

Committee on Subsidies and
Countervailing Measures

MINUTES OF THE MEETING HELD ON
27 AND 28 OCTOBER 1987

Chairman: Mr. L. Wasescha (Switzerland)

1. The Committee held a regular meeting on 27 and 28 October 1987.
2. The Committee adopted the following agenda:
 - A. Adherence to or acceptance of the Agreement by other countries
 - B. Examination of countervailing duty laws and/or regulations of signatories of the Agreement (SCM/1 and addenda)
 - (i) Australia (SCM/1/Add.18/Rev.1/Suppl.1)
 - (ii) Brazil (SCM/1/Add.26/Suppl.1)
 - (iii) Japan (SCM/1/Add.8/Suppl.1 and SCM/W/135, 136, 137, 139 and 140)
 - (iv) Korea (SCM/1/Add.13/Rev.2 and SCM/W/127, 133, 134 and 143)
 - (v) The Philippines (SCM/1/Add.23 and SCM/W/109, 114 and 114/Add.1, 117 and 123)
 - (vi) Pakistan (SCM/1/Add.24 and SCM/W/106, 111, 113 and 139)
 - (vii) Other legislation
 - C. Notification of subsidies under Article XVI:1 of the General Agreement (L/6111 and addenda and SCM/W/147)
 - D. Semi-annual reports of countervailing duty actions taken within the period 1 January-30 June 1987 (SCM/84 and addenda)
 - E. Reports on all preliminary or final countervailing duty actions (SCM/W/132, 138, 141, 142 and 144)
 - F. Canada - Imposition of countervailing duties on imports of manufacturing beef from the EEC - Report by the Panel (SCM/85)

- G. Report by the Chairman on his informal consultations on the Draft Guidelines on the Application of the Concept of Specificity (SCM/W/89)
- H. Report by the Chairman on his informal consultations on paragraph 4(b) of SCM/W/74/Rev.1 (Draft Guidelines on Physical Incorporation)
- I. Report by the Chairman on his informal consultations on the Panel Reports pending before the Committee (SCM/42, 43 and 71)
- J. Canada - Imposition of countervailing duties on imports of grain corn originating in or exported from the United States (SCM/M/33 and SCM/M/34, paragraphs 106-109)
- K. United States - Countervailing duty investigation on imports of fresh cut flowers from various countries (SCM/M/34, paragraphs 111-120)
- L. Other business
 - (i) United States - Collection of countervailing duties on imports of non-rubber footwear from Brazil entered into the United States between 1 January 1980 and 28 October 1981
 - (ii) United States - Countervailing duty investigation of imports of granite from Italy
 - (iii) Canada - Countervailing duty investigation on imports of drywall screws from France
 - (iv) Request by the Chairman of the Uruguay Round Negotiating Group on MTN Agreements and Arrangements for information on the activities of the Committee
- M. Annual Review and Report to the CONTRACTING PARTIES
 - A. Adherence to or acceptance of the Agreement by other countries
 - 3. The Chairman informed the Committee that since its meeting of 3 June 1987 no country had accepted or adhered to the Agreement.
 - B. Examination of national legislation and implementing regulations (SCM/1 and addenda)
 - (i) Australia (SCM/1/Add.18/Rev.1/Suppl.1)
 - 4. The Committee had before it document SCM/1/Add.18/Rev.1/Suppl.1 containing Australian Customs Notice No. 87/169 on new procedures for the processing of anti-dumping and countervailing duty petitions. These new procedures applied to petitions accepted on or after 1 September 1987.

The representative of Australia recalled that at a previous meeting of the Committee on Anti-Dumping Practices his delegation had made a statement regarding proposed changes to the Australian anti-dumping and countervailing duty legislation. These proposed amendments had not yet been submitted to the Australian Parliament; however, the Minister for Industry, Technology and Commerce had decided that, pending the amendments to the legislation, certain changes should be made to the procedures for the investigation of anti-dumping and countervailing duty petitions. Details of these procedural changes were outlined in the Notice reproduced in document SCM/1/Add.18/Rev.1/Suppl.1.

5. The representative of the EEC expressed his delegation's wish to have the opportunity to make comments on the Notice at the next regular meeting. Regarding the announcement in the Notice of the publication of a new dumping manual he requested a clarification of the legal status of this manual.

6. The representative of Australia said that the publication of a new dumping manual was part of the implementation of the changes to the Australian anti-dumping and countervailing duty procedures. Copies of the new dumping manual would be provided to the secretariat as soon as possible after its publication.

7. No further comments were made on Australian Customs Notice No. 87/169; the Chairman invited delegations wishing to ask questions on this Notice to do so in writing by 10 January 1988 and requested the delegation of Australia to reply in writing to those questions by 10 March 1988.

(ii) Brazil (Customs Policy Commission Resolution No. 00-1227 of 14 May 1987, document SCM/1/Add.26/Suppl.1)

8. The Chairman recalled that at its meeting held on 3 June 1987 the Committee had taken note of Decree No. 93.962 of 22 January 1987 as a result of which the Agreement had become applicable as domestic law in Brazil (SCM/M/34, paragraphs 25-26). As provided for in this Decree further implementing rules had been laid down in a Resolution adopted by the Brazilian Customs Policy Commission on 14 May 1987.

9. The representative of Brazil said he would appreciate it if delegations which wished to raise questions or make comments on the Resolution could submit their questions in writing.

10. The representative of the United States expressed his wish to have an opportunity to submit written questions on the Resolution and requested that the Resolution be put on the agenda of the next regular meeting of the Committee.

11. The Chairman said the Committee would revert to the Resolution at its next regular meeting; he invited delegations to submit questions in writing to the secretariat by 10 January 1988 and invited the delegation of Brazil to reply to those questions by 10 March 1988.

