

TARIFFS AND TRADE

Committee on Subsidies