (Add.6), Finland (Add.7), Colombia (Add.8), Chile (Add.9), Uruguay (Add.10), Brazil (Add.11), Norway (Add.12), Austria (Add.13 and Suppl.1), Switzerland (Add.14), Sweden (Add.15), Indonesia (Add.16), the Philippines (Add.17) and Turkey (Add.18). No notifications had been received from the EC, India, Israel, Japan, Korea, Pakistan and the United States.

26. The Chairman recalled that at its last meeting the Committee had agreed to hold a special meeting to review those notifications. In the absence of notifications from, *inter alia*, the three largest trading powers and one of the largest developing nations in the GATT system, he could not see how such a meeting could be held. The special meeting, therefore, would be held once notifications had been received from those signatories who had not yet provided them.

27. The delegate of the EC stated that the EC was very close to the completion of the document for most sectors notified. The resulting document would be combined with the update requested at the beginning of 1994, for most of the sectors notified.

28. The delegate of India was unable to say when the notification could be provided.

29. The delegate of Japan stated that Japan would submit the full notification as soon as possible.

30. The delegate of Korea indicated the notification would be provided as soon as possible.

31. The delegate of Pakistan stated that Pakistan would try to provide the notification before June this year.

32. The delegate of the United States noted that the United States was treating the overdue notification as a matter of urgency.

33. The Committee took note of the statements made and decided to revert the item at a subsequent meeting of the Committee.

(iii) Full notifications due in 1990 (L/6630 and addenda)

34. The Chairman observed that, as the previous Chairman had noted at the last regular meeting of the Committee, the United States had not answered questions posed by Australia in SCM/W/283 with respect to the United States' notification. Accordingly, the Committee had agreed to keep this matter on the agenda pending written responses to these questions.

35. The delegate of the United States apologised for the delay, and advised the response would be provided in a matter of days.

36. The delegate of Australia thanked the United States delegation for its advice that a written response to Australia's questions was imminent. He hoped that the Committee could conclude the item at the next regular meeting.

37. The Committee took note of the statements made and decided to revert to the matter at the next regular meeting of the Committee.

D. Semi-annual reports of countervailing duty actions taken within the period 1 July to 31 December 1993 (SCM/180 and addenda)

38. The Chairman recalled that an invitation to submit Semi-Annual Reports under Article 2:16 of the Agreement was circulated on 12 January 1994 in SCM/180. To date the EC (Add.2), New Zealand (Add.3), Brazil (Add.4), Australia (Add.5), the United States (Add.6) and Canada (Add.7) had notified actions. In addition Colombia had very recently notified that it had taken actions. Austria, Chile, Egypt, Hong Kong, India, Indonesia, Japan, Korea, Norway, Pakistan, the Philippines, Poland, Sweden and Switzerland had notified that they had taken no actions during this period. Singapore, an observer, had notified the Committee that it had taken no actions during the period. Israel and Uruguay had not submitted notifications.

39. The Chairman asked Israel and Uruguay whether they had taken countervailing actions and when they would submit a written notification in response to SCM/180.

40. The delegate of Uruguay stated that Uruguay had not taken any countervailing duty action, and would provide written notification to the Committee as soon as possible.

41. The Chairman asked for comments in relation to the notifications received.

42. No comments were made.

43. The Committee took note of the statement made by Uruguay.

E. Reports on all preliminary or final countervailing duty actions (SCM/W/302 and 306)

44. The Chairman recalled that reports had been received from Canada, the EC and the United States. The Chairman urged any signatory which had taken countervailing actions to report those actions.

45. No comments were made in relation to the reports.

46. The Committee took note that there were no comments made.

47. The Chairman stated that he was extremely concerned about a tendency among signatories not to take the notification obligations of Article XVI and of this Agreement seriously. It seemed to him that this did not bode well for the effective operation of the new Final Act Agreement on Subsidies and Countervailing Measures. Successful implementation of the new Subsidies Agreement would depend on cooperation and transparency by all Members. The new Agreement contained notification procedures related, amongst other things, to transitional rules for prohibited subsidies, to non-actionable subsidies and to subsidies provided by countries in transformation to market economies as well as existing subsidies legislation and countervailing action notifications. Many of the Agreement's provisions simply would not function unless those notification requirements were taken seriously. If even the relatively small group of signatories to the current Agreement failed to comply with the notification requirements, it would be even harder to convince the membership as a whole of the WTO to do so. He strongly urged all signatories to make maximum efforts to comply with the notification obligations.