- (iii) Japan (Guidelines for the conduct of anti-dumping and countervailing duty investigations (document SCM/1/Add.8/Suppl.1))

12. The Chairman recalled that at the meeting of 3 June 1987 the Committee had begun its examination of the Japanese Guidelines for the conduct of anti-dumping and countervailing duty investigations (SCM/M/34, paragraphs 9-24). Written questions on these Guidelines had been received from Canada (SCM/W/135), the EEC (SCM/W/136), the United States (SCM/W/137), Australia (SCM/W/139) and Brazil (SCM/W/140). Answers by Japan to these written questions and to some of the questions put at the meeting in June had been circulated in document SCM/W/146.

13. The representative of Canada said he found the replies provided by Japan satisfactory but he wished to reserve his delegation's right to raise further questions on the Guidelines.

14. The representatives of the EEC, the United States, Australia and Brazil said they wished to have the opportunity to revert at the next meeting to the Japanese Guidelines and the replies by Japan to their written questions.

15. The Chairman requested delegations wishing to raise additional questions to do so in writing by 10 January 1988 and requested the delegation of Japan to provide written replies to such possible additional questions by 10 March 1988.

- (iv) Korea (Article 13 of the Customs Act and Article 4-13 of the Presidential Decree of the Customs Act, document SCM/1/Add.13/Rev.2)

16. The Chairman said the countervailing duty legislation of Korea had been on the agenda of the Committee at its meetings held in October 1986 (SCM/M/32, paragraphs 4-9) and in June 1987 (SCM/M/34, paragraphs 27-33). Written questions on the Korean legislation had been received from the EEC (SCM/W/127) and Australia (SCM/W/133) and replies by Korea to these questions had been circulated in, respectively, SCM/W/134 and ADP/W/146. In addition, replies by Korea to questions asked by the United States had been circulated in SCM/W/143.

17. The representative of the EEC said that although his delegation was satisfied with most of the replies given by Korea to the questions put by the EEC in SCM/W/127, he would like to have a further explanation of the provisions in the Korean legislation for the self-initiation of countervailing duty investigations and in particular of the rôle of the Minister of Finance in the self-initiation of investigations.

18. The representative of Korea replied that under the Korean countervailing duty legislation, self-initiation of a countervailing duty investigation was possible if there was evidence of subsidized imports and material injury resulting therefrom and if the Minister of Finance deemed it necessary to open an investigation. He added that such self-initiation of investigations was not likely to occur often.

19. The representative of Australia said his delegation wished to revert to the Korean countervailing duty legislation at a later stage.

20. Regarding the answers provided by Korea to questions put by his delegation on the expression "any person having an interest in ... the domestic industry", the representative of the United States noted that in item 1(c) of SCM/W/143 the Korean authorities had stated that they would observe any agreement which might be reached in the Uruguay Round negotiations on the interpretation of the expression "by or on behalf of a domestic industry", an implication that there currently is no agreed interpretation of this expression.

21. The representative of Korea said that Article 4-4(2) of the Presidential Decree of the Customs Act defined the expression "any person having an interest in the domestic industry". According to this definition three categories of persons could file a petition on behalf of a domestic industry: a domestic producer or wholesaler of a like product, an association of producers or wholesalers of the like product, or unions of workers involved in the production or wholesale of the like product. He further stated that differing interpretations were possible of the expression "by or on behalf of the domestic industry" and that his Government would observe the understanding which might be reached on this issue in the context of the Uruguay Round negotiations.

22. The Chairman said that the Uruguay Round did not detract from the obligation of the signatories to observe the existing rules of the Agreement. He invited delegations wishing to raise further questions on the Korean legislation to do so in writing by 10 January 1988 and requested the delegation of Korea to provide its written replies to such possible additional questions by 10 March 1988.

(iv) The Philippines (Section 302 of Presidential Decree No. 1464 and Department of Finance Order No. 300, document SCM/1/Add.23)

23. The Chairman recalled that the Committee had discussed the countervailing duty legislation of the Philippines at its meetings held in April 1986 (SCM/M/31, paragraphs 5-11) and October 1986 (SCM/M/32, paragraphs 10-17). Questions on this legislation had been circulated in SCM/W/109 (United States), SCM/W/114 (EEC) and SCM/W/117 (Australia). Responses by the Philippines to these questions appeared in SCM/W/123. At its meeting of 3 June 1987 the Committee had reverted to the countervailing duty legislation of the Philippines. At that meeting the representatives of Australia, the EEC and the United States had made further comments in light of the replies contained in SCM/W/123 (see SCM/M/34, paragraphs 36-38). Subsequently the EEC had submitted an additional question (SCM/W/114/Add.1).

24. The representative of the Philippines recalled that in SCM/W/117 the delegation of Australia had raised a question on the first paragraph of Section 4 of Department of Finance Order No. 300; this paragraph provided that, pending the investigation, the Commissioner of Customs or the Collector of Customs could condition the release of articles subject to

investigation upon the filing of a bond at double the dutiable value of the articles. He informed the Committee that Executive Order No. 66, published in the Official Gazette of the Philippines on 8 December 1986, had amended Subsection C of Section 302 to provide for the release from customs custody of articles subject to investigation upon the filing of a bond equal to the ascertained or estimated amount of the subsidy as provisionally determined by the Minister of Finance (this Executive Order has been circulated in SCM/1/Add.23/Suppl.1).

25. In response to the additional questions put by the EEC in SCM/W/114/Add.1, the representative of the Philippines confirmed that his authorities assimilated the assessment of the admissibility of a complaint under Articles 2:1 and 2:3 of the Agreement with an affirmative preliminary finding of subsidization and injury. Regarding the question by the EEC in SCM/W/114/Add.1 on the consistency of this approach with the Agreement, he said that the determination by the Minister of Finance of a prima facie case of subsidization and injury to a domestic industry was the result of a preliminary affirmative finding that there was a reasonable ground to believe that a subsidy existed and that there was a likelihood of injury to the domestic industry. Imports of the subsidized article had to directly cause injury to an established industry in the Philippines, i.e. there had to be a causal link between the subsidized imports and the injury suffered by the domestic industry.

26. The representative of the EEC said it would be useful to have the answers by the representative of the Philippines in written form; by way of preliminary comment on these answers he said his delegation doubted whether a finding that a petition was admissible could be equated with an affirmative preliminary determination which would lead to the application of provisional measures. He emphasized the distinction between the evidence required to initiate an investigation and the evidence necessary to justify the application of provisional measures and requested the delegation of the Philippines to seek further clarification on this issue from its authorities.

27. The representative of the Philippines referred to paragraph (d) of Section 3 of Department of Finance Order No. 300 (SCM/1/Add.23, page 4) which specified the information which had to be provided by a petitioner; the Ministry of Finance insisted on strict compliance with these petition requirements.

28. The Chairman requested the representative of the Philippines to make his answers available in written form. He also invited delegations wishing to raise additional questions to do so in writing by 10 January 1988 and requested the delegation of the Philippines to reply in writing to such possible additional questions by 10 March 1988.

(vi) Pakistan (Ordinance No. III of 1983, document SCM/1/Add.24)

29. The Chairman informed the Committee that the delegation of Pakistan was not in a position to attend the meeting and said the Committee would revert to the countervailing duty legislation of Pakistan at its next regular meeting.

(vi) Other legislation

30. The representative of Canada recalled that at the meeting of 3 June 1987 his delegation had expressed its concerns regarding proposals under consideration in the United States Congress to amend the countervailing duty legislation of the United States (SCM/M/34, paragraphs 50 and 51). At that time he had referred in particular to HR 3 which had been passed by the House of Representatives at the end of April. In the meantime the United States Senate had passed its own bill containing proposed amendments similar to those included in HR 3. As examples of provisions in the Senate bill which were of special concern to his authorities, he mentioned the proposed re-interpretation of the specificity test which would be a significant departure from the generally agreed guidelines in this area and the proposed method for the calculation of subsidies on certain processed agricultural products. This proposal would require that in the case of an agricultural product processed from a raw agricultural product, subsidies found to be provided to the producers of the raw product be deemed to be provided with respect to the processed product. The result of this amendment would be that it would no longer be necessary to conduct an upstream subsidy investigation to determine whether a subsidy on a raw agricultural product was also a subsidy on an agricultural product processed from that raw product. The Canadian authorities were of the view that this provision could lead to the imposition of excessive countervailing duties in cases where subsidies provided to producers of raw agricultural products were not fully passed through to the producers of products processed from those raw products. Such a result would be inconsistent with Article 4:2 of the Agreement. The Canadian authorities believed that flexibility was needed to enable the importing authorities to take account of the real economic effect of subsidies on raw agricultural products.

31. The representative of Canada also reiterated his concerns regarding the proposal considered by the United States Congress for an extension from five to ten-fourteen years of the period for which a duty drawback on exports of sugar could be claimed (see also SCM/M/34, paragraph 51). His authorities considered that this proposal, if enacted, would be a breach of the United States obligations under Article 9 of the Agreement. The proposed extension of the period for duty drawback on sugar exports was clearly designed to stimulate sugar exports in order to maintain sugar refining capacity in the United States; it could not be justified by the nature of the production process of refined sugar, nor could it be considered "reasonable" within the meaning of item (i) of the Illustrative List of Export Subsidies. His authorities were seriously concerned that enactment of this provision would lead to a substantial increase of exports from the United States to Canada of refined sugar which would cause injury to Canadian sugar producers. He concluded by expressing the hope that the United States delegation would bring these concerns to the attention of its authorities.

32. The representatives of Hong Kong, Japan, the EEC, Korea and Australia also expressed their concerns regarding various aspects of the proposed amendments to the countervailing duty legislation of the United States.

33. The representative of the United States said he had taken note of the comments made by the delegations of Canada, Hong Kong, Japan, the EEC, Korea and Australia. He would convey the views expressed by those delegations to his authorities but recalled his delegation's earlier expressed view that it was premature to discuss pending legislation in the Committee. If and when changes to the relevant U.S. laws were enacted, his delegation would notify the Committee in accordance with agreed procedures.

34. The Chairman said the Committee would maintain on its agenda the item "other legislation" in order to afford the signatories the opportunity to revert to particular aspects of national countervailing duty laws and regulations.

35. The Chairman concluded the discussion of item B of the agenda by pointing to the importance of prompt replies to written questions on countervailing duty laws and/or regulations.

C. Notification of subsidies under Article XVI:1 of the General Agreement (L/6111 and addenda and SCM/W/147)

36. The Chairman said that at the meeting of the Committee on 3 June he had reminded the signatories of a decision taken by the Committee in April 1985 to hold once in every three years a detailed examination of full notifications of subsidies (SCM/M/27, paragraph 67). With a view to facilitating the preparation of the special meeting to examine the full notifications due in 1987, he had requested the signatories to submit their notifications by mid-September 1987. Unfortunately, by mid-September full notifications had been received from ten signatories only; since then five further notifications had been received. No notifications had been submitted by the EEC, Egypt, Indonesia, Israel, Japan, New Zealand, Norway, Pakistan, the Philippines and Spain (see SCM/W/147). The Chairman said that in view of this large number of notifications which had not yet been submitted, he had decided to postpone the special meeting. This meeting would be convened only after all, or at least a substantial majority, of the signatories had fulfilled their notification obligation under Article XVI:1. He would consult with signatories on the precise date of the special meeting and expressed the hope that this meeting could take place early in 1988.

37. The Chairman requested those signatories who had not yet submitted their full notifications to indicate when they expected to be in a position to do so.

38. The representative of the EEC said it went without saying that Spain was a member of the EEC. His delegation would shortly submit a full notification covering both industrial and agricultural subsidies.

39. The representatives of Japan, New Zealand, the Philippines and Norway indicated they would submit their full notifications of subsidies in the very near future.

40. The representative of the United States said that an EEC notification of EEC-wide subsidies alone would not be sufficient and recalled that the obligation under Article XVI:1 of the General Agreement to notify subsidies was an obligation of the individual member States of the EEC in their capacity as contracting parties to the General Agreement.

41. The representative of the EEC said that past notifications by his delegation under Article XVI:1 of the General Agreement had included both programmes administered by the EEC and programmes administered by the EEC member States.