F. United States - Countervailing duties on certain carbon steel flat products from several member States from the EC - Request by the EC for the establishment of a Panel (SCM/182 and Corr.1)

48. The Chairman recalled that the EC requested conciliation on this matter in document SCM/176 and Add.1 and that the matter had been the subject of conciliation at a regular meeting of the Committee on 27 and 28 October 1993, and thereafter at a special meeting of the Committee on 10 November 1993. The EC had now requested the establishment of a Panel with respect to the matter. The request and the bases therefore had been circulated in SCM/182 and Corr.1.

49. The delegate of the EC recalled that recently the Committee had discussed a number of countervailing duty decisions by the United States against a number of steel products involving many signatories of the Subsidies Code. The Committee was therefore aware of the serious concerns raised by those cases.

50. He recalled that the Committee had decided in June 1993 to establish a Panel to decide on a number of issues in respect of the duties imposed by the United States on imports of lead and bismuth bar steel originating in France, the UK and Germany. That Panel had not yet presented its conclusions. In the meantime the United States had again imposed countervailing duties on a number of other steel products. It was in respect of issues arising in those other cases, that the EC now asked for the establishment of a Panel.

51. The Community had held several rounds of consultations with the United States on the preliminary subsidy and injury findings and the final subsidy and injury findings concerning flat rolled steel products. A number of those issues were subsequently raised in two conciliation meetings by this Committee. A large number of issues remained unresolved. The United States and the Community had fundamental differences concerning the interpretation of key provisions of the Subsidies Code and of their underlying rationale.

52. The Community therefore requested the establishment of a Panel in respect of several aspects of the countervailing duty methodology used by the United States. The Community reserved its rights under the Code in respect of all other issues concerning the US methodology that were not explicitly raised in the Panel request, and also in relation to the preliminary and definitive injury determinations in the flat-rolled steel investigations carried out by the United States.

53. There were two issues that the EC wished to highlight to the Committee. They were the treatment of subsidies that had been granted prior to the privatization of the company and the treatment of social subsidies.

54. Concerning pre-privatization subsidies, the EC was of the view that the imposition of countervailing duties could only be justified if it was demonstrated that subsidies were granted to a beneficiary of such subsidies. In the case of privatization at full market value, the newly formed company could not have the benefit of subsidies that were granted in the past to a state-owned company. This was because when a company had been sold at full market value, any remaining benefits from previous subsidies would be neutralized. The United States, however, had wilfully chosen to ignore this by making an irrebuttable presumption that a benefit received in the past would remain with a company, whatever had subsequently happened to that company. The EC considered that the United States had acted contrary to provisions of the Code, notably Article 4:2, and that the US findings were irrational.

55. The US had countervailed social subsidies supplied by governments to laid-off workers or to retirees from steel companies. The EC considered it clear that this kind of assistance benefitted persons, not companies. Countervailing duties could only be justified if the social subsidies had relieved the companies from legal obligations towards previous workers. But nothing of this kind had been demonstrated by the United States. The United States had made unwarranted assumptions, without examining the facts.

56. The EC did not seek an administrative review of the decision. The EC asked that the Committee, assisted by a Panel, clearly indicate how far the Code permitted signatories to extend application of their countervailing duty laws.

57. In this case the EC was not asking for the definition of issues left open by the negotiators of the Code, but for a determination whether the United States decision was in accord with international law, economic rationality, ordinary logic and with the facts available in each of those cases.

58. The representative of the United States stated that his government believed that the United States had acted in conformity with its obligations under the Agreement, but accepted the EC's right to request a panel.

59. The delegate of Japan reserved Japan's rights to participate in the Panel.

60. In accordance with the provisions of Article 18:1 of the Agreement, the Committee established a Panel as requested by the EC.