42. The representative of Korea said that in the interest of greater transparency his delegation had submitted a notification which included some programmes which were perhaps not subsidies within the meaning of Article XVI:1.

43. The Committee took note of the statements made.

D. Semi-annual reports of countervailing duty actions taken within the period 1 January-30 June 1987 (SCM/84 and addenda)

44. The Chairman said the following signatories had informed the Committee that they had taken no countervailing duty actions during the period 1 January-30 June 1987: Austria, Brazil, Chile, Finland, Hong Kong, India, Israel, Japan, Korea, the Philippines, Sweden, Switzerland, Turkey and Yugoslavia. No reports had been received from the EEC, Egypt, Indonesia, New Zealand, Norway, Pakistan, Spain and Uruguay. He said he was concerned about this large number of signatories who had not submitted their semi-annual report.

45. The representative of Norway said his country had taken no countervailing duty action during the period 1 January-30 June 1987. The representative of the EEC also informed the Committee that the EEC had taken no countervailing duty actions during this period.

46. The Chairman said the semi-annual report of the United States had been received only very recently and recalled that on a number of previous occasions the United States had also been very late in submitting its semi-annual report.

47. The Committee examined the semi-annual reports submitted by Canada (SCM/84/Add.2) and Australia (SCM/84/Add.3). No comments were made on these reports. The Committee agreed to revert to the semi-annual report of the United States (SCM/84/Add.4) at its next regular meeting.

E. Reports on all preliminary or final countervailing duty actions (SCM/W/132, 138, 141, 142 and 144)

48. Reports on all preliminary or final countervailing duty actions had been received from Australia, New Zealand and the United States. No comments were made on these reports. The representative of Canada informed the Committee that during the period of January-June 1987 a final countervail action had been taken by Canada with respect to corn imported from the United States.

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

49. The Chairman recalled that the dispute which had led to the establishment of this Panel had been referred to the Committee by the EEC in July 1986 (SCM/75). On 1 August 1986 the Committee had held a special meeting for the purpose of conciliation under Article 17 of the Agreement (SCM/M/Spec/12). This conciliation procedure had not resulted in a mutually satisfactory resolution of the dispute and the Committee had therefore agreed, at its meeting of 29 October 1986, to establish a panel (SCM/M/32, paragraph 183). At the regular meeting of the Committee of 3 June 1987 the Committee had been informed of the terms of reference and composition of this Panel (SCM/M/34, paragraphs 104 and 105).

51. The Chairman of the Panel, Ambassador von Platen, introduced the Report on behalf of the Panel. He said the members of the Panel had been fully aware of the importance of the issues in dispute which had many implications going beyond the area covered by the Agreement. As the Panel had been requested to examine the rights and obligations of the parties to the dispute under the Agreement, the main focus of the conclusions had been on the legal aspects of the case. However, the Panel had not neglected the economic aspects of the case. On behalf of the Panel he thanked the secretariat for its assistance.

52. The representative of the EEC said his delegation was deeply satisfied with the Report by the Panel. The Panel had considered a very important issue: the interpretation of the concept of "domestic industry" for the purpose of the determination of the standing of a petitioner to file a countervailing duty petition and for the purpose of the determination of the existence of injury. The same issue had been examined by the Panel which had been established in the dispute between the EEC and the United States concerning the definition of industry in the case of wine and grape products in the United States Trade and Tariff Act of 1984 (SCM/71). The Report was clear and objective and reaffirmed the conclusions made by the Wine Panel. He also noted that the Report was important in that it gave guidance on general questions of interpretation of the Agreement. In this respect he referred in particular to paragraph 5.6 of the Report in which the Panel had expressed the view that "the overall objective of the Code must be viewed as one of striking a balance between the injuries to be remedied and the injuries caused by providing such remedies". He proposed that the Committee adopt the Report.

53. The representative of Canada said the Report by the Panel raised a number of complex and important issues; his authorities needed more time to study these issues before they would be able to take a position on the findings and conclusions of the Panel. He pointed to some important implications of the Report. In his view the findings and conclusions of the Panel meant that certain producers were to be denied countervailing duty relief from injury caused by subsidized imports and offered very little incentive to discipline the use of subsidies, in particular agricultural export subsidies. His authorities considered that the issues raised by the Report required further examination in the Committee and in the Uruguay Round of Multilateral Trade Negotiations.

54. The representative of the United States said his country which had appeared before the Panel, had a fundamental interest in the issues which had been examined by the Panel. The Report had important implications and his Government needed more time to reflect before it could formulate its position on the Report.

55. The representative of Australia shared the view that the Report required careful consideration because of its far-reaching implications. The issues addressed in the Report were of fundamental importance for the operation of the Agreement and for the operation of Article VI of the General Agreement. In the view of his delegation the essential issue was what protection could be given to producers of agricultural raw materials against the effects of subsidies granted on processed agricultural products; in this regard he emphasized that many agricultural products did not enter international trade in their raw form but required some processing before they could be traded internationally. In order to illustrate this issue he mentioned the examples of fresh and frozen peas, fresh and canned tomatoes, sheep and wool, and cane sugar and refined sugar. He considered that in such cases the question of the definition of "like product" and "domestic industry" had to be considered in light of the second Interpretative Note to Section B of Article XVI of the General Agreement. He further referred to the general objective of the Agreement "to ensure that the use of subsidies does not adversely affect or prejudice the interests of any signatory to this Agreement, and that countervailing measures do not unjustifiably impede international trade, and that relief is made available to producers adversely affected by the use of subsidies within an agreed international framework of rights and obligations." For his authorities this was the point of departure of their evaluation of the Panel Report. Another element to be taken into consideration in the examination of the Panel Report was Article VI of the General Agreement, and in particular the fact that this Article referred to injury to "an industry" and not injury to a domestic industry defined in terms of producers of like products. He considered that, in view of the use of the term "an industry" in Article VI, the Panel had adopted a too narrow approach to the issue of the definition of "domestic industry". Furthermore, his authorities interpreted Article 2:1 of the Agreement in a broader manner than the Panel; they were of the view that this Article allowed for "an industry" rather than a particular industry to file a petition for countervailing duty relief. He also expressed the view that Article 6, viewed in its entirety, allowed for a wider interpretation of the concept of "domestic industry" than the one adopted by the Panel. He concluded by saying that in his delegation's view the Panel had not considered all aspects of the Agreement which were relevant to the case. His delegation therefore was not in a position to share the conclusions and recommendations of the Panel.

56. The representative of New Zealand said his delegation needed more time to reflect on the Panel Report, both because of its serious practical consequences and because of the interpretative issues it raised. The interpretation adopted by the Panel would not have been anticipated by his authorities and he therefore considered it necessary to examine carefully the manner in which the Panel had reached its conclusions. It was clear from the Report that certain arguments had weighed very heavily in the

reasoning of the Panel and the weight given to these arguments had implications not only for this particular case but also for the interpretation of the Agreement in general. Regarding this latter aspect, he drew attention to the importance attached by the Panel in its interpretation of provisions of the Agreement to the drafting history of the Anti-Dumping Code of 1967. His delegation wished to reflect on the relevance of this Anti-Dumping Code, drafted twenty years ago, to the interpretation of the Agreement concluded in 1979. Another interpretative issue requiring further consideration was the relationship between the findings of the Panel in this case and the findings of the Panel on the dispute between Finland and New Zealand concerning anti-dumping action, taken by New Zealand on imports of electrical transformers from Finland.¹ Regarding the practical consequences of the Report, he said that some of these consequences had already been pointed out by the representative of Australia. In view of the interpretative and practical implications of the Panel Report his delegation was not in a position to support the adoption of the Report at this point.

57. The representative of the EEC said his delegation regretted that the delegations which had spoken had not been in a position to support the adoption of the Report by the Panel. He reiterated that the Report was an objective and neutral interpretation of the relevant provisions of the Agreement and that it reaffirmed the conclusions reached by the Wine Panel. However, if some delegations wished to have more time to study the Report, his delegation was prepared to accept that the Committee would postpone its further discussion of the Report. He proposed that a special meeting of the Committee be convened within four to six weeks to afford the signatories an opportunity to have a detailed discussion of the Report.

58. The representative of Finland agreed that the Panel Report had important implications and that the Committee should continue its discussion of the Report at a future meeting.

59. The Committee took note of the statements made and agreed to hold a special meeting within four to six weeks to continue its discussion of the Panel Report.

60. On behalf of the Committee the Chairman thanked the members of the Panel.

G. Report by the Chairman on his informal consultations on the Draft Guidelines on the Application of the Concept of Specificity (SCM/W/89)

61. The Chairman recalled that the Draft Guidelines on the Application of the Concept of Specificity (SCM/W/89) had been on the agenda of the regular meetings of the Committee since October 1985. As a result of the position taken by the delegation of the United States, the Committee had so far been unable to formally adopt the Draft Guidelines. He informed the Committee that the informal consultations he had held with the delegation of the United States had made it clear that the United States remained unable to

¹ BISD 32S/55.

support the adoption of the Draft Guidelines by the Committee. However, the United States continued to apply the principles laid down in SCM/W/89 in its countervailing duty practice. He proposed that the Committee take note of this situation, express its desire that the principles contained in the Draft Guidelines continue to be applied by all signatories and maintain the matter on its agenda.

62. The representative of the United States said that for the same reason that it could not support the adoption of the Draft Guidelines, his delegation could not associate itself with an expression by the Committee of a desire that all signatories should apply the principles laid down in SCM/W/89.

63. The representative of Canada said he was surprised by this statement of the representative of the United States; in the past, the United States had indicated that it was applying the specificity principle in its countervailing duty practice and he wondered whether this statement meant that the United States had changed its approach to the definition of countervailable subsidies.

64. The representative of the United States said his Government continued to use the specificity principle in countervailing duty investigations. However, he could not associate the United States with an expression by the Committee of a wish that all signatories should apply the specificity principle as provided for in SCM/W/89; in his view there was only a difference in form, and not in substance, between the adoption of the Draft Guidelines and the proposal made by the Chairman.

65. The Committee took note of the proposal made by the Chairman and the comments made thereon and agreed to revert to this matter at its next regular meeting.

H. Report by the Chairman on his informal consultations on paragraph 4(b) of document SCM/W/74/Rev.1 (Draft Guidelines on Physical Incorporation)

66. The Chairman recalled that at its meeting of 23-24 October 1985 the Committee had adopted the Draft Guidelines on Physical Incorporation (SCM/W/74/Rev.1) with the exception of paragraph 4(b) which had been referred to the Group of Experts for further consideration in light of comments made by the delegation of Chile (SCM/W/94). The Group of Experts had re-examined this paragraph but had not proposed any changes to its wording. Since the last meeting of the Committee the Chairman had held consultations with the delegation of Chile and the delegation of Australia which had also indicated that it had certain difficulties with this paragraph. In these consultations Chile and Australia had undertaken to submit working papers explaining in detail and with the aid of concrete examples their position on paragraph 4(b). The Chairman proposed that the Committee revert to this matter when these working papers had been circulated.

67. The representative of Australia said that his Government was considering an internal report on the issues addressed in paragraph 4(b) of SCM/W/74/Rev.1. When his authorities had formulated their position on

this paragraph, his delegation would submit to the Committee a paper setting out the views of Australia; this paper might include suggestions for changes to the text of paragraph 4(b).

68. The Committee took note of the proposal of the Chairman and the statement of the representative of Australia.

I. Report by the Chairman on his informal consultations on the Panel Reports pending before the Committee (SCM/42, 43 and 71)

69. The Chairman said he had carried out informal consultations with interested delegations on these three Panel Reports which had made it clear that the positions of these delegations remained unchanged. He noted that the United States and the EEC had concluded a bilateral arrangement relating to their dispute concerning restitution payments granted by the EEC on exports of pasta products. He invited the United States and the EEC to provide the Committee with some information on the nature of this arrangement.