61. The Chairman noted that Article 18:1 set out the terms of reference that normally applied to panels under the Agreement. The parties in this case had not proposed modified terms of reference. In accordance with the terms of Article XVIII:1, therefore, the terms of reference of the panel were as follows:

"To review the facts of the matter referred to the Committee by the EC in SCM/182 and Corrigendum 1 and, in the light of such facts, to present to the Committee its findings concerning the rights and obligations of the signatories party to the dispute under the relevant provisions of the General Agreement as interpreted and applied by the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement."

62. In accordance with Article 18:3, the Committee authorized the Chairman to decide the composition of the panel in consultation with the parties concerned.

G. Brazil Imposition of provisional and definitive duties on milk powder and certain types of milk from the EEC - Report of the Panel (SCM/179 and Corr.1)

63. The Chairman recalled that the Report of the Panel was circulated to the Committee on 27 January 1994.

64. Mr. Trainor, member of the Panel, made the following statement.

65. The panel was comprised of Mr. Thomas A. Bernes, as Chairman, Mr. Antonio Buencamino and Mr. Mark Trainor. The panel was established by the Committee on 25 January 1993, and started its work in March 1993. As indicated in SCM/164, the terms of reference of the Panel were:

"To review the facts of the matter referred to the Committee by the EC in SCM/155 and in the light of such facts to present to the Committee its findings concerning the rights and obligations of signatories party to the dispute under the relevant provisions of the General Agreement as interpreted and applied by the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement."

The matter dealt with the imposition by Brazil of provisional and definitive countervailing duties on milk powder and certain types of milk from the EEC.

66. The Panel met with the two parties to the dispute on 22-23 April and 17-18 June 1993. At those meetings, and in reply to the questions by the Panel, the parties had made detailed submissions to the Panel. In addition to the submissions by the parties to the dispute, the Panel also received a written submission from the United States. The United States and Australia have reserved their rights to present their view to the Panel. The Panel considered the available submissions and information carefully and presented its findings and conclusions to the parties to the dispute on 16 December 1993. As no mutually satisfactory solution to the dispute could be reached within the time allotted by the parties to the dispute, the Report was circulated to the Committee on 27 January 1994, in documents SCM/179 and Corr.1. Corrigendum 1 informed the Committee about the appropriate date for document SCM/179.

67. Details of the Panel's findings and conclusions on the issues raised by the parties were contained in paragraphs 196-367 of the Report. The conclusions of the Panel were summarized in paragraph 368 of the Report. The Panel concluded that (1) the imposition by Brazil of provisional countervailing duties on imports of milk powder and certain types of milk was inconsistent with Brazil's obligations under Articles 5:1 and 1 of the Agreement, (2) the imposition by Brazil of definitive countervailing duties on imports of milk powder from the EEC was inconsistent with Brazil's obligations under Articles 6:1-4 and 1 of the Agreement; and (3) the imposition by Brazil of definitive countervailing duties on imports of certain types of milk from the EEC was inconsistent with Brazil's obligations under Articles 6:1-4 and 1 of the Agreement. The recommendation of the panel to the Committee of Subsidies and Countervailing Measures was contained in paragraph 369. The Panel recommended that the Committee request Brazil to bring its measures into conformity with its obligations under the Agreement. The Panel suggested that the Committee request Brazil to cease applying the countervailing duty on imports of milk powder and certain types of milk from the EEC. The Panel considered that by submitting the Report contained in SCM/179 and Corr.1 to the Committee on Subsidies and Countervailing Measures it had fulfilled its mandate.

68. The representative of the EC observed that the Community welcomed the Report of the Panel. The EC noted that the Report upheld its position concerning the lack of conformity of the countervailing duties with the Subsidies Code. The Panel, in paragraph 368 of its Report, had concluded that: (a) the imposition by Brazil of provisional countervailing duties on imports of milk powder and certain types