70. The representative of the EEC said that, insofar as the dispute between the EEC and the United States on export refunds on pasta was concerned, a new element was the conclusion of a Settlement between the EEC and the United States on exports from the EEC of pasta products to the United States. The Settlement had taken effect provisionally on 1 October 1987 and its text had been published in the Official Journal of the European Communities, No. L 275/36, of 29 September 1987.

71. The Chairman suggested that the parties to the Settlement could perhaps provide information on the substance of the Settlement at a future meeting of the Committee.

72. The representative of the United States said his delegation would take into consideration the suggestion made by the Chairman. He added that signatories of the Committee should be aware that it was provided explicitly in the Settlement that "the provisions of this Settlement are without prejudice to the legal positions of either party regarding the consistency with GATT of the use of export subsidies or export refunds for any product processed from primary agricultural products." Consequently, the Settlement was without prejudice to the legal questions at issue in the Panel Report on pasta.

73. In response to the request for information made by the Chairman, the representative of the EEC reiterated that the text of the Settlement had been published in the Official Journal of the European Communities. He agreed with the representative of the United States that the Settlement was without prejudice to the respective positions of the two parties on the substantive legal issues but he pointed out that the Settlement also provided that "both parties agree to seek resolution of the pasta export refund issue on a definitive basis in the Uruguay Round of Multilateral Trade Negotiations as quickly as possible." He therefore suggested that it might no longer be necessary to keep the Panel Report on pasta on the agenda of the Committee.

74. The representative of the United States said that despite the existence of the Settlement, his delegation opposed the suggestion to remove the Panel Report on pasta from the agenda of the Committee.

75. The representative of Canada seconded the position taken by the delegation of the United States; the Panel Report on pasta did not concern only the EEC and the United States but was also of interest to other signatories. He therefore requested that this Panel Report be maintained on the agenda of the Committee. He noted with interest the suggestion by the EEC that where problems relating to the operation of the Agreement had been raised in the context of the Uruguay Round, it would no longer be necessary to discuss such problems in the Committee.

76. The representative of the EEC said that, as there had been some discussion of a recent development in the dispute concerning exports of pasta from the EEC to the United States, the Committee should also consider whether there had been new developments in the other two disputes. He recalled that with respect to the Panel Report on wheat flour the EEC had indicated on several occasions its preparedness to adopt this Report. Regarding the Panel Report on wine he said that the problem here was that one signatory, who had made no comments on the substance of the Report, had established an artificial link between this and other Panel Reports.

77. The representative of the United States reiterated that his delegation was not in favour of the adoption of the Panel Report on wheat flour because this Report did not constitute a basis for the resolution of the dispute which had been referred to the Panel. He recalled that a previous Chairman of the Committee had made a proposal to resolve this dispute in document SCM/Spec/20 of 16 November 1983 and said that his delegation continued to be prepared to examine a possible resolution of the dispute on the basis of that proposal. Regarding the Panel Report on wine he considered that, in light of the findings and conclusion of the Panel established in the dispute concerning manufacturing beef, it might be more difficult to envisage adoption of this Panel Report.

78. The representative of the EEC wondered whether the United States was making a linkage between the Panel Report on wine and the Panel Report on manufacturing beef.

79. The Committee took note of the statements made and agreed to revert to the three Panel Reports at its next regular meeting. The Chairman said he would hold further informal consultations with the delegations concerned.

J. Canada - Imposition of countervailing duties on imports of grain corn originating in or exported from the United States (SCM/M/33 and SCM/M/34, paragraph 106-109)

80. The Chairman said the Committee had held a special meeting on this matter on 5 May 1987, following a request by the United States for consultations under Article 16:1 of the Agreement (SCM/M/33). At that special meeting Canada and the United States had been invited to keep the Committee informed of further bilateral consultations which they might have on this issue. At the meeting of the Committee held on 3 June the

representative of Canada had informed the Committee that no further bilateral consultations had taken place and that the question whether the application of countervailing duties on grain corn was in the public interest of Canada would be the subject of a public hearing before the Canadian Import Tribunal (CIT) on 6 July 1987 (SCM/M/34, paragraph 107). At the same meeting the representative of the United States had reiterated the concerns of his delegation with the Canadian decision to introduce countervailing duties on grain corn from the United States and had announced that his delegation wished to have further consultations with Canada (SCM/M/34, paragraph 108).

81. The representative of Canada said bilateral consultations on this matter had taken place between the United States and Canada on 30 July 1987. These consultations had been useful but no mutually satisfactory resolution had been reached. Since then no further bilateral consultations had been held. On 20 October 1987 the CIT had issued a report on this case pursuant to Section 45 of the Canadian Special Import Measures Act which allowed it to report on whether the imposition of a countervailing duty, or the imposition of such a duty in the full amount of the subsidy determined to be provided, was in the public interest. This Report recommended that the current countervailing duty on imports of grain corn from the United States be reduced from \$1.10 per bushel to 30 cents per bushel. In the course of its enquiry under Section 45, the CIT had received representations from a large number of parties such as users and producers of grain corn. The Report was non-binding and without immediate effect on the current countervailing duty. However, the Canadian Government was giving careful consideration to the Report and hoped to be in a position to respond to it in the near future.

82. The Committee took note of the statement by the representative of Canada and agreed to revert to this matter if requested to do so by one of the interested delegations.

K. United States - Countervailing duty investigation on imports of fresh cut flowers from various countries (SCM/M/34, paragraphs 111-120)

83. The Chairman recalled that at its meeting held on 3 June 1987, the representatives of Canada and the EEC and the observer for Colombia had made some comments on various aspects of the determinations of subsidization and injury made by the relevant United States agencies in the course of a countervailing duty investigation on fresh cut flowers from various countries (SCM/M/34, paragraphs 111-120).

84. The representative of Canada said that subsequent to the last meeting of the Committee Canadian authorities had recently made representations to the United States in which they had described their views on this case. He expressed the hope that the United States would reply in the near future.

85. The representative of the EEC said his delegation continued to have difficulties with the affirmative final countervailing duty determination made in January 1987 by the United States Department of Commerce with respect to fresh cut flowers from the Netherlands, and in particular with

the determination that the aids for the creation of co-operative organizations were administered in such a way as to be limited to a specific enterprise or industry, or group of enterprises or industries in the Netherlands. In this respect he made several points. Firstly, the eligibility for funding under this programme was open to all agricultural sectors in the member States, with the exception of milk and wine which were in oversupply. Secondly, 5,000 individual projects covering a wide range of agricultural sectors had been financed under this EEC programme. Thirdly, since 1978 the Netherlands alone had submitted proposals for the financing of projects in fourteen different agricultural sectors, including the flowers sector. Fourthly, if account was taken of the other sectors in which projects had been financed under the programme in the eleven other member States, it was obvious that the programme was generally available in the agricultural sector to member States within the EEC. Finally, he expressed the view that the determination of whether the programme was sector-specific should have been made at the level of the Community and not at the level of an individual member State.

86. The Committee took note of the comments made and agreed to revert to this issue at its next regular meeting.

L. Other business

(i) United States - Collection of countervailing duties on imports of non-rubber footwear from Brazil entered into the United States between 1 January 1980 and 28 October 1981

87. The representative of Brazil brought to the attention of the Committee a dispute between his country and the United States regarding the collection of countervailing duties and the application of provisional measures on imports into the United States of non-rubber footwear from Brazil which had entered the United States between 1 January 1980 and 28 October 1981. These actions by the United States had been taken without a prior finding of the existence of injury, as required by Article VI of the General Agreement, and in violation of Articles 1, 2, 4 and 5 of the Agreement. The total value of the duties which the United States sought to impose was estimated at US \$58 million on a volume of trade in excess of US \$500 million. The case had been brought before the United States Court of International Trade which was expected to render its decision before the end of this year. In light of that decision the Government of Brazil would take the appropriate measures to enforce its rights under the Agreement and under the General Agreement.

88. The representative of Brazil explained the background of this case as follows. On 12 September 1974, a countervailing duty order had taken effect on imports into the United States of non-rubber footwear from Brazil. This order had entered into force without a prior determination that imports of Brazilian non-rubber footwear were causing, or threatening to cause, material injury to an industry in the United States, as required by Article VI:6(a) of the General Agreement. The relevant provisions of the United States countervailing duty law in effect in 1974 pre-dated the General Agreement and in light of the Protocol of Provisional Application of the General Agreement, the United States had taken the position that it

was not required to apply an injury test in countervailing duty investigations. Between 12 September 1974 and 7 December 1979 the countervailing duty rate on non-rubber footwear from Brazil was revised several times. The new rate in each case was applied prospectively and liquidation of customs duties proceeded normally. On 4 January 1980, liquidation of customs duties was suspended effective 7 December 1979 following the termination of the IPI export credit premium programme by the Government of Brazil. Initially, the purpose of this suspension of liquidation was to allow time to recalculate the amount of the subsidy in view of the termination of the IPI export credit premium programme. However, the suspension of liquidation remained in effect for several years. During the period 1 January 1980-21 June 1983, importers of Brazilian footwear were required to pay cash deposits for estimated countervailing duties in an amount equal to 1 per cent of the FOB value of the merchandise.

89. The representative of Brazil recalled that in 1979 the United States and Brazil accepted the Agreement which entered into force between them on 1 January 1980. A principal obligation of all signatories of the Agreement was to implement Article VI of the General Agreement with respect to all merchandise entered on or after the effective date of the Agreement. For the United States this principally meant that it was required to apply an injury test prior to the imposition of countervailing duties on imports from other signatories. On 4 January 1980 the United States had enacted the Trade Agreements Act of 1979, which substantially amended its countervailing duty law. The purpose of this Act was, inter alia, to bring the United States domestic legislation into conformity with the Agreement and with Article VI of the General Agreement. The most important change made to the United States countervailing duty legislation was the application of an injury test in cases involving merchandise exported to the United States from other signatories of the Agreement. However, whereas this injury test was applied automatically to new countervailing duty investigations initiated after 4 January 1980, it was not applied automatically to imports subject to countervailing duty orders already in effect on 1 January 1980. In order to obtain application of the injury test to imports covered by outstanding countervailing duty orders, the Act required signatories of the Agreement, or exporters "accounting for a significant proportion of exports to the United States of merchandise which is covered by the order", to file an application with the United States International Trade Commission (USITC) within three years of the date of the enactment of the Act. The USITC had three years from the date of the filing of such a request to make a determination as to whether an industry in the United States would be materially injured or be threatened with material injury by reason of imports covered by the countervailing duty order if the order were to be revoked.

90. The representative of Brazil said that on 29 October 1981 his Government had formally requested the USITC to determine whether material injury, or threat thereof, to a United States industry would result from the revocation of the countervailing duty order on non-rubber footwear from Brazil. During the period of the USITC investigation the suspension of liquidation first ordered on 7 December 1979 had remained in effect. On 10 May 1983 the USITC had made a final determination that revocation of the

countervailing duty order on non-rubber footwear from Brazil would not result in material injury, or threat thereof, to an industry in the United States. On the basis of this USITC determination the United States Department of Commerce had revoked the countervailing duty order on 21 June 1983 with respect to all future entries of the articles in question and instructed the United States Customs Service to refund any estimated deposits collected on imports of Brazilian footwear made between 29 October 1981 and the date of the revocation of the order. However, in spite of the negative determination by the USITC and the consequent revocation of the countervailing duty order, the Department of Commerce had announced its intention to collect countervailing duties on all imports of non-rubber footwear from Brazil which had entered the United States between 7 December 1979 and 28 October 1981. According to the Department's interpretation of the relevant statutory provisions, countervailing duties must be collected on imports which are entered into the United States prior to the date of a request for an injury determination under Section 104(b)(i) of the Trade Agreements Act.