of milk from the EEC was inconsistent with Brazil's obligations under Articles 5:1 and 1 of the Subsidies Code; (b) the imposition by Brazil of definitive countervailing duties on imports of milk powder from the EEC was inconsistent with Brazil's obligations under Articles 6:1-6:4 and 1 of the Code; (c) the imposition by Brazil of definitive countervailing duties on imports of certain types of milk from the EEC was inconsistent with Brazil's obligations under Articles 6:1-6:4 and 1 of the Code. The EC considered that the Panel's Report was of considerable value in that it confirmed, and in some cases defined further, the criteria for the imposition of countervailing duties. This was particularly true of the following points. Concerning provisional duties, the Report made clear that before such measures could be taken, a preliminary investigation must have been carried out. Such an investigation involved at least notification and the granting of a reasonable opportunity for all parties to examine the allegations and to defend themselves. The Panel concluded that the "preliminary affirmative finding" of subsidization and injury required by Article 5:1 could only be made following an investigation. Concerning definitive duties, the Panel confirmed that determinations of injury should result from careful analysis of all relevant factors specified in Article 6, and be based on positive evidence. Concerning both provisional and definitive measures, the Panel emphasized that all issues of fact and law considered material by the investigating authority in reaching its findings must be set out in the public notice, as required by Article 2:15 of the Code, and that only those arguments could be taken into account by the Panel in reviewing the compliance of the measures with the Code. This meant that in the context of Panel proceedings, parties could not argue that their decision was motivated by elements not referred to in the public notice or a public statement of reasons produced for the first time before the Panel. The EC welcomed the Panel's conclusion with regard to the need for a comprehensive coverage of all material issues of fact and law in the public notice. The EC noted that some of the Panel's conclusions anticipated the provisions of the new Subsidies Agreement which would enter into force next year. The fact that such conclusions were reached under the existing Code was especially welcomed. The EC requested the Committee to adopt the Panel Report and make the appropriate recommendations to Brazil in order to resolve this dispute. In this regard, the EC hoped that Brazil would act speedily to implement the recommendations of the Panel Report.

69. The representative of Brazil expressed his delegation's dissatisfaction in relation to some of the statements and conclusions of the Panel. Alleged mistakes of an exclusively procedural nature could now be deemed so fundamental as to invalidate the decision of the investigating authorities. Following their investigation Brazilian authorities were convinced that subsidies were causing material injury and should be counteracted with appropriate measures. Brazil regretted that the GATT system of dispute settlement could completely ignore the substantive facts in an investigation and ignore real economic problems and give no consideration whatsoever to the material injury suffered by the industry affected. The Panel's Report had placed excessive emphasis on procedural matters. The Panel had disregarded the lack of a prompt response by the EC to Brazil's offer of consultations in the beginning of 1992. Although the Panel had recognized in paragraph 362 of the Report that "this investigation might have taken a different course if the EC had responded promptly to Brazil's offer to consultations", the Panel did not regard this as a sufficient reason for Brazil to rely on Article 2:9. Brazil was of the opinion that members of the Committee should give consideration to certain issues of principle in the Report. The first issue that should be considered was a notion introduced in paragraphs 290, 291 and reiterated in 312 of the Report, that a Panel could not examine the record of an investigation if the record was not properly reflected in the public notices and other statements of reasons issued at the time of the finding. The Panel thereby concluded that public notices and the relevant reports must contain all the justification for findings concerning injury. Consequently the Panel refused to review any other documents relevant to the dispute, if such documents and data were not published at a certain moment. The second issue of interest was the assertion, contained in paragraph 262 of the Report, that "the fulfilment of a signatory's obligation under Article 2:5 could not be made conditional on a case by case judgement on the part of the investigating authorities as to whether it was necessary to seek information from interested parties". The representative of Brazil said that it was correct that all interested parties should be afforded an opportunity to see the relevant information

concerning the investigation according to Article 2:5, and that signatories and exporters be given notice of the findings according to Article 2:15, there seemed to be no rule in the Code establishing a pattern of procedure for the investigating authorities in every investigation. The Brazilian delegate drew the Committee's attention to paragraph 353 of the report where the Panel stated: "The Panel did not prejudge the issue of whether Brazil, had it properly respected the procedural requirements of the Agreement and adequately explained the reasons for its findings, could have validly imposed provisional and definitive countervailing duties on imports of milk powder and certain types of milk from the EC." Brazil invited other members of the Committee to give their opinions on the Report.

70. The delegate of Canada understood that paragraph 353 in the Panel Report accepted there may be justification for a countervailing duty action against imports of skimmed milk powder from the EC, but he disagreed that procedural obligations were less important than substantive issues. In any judicial system, whether international or domestic, procedural obligations were of central importance. In his view the Panel Report was an important one and was not the first report of a GATT panel to determine a dispute on the basis of procedural failings without addressing additional issues that may have been raised. He urged Brazil to support the adoption of the Report.

71. The delegate of Brazil reserved Brazil's rights to take suitable measures envisaged in the GATT to avoid any injury to its industry as a result of a suspension of the collection of the countervailing duties on imports of milk powder from the EC. Brazil would not oppose adoption of the Report of the Panel by the Committee.

72. The Committee took note of the statements made and adopted the Report of the Panel.

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

73. The Chairman recalled that the Report of the Panel was circulated on 4 December 1992 and was discussed in the Committee at its meeting of 28 and 29 April 1993 (SCM/M/65). It was removed from the agenda of the last regular meeting pending consultations between the parties to the dispute. The parties had now asked that this item be returned to the agenda. The Chairman noted the discussion in the Anti-Dumping Committee of the previous day, and the resolution of the matter in that Committee. He asked whether the Committee was in a position to agree to the adoption of this Report. He noted that statements made at previous meetings concerning this Report remained on the record.

74. The delegate of Norway noted that his Government's views on the Panel Report were clearly stated in the Report itself, and in the minutes of the Committee's meeting of April 1993 (SCM/M/65). Norway had a number of concerns with the Panel Report. Some of those concerns had been met through the new Agreement on Subsidies and Countervailing Measures resulting from the Uruguay Round. Other concerns remained, in particular with regard to injury. In Norway's view the Panel had interpreted the Agreement in a manner that permitted the investigating authorities to assume causation as long as injury was found and also to attribute injury caused by other factors to allegedly dumped imports. In the April 1994 meeting of the Anti-Dumping Committee, the delegation of Norway had made comments on differing standards used by various panels in examining anti-dumping actions. The Government of Norway held the same views in relation to this Report. He asked that the Chairman make a statement regarding the legal effect of adoption of Panel Reports, similar to the corresponding statement made by the Chairman of the Anti-Dumping Committee on the previous day.

75. The delegate of the United States stated that it was appropriate to now adopt the Report.

76. The delegate of Japan requested that a statement in similar terms to that made by the Chairman of the Anti-Dumping Committee be made by the Chairman.

77. The Chairman noted that discussion in the Committee and the consultations held on this Panel Report confirmed that some delegations had strong views on issues such as burden of proof and causation and those delegations continued to have difficulties with interpretations by the Panel. However, in order to alleviate any concerns, he reiterated that the purpose of any Panel Report was to resolve a specific dispute between the parties to the dispute. A Panel Report did not create obligations on parties that were not parties to the specific dispute addressed by the Panel Report, nor did it represent binding legal precedent applicable to other disputes.

78. The Committee took note of the statements made and adopted the Report of the Panel.

79. The delegate of Japan noted that Japan was deeply dissatisfied with the Panel Report. Three issues in particular deserved serious attention by the Committee. The first of these was the Panel's exclusion of certain matters from its consideration because they had not been adequately raised during consultations or conciliation stages. Secondly, the Panel had entirely subverted the rule in Article 6:4 of the Code that the subsidized imports should be examined to be causing injury through the effects of the subsidy. Those problems were of the same nature as in the Anti-dumping Report. Thirdly, Japan also had concerns that the Panel refused to look at secondary effects because no understanding concerning the calculation of the value of a subsidy had been developed. Those three issues had been raised by Japan at the meeting of the Committee of April 1993. The first two issues had been raised by Japan at the April 1994 meeting of the Anti-Dumping Committee. Japan wished to formally record its concerns in relation to this Report. Japan stated that, as in the case of the related Panel Report adopted by the Anti-Dumping Committee, the Chairman's statement was a condition for Japan's agreement in adopted of the Report.

80. The delegate of Hong Kong wished to reiterate concerns and reservations on certain matters contained in the Panel Report, which had been expressed at the April 1993 Committee meeting. The consent of Hong Kong to the adoption of this Panel Report was without prejudice to Hong Kong's positions on those matters. Hong Kong was of the view that the statement made by the Chairman was unnecessary.