91. The representative of Brazil said that on 19 July 1983 his Government had communicated to the United States its objections to the decision to collect countervailing duties on Brazilian non-rubber footwear entered into the United States between 7 December 1979 and 28 October 1981. These objections had been based on two grounds. Firstly, the relevant provisions of the countervailing duty legislation of the United States did not require the United States Government to take such a step. The transition provisions of the Trade Agreements Act could and should be interpreted to require the liquidation of all unliquidated merchandise without the imposition of a countervailing duty in case of a negative injury determination by the USITC. Secondly, since there had never been a determination of injury with respect to imports of non-rubber footwear from Brazil and a negative determination was made the first time the USITC had considered the issue, the imposition of countervailing duties on this product would be in violation of the Agreement and of Article VI of the General Agreement. The United States should avoid an interpretation of its domestic law which would cause it to act in violation of the Agreement and in violation of the General Agreement. Ambiguity in the language of the Act should, therefore, be resolved in favour of an interpretation consistent with the international obligations of the United States. Notwithstanding these objections raised by the Government of Brazil, the United States had initiated an administrative review of entries of Brazilian non-rubber footwear subject to the countervailing duty order during calendar year 1980. On 19 April 1985 the Department of Commerce had announced the final results of this administrative review in which it had found an amount of subsidization ranging from 8.84 per cent to 11.03 per cent ad valorem. As a result of this finding the Department had instructed the Customs Service to collect the difference between this amount and the 1 per cent cash deposit paid during the period under review, plus interest. The estimated value of these duties to be collected was US\$35 million. Furthermore, the Department of Commerce had also completed its administrative review for the period 1 January-28 October 1981 in which it had found an amount of subsidization of 6.04 per cent and the Department had stated that it intended to collect duties on these entries as well. As a result, the estimated liability of imports of Brazilian non-rubber

footwear for the two-year period 7 December 1979-28 October 1981 was US\$58 million. The total value of imports affected was well over US\$500 million.

92. The representative of Brazil said that in the view of his authorities the action taken by the United States in this case was inconsistent with the Agreement and with the General Agreement for the following reasons. Firstly, the determination to collect countervailing duties on entries of Brazilian non-rubber footwear between 1 January 1980 and 28 October 1981 without a prior affirmative injury determination by the USITC, violated Article VI:6(a) of the General Agreement and Article 1:1 of the Agreement. Secondly, the attempt to assess countervailing duties on imports of Brazilian non-rubber footwear entered into the United States after 1 January 1980, based upon the countervailing duty order which had entered into force in 1974, violated the procedural requirements of Article 2:1 of the Agreement. Thirdly, his Government considered that the imposition of provisional measures in the form of cash deposits, without a prior preliminary determination of injury, and during a period of five years, was in violation of Articles 5:2 and 5:3 of the Agreement. Fourthly, the collection of definitive duties in excess of the duties imposed provisionally violated Article 5:6 of the Agreement. Finally, his authorities were of the view that the collection of definitive duties in excess of the provisional duties collected violated the letter, spirit and intent of Article X:2 of the General Agreement, by retroactively applying an increase in the rate of duty to entries which had occurred 4-5 years before.

93. The Committee took note of the statement made by the representative of Brazil and agreed to revert to this matter at its next regular meeting.

(ii) United States - Countervailing duty investigation of imports from granite from Italy

94. The representative of the EEC drew the attention of the Committee to two procedural problems which had arisen in a recently initiated countervailing duty investigation by the United States of imports of granite from Italy. This investigation involved a very large number of small exporters. The United States Department of Commerce had received replies to its questionnaires from producers who, according to United States import statistics, accounted for 81.8 per cent of the imports of the product subject to investigation. The Department of Commerce intended to compare this figure, based on United States import statistics, with statistics on exports of the product in question from Italy to the United States. Such statistics were not available, however, for the kind of granite covered by the investigation. Moreover, the EEC delegation considered that, given that the United States authorities were satisfied, on the basis of their own import statistics, that 81.8 per cent of the Italian exporters had replied to the questionnaire, there was no need to examine the Italian export statistics. A second problem related to the same investigation was that the United States authorities wished to include all exporters in the investigation. In this respect the representative of the EEC said that in cases with a large number of small exporters one could limit the investigation to a number of representative exporters.

95. The Committee took note of the statement made by the representative of the EEC and agreed to revert to this matter at its next meeting.

(iii) Canada - Countervailing duty investigation on imports of drywall screws from France

96. The representative of the EEC made several comments on a countervailing duty investigation initiated in June 1987 by Canada with respect to drywall screws from France. His delegation was of the view that this investigation had been opened without there being sufficient evidence to justify the opening of an investigation. In addition, the programmes covered by the investigation were generally available to enterprises in economically weak regions. Consequently, these programmes did not entail any net benefits for the enterprises in question.

97. The representative of Canada said his authorities had sufficient evidence to initiate this investigation. Regarding the evidence on the existence of subsidization he pointed out that this evidence consisted of a publication by the French enterprise in question in which that enterprise itself had listed various sources of public assistance which it was receiving. With respect to the subsidy determination contained in the preliminary determination made in this case, his authorities were prepared to discuss it with the EEC. Furthermore, on the injury side, the evidence was detailed in the public notices issued in the context of this case and took the form inter alia, of price suppression and lost market share due to dumped and subsidized imports.

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

(iv) Request by the Chairman of the Uruguay Round Negotiating Group on MTN Agreements and Arrangements for information on the activities of the Committee

99. The Chairman said he had been informed by the Chairman of the Uruguay Round Negotiating Group on MTN Agreements and Arrangements that this Group would appreciate it if the Committee would make available to it information on the Committee's activities.

100. Several delegations expressed their views on this matter; the Committee agreed to revert to this issue at a future meeting.

M. Annual Review and Report to the CONTRACTING PARTIES

101. The Committee adopted its Report (1987) to the CONTRACTING PARTIES (L/6254).

Date of the next regular meeting

102. The Chairman said that in accordance with the decision taken by the Committee at its meeting in April 1981 (SCM/M/6, paragraph 36), the next regular meeting of the Committee would take place in the week of 25 April 1988.