81. The delegate of Norway noted that the Panel Report had been adopted in spite of the fact that many delegations, including Norway, had strong objections to a number of interpretations made by the Panel. The statement of the Chairman made prior to the adoption of the report facilitated the decision of Norway to adopt the Report. That statement of the Chairman had to be seen in conjunction with the adoption of the Panel Report. He asked that the text of the Chairman's statement be duly reflected in GATT documents and publications that described the outcome of the dispute. Norway's adoption of the Report was in line with Norway's policy of preserving an efficient dispute settlement in GATT. Signatories should take determined action to adopt and implement the remainder of Panel Reports under the Tokyo Round Agreements prior to the entry into force of the WTO.

82. The delegate of Sweden, speaking on behalf of Sweden and Finland, reiterated those delegations' concerns about the Panel Report which were reflected in the minutes of the April 1993 Subsidies Committee meeting (SCM/M/65), and the April 1994 meeting of the Anti-Dumping Committee. Those concerns were that the Panel had limited its determination only to matters raised during the consultations and conciliation process, the Panel's treatment of causation, the acceptance of only one injury determination for both dumping and subsidy investigations, and the lack of verification of standing.

83. The delegate of the United States noted that the statements made by delegations only constituted national positions, and therefore he did not believe it productive to comment upon them. The debate in the Committee was reminiscent of the debate between the two parties in the dispute before the Panel. This underscored the importance of the role of the Panel as a neutral disinterested party. The Chairman had observed that a number of issues in this Report were controversial. This was not surprising, as

countervailing measures were notable for strong differences of view on many issues. These differences could only be settled through joint action or if particular cases were referred to Panels. He agreed with the representative of Hong Kong that the Chairman's statement stated nothing new. He took exception to the delegate of Japan's statement, that the Chairman's statement was a condition for adoption of the Report. It was the United States' understanding that the Panel Report had been adopted without condition. Concerning Norway's request that the statement be reflected in all GATT documents relating to this case, he expected that the Chairman's statement would only appear in the minutes of the Committee.

84. The delegate of Australia stated that Australia had noted the statements of delegations, and of the Chair, and the fact that the Panel Report was adopted unconditionally.

85. The Chairman was pleased that the Committee had been able to deal with two contentious Reports at this meeting and stated that it was his strong belief, which he was confident was shared by the Committee, that the adoption of Panel Reports was imperative to the functioning of the dispute settlement system. He hoped that the adoption of this Report set the tone for adoption of future reports.

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

86. The Chairman recalled that the Report of the Panel was circulated on 4 October 1989, and had been examined at various meetings since that time. At its last regular meeting, the Committee had agreed to revert to this matter at a future meeting. The Report had now been before the Committee for five years. He hoped the Committee would be in a position to adopt this Report at this meeting.

87. The delegate of Brazil stated that since the adoption of the Panel Report on the same issue by the Council of Representatives, there had been continued indications by the representatives of the United States that their authorities were searching for a suitable means to implement the conclusions of that Panel. Brazil was hopeful that a final solution to this issue could be found in the near future. Therefore, Brazil was of the opinion that the adoption of the Report of the Panel established by the Committee on the very same issue would bring confusion to the matter.

88. The representative of the United States regretted that it was not possible to adopt this Report at this meeting. He found it particularly regrettable that it was not being adopted because of links drawn to cases taken outside the Committee. This set a dangerous and unfortunate precedent.

89. The Committee took note of the statements made and decided to revert to this item at its next regular meeting.

J. German Exchange Rate Scheme for Deutsche Airbus - Report of the Panel (SCM/142)

90. The Chairman recalled that the Report of the Panel was circulated on 4 March 1992 and had been examined at various Committee meetings since that time. At its last regular meeting the Committee had agreed to revert to the matter at its next regular meeting. He hoped that the Committee was in a position to agree to adopt the Report.

91. The representative of the EC stated that the position of the EC had not changed and the EC would not agree to the adoption of this report.

92. The delegate of the United States regretted that the Community was not in a position to agree to adoption. He hoped that adoption of the Report could take place in the not too distant future.

93. The Committee took note of the statements made and agreed to revert to the item at its next regular meeting.

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

94. The Chairman recalled that the Report of the Panel was circulated on 21 March 1983 and had been examined at various meetings since that time. At its previous regular meeting the Committee had agreed to revert to this matter at its next regular meeting. This Report had now been before the Committee for more than a decade and was the oldest dispute before the Committee. He asked if the Committee was prepared to adopt the Report.

95. The delegate of the United States stated that the United States' views on the Report had not changed and the United States would not agree to adoption of the Report.

96. The delegate of the EC noted that the particular dispute had evaporated some time ago.

97. The Committee took note of the statements made and decided to revert to the item at its next regular meeting.

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

98. The Chairman recalled that the Report of the Panel was circulated on 19 May 1983 and had been examined in various meetings since that time. At the last regular meeting the Committee had agreed to revert to this matter at its next regular meeting. Like the previous Panel Report, this Report had been before the Committee for more than a decade. He hoped that the Committee was in a position to adopt this Report.

99. The representative of the EC regretted that on this Report also the EC's position had not changed. The EC was not in a position to agree to the adoption of the Report. In this case also the dispute in this case was settled in a satisfactory manner between the parties.

100. The Committee took note of the statements made and decided to revert to this item at its next regular meeting.

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

The Chairman recalled that the Report of the Panel was circulated on 13 October 1987. At its last regular meeting the Committee had agreed to revert to this matter at its next regular meeting. He asked if the Committee was prepared to adopt this Report.

101. The representative of Canada stated that Canada's position had not changed with respect to adoption of this report.

102. The representative of the EC regretted very much that Canada was unable to agree to adoption of this Report and regretted that Canada had not been able to offer any solution to the underlying dispute. The duties in this case were considered not to be in conformity with the Code but were imposed in 1986 and since then exports of boneless beef from the EC to Canada had stopped. Canada's representatives at previous Committee meetings had informed the Committee that discussions were underway to find a pragmatic solution to the dispute. He asked the delegate of Canada to inform the Committee of the result of those discussions.

103. The delegate of Canada responded that it was true that a bilateral resolution of this matter had been pursued in the recent past and that there had been a number of discussions seeking a compromise, but the discussions had not yet reached a resolution.

104. The representative of the EC noted that this was the only matter concerning an unadopted Panel Report in which the dispute had not been resolved.

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

106. The Chairman stated that it was incumbent on him to address the situation confronting the Committee with respect to unadopted Panel Reports. Even though two reports had been adopted there remained five outstanding reports. This situation was unacceptable. It was inevitable that every Panel Report would contain elements that one party or the other to the dispute would dislike or disagree with. If there were not a difference of views to be resolved, there would have been no Panel in the first place. If that was the basis for blocking the adoption of Panel Reports then under the current system no dispute would ever be settled. In his view it was necessary for the signatories to the Agreement to look beyond the narrow interests involved in the given dispute and concentrate on the broader common need for a credible and effective dispute settlement system. No signatory's interests were served by a situation where disputes could not be resolved multilaterally. He called on signatories to act in their broader interests and agree to the adoption of Panel Reports. The regular meeting of the Committee in October should be the last regular meeting of the Committee before the entry into force of the WTO. Thus, it presented a good opportunity to clear the decks of unadopted Panel Reports and kick off the entry into force of the WTO on a positive note. It was his intention to consult informally with delegations concerned in order to achieve, if possible, the adoption of all outstanding Panel Reports at the next meeting.

N. Other business

(i) Implementation of Softwood Lumber Panel Report (SCM/162)

107. The representative of Canada recalled that the Panel Report in question had been adopted in October 1993 and the Panel Report had concluded that the United States violated its international trade obligations by imposing an interim bonding requirement under Section 301 of their law. It was Canada's understanding that the United States would by now have implemented its obligations in light of the Panel's conclusions involving the termination of the 301 action, the refund of any cash deposits, the cancelling of any bonds and the liquidation of any entries prior to this meeting. However, this had not occurred. He asked the United States to clarify when those recommendations would be implemented.

108. The representative of the United States stated that the section 301 case had been terminated. With respect to the other matters he recalled that at the last meeting of the Committee he had noted that there were administrative procedures under way which were of relevance to the matter at hand. That process was continuing and he expected results in the not too distant future.

109. The Committee took note of the statements made.

(ii) Brazil - Countervailing Duties on Imports of Wheat from Canada

110. The representative of Canada stated that Canada was disappointed with action taken by Brazil to initiate a countervailing duty investigation against imports of Canadian wheat. It was the view of his authorities that the programmes identified by Brazil did not constitute a countervailable subsidy. He informed the Committee that Article 3:1 consultations were held by Brazil on 7 October 1993 in

Rio de Janeiro and that Canada has recently requested Article 3:2 consultations which would be held in early May 1994. He hoped that Brazil could reach a preliminary determination of subsidization and injury as soon as possible. The reasoning provided by the Government of Brazil would then be scrutinized.

111. The representative of Canada noted that another matter related to the initiation of the investigation was that pressure had been applied by Argentina both to initiate the case and to issue a positive determination. There were particular procedures under the Code if countries had concerns about other countries' exports to third countries. It was regrettable, and had severe implications with respect to the system of rules established by the Code, if bilateral pressure were applied. He hoped that Brazil would conduct its countervailing duty investigation consistently with its obligations under the Code.

112. The delegate of Brazil refrained from making any comments on the second point raised by the delegate of Canada. Concerning the first point raised he confirmed that consultations were scheduled for May in Rio de Janeiro.

113. The representative of Argentina understood that there had been exports of wheat of Canadian origin to the Brazilian market. A countervailing investigation had been opened by the Brazilian authorities which was their prerogative. The matter had been discussed at Ministerial level between Canada and Argentina. A very constructive series of talks were under way. He was therefore quite surprised that it could be thought that Argentina had sufficient power to persuade Brazil to infringe multilateral rules. He had no doubt that the Brazilian authorities had proceeded properly and it was the right of the Canadian authorities to ensure that Brazil's obligations were complied with. The delegate of Canada could not be unaware of the fact that there was a common market integration process set to start within nine months between Argentina, Brazil, Uruguay and Paraguay. Issues such as the enquiry had been discussed, but it was not possible to suggest that a government could influence another government to make it take an illegal measure.

(iii) Transitional issues

114. The Chairman noted that the transition from the current regime to the World Trade Organization would require significant efforts on the part of the Members of the Committee as well as other Members of the WTO. On the one hand there were a wide range of arrangements to be made in order for the new WTO Subsidies Committee to perform its tasks. To mention a few of these tasks, it would be necessary to create a functional Permanent Group of Experts, to establish a mechanism for notification and review of non-actionable subsidies to receive within 90 days of entry into force notifications of existing programmes inconsistent with the new Agreement, to develop a workable system for the notification and review of legislation of well over 100 WTO Members, and simply to establish the new Committee's operating procedures. The Preparatory Committee would be the setting in which many of those issues would be decided and much work on a horizontal basis was required. However, he expected that the signatories to the current Subsidies Agreement would have a particular interest in those questions and he therefore encouraged the Members of the Committee to begin considering and informally discussing those questions.

115. It would also be necessary to consider in what manner and for what purposes the Committee would continue to operate after the entry into force of the Agreement establishing the World Trade Organization. Under Article 3:11 of the new Dispute Settlement Understanding, the DSU would apply to disputes where the request for consultations was made after entry into force. Existing rules would continue to apply for other disputes. In a Decision on the Application and Review of the Understanding on Rules and Procedures Governing the Settlement of Disputes, Ministers had invited Committees to decide that they should remain in operation for the purpose of dealing with any dispute for which a

request for consultations was made before the date of entry into force. Thus, the Committee would be required to make a decision of some kind.

116. The details of the arrangements of the continuation of the Agreement would need to be fleshed out. For instance, the new Subsidies Agreement would apply to investigations initiated pursuant to applications made after entry into force. Would the existing Committee entertain disputes with respect to investigations where the application was made before the date of entry into force but consultations were not requested until after that date? If not, there would be a lacunae in dispute settlement coverage. He did not propose that the Committee act at this time to resolve these questions, but thought that the Committee should begin to consider these matters well in advance. He noted that the Chairman of the Anti-Dumping Committee planned to consult with other Committee Chairmen on those issues.

117. The delegate of Hong Kong recalled that his delegation had made a proposal in the Anti-Dumping Committee and understood that the Chairman of the Anti-Dumping Committee would contact the Chairman about that proposal.

118. The Committee took note of the statements made.

O. Date of the next regular meeting

119. In accordance with a decision taken by the Committee at its April 1981 meeting, the Committee decided that the next regular meeting would take place in the week of 24 October 1994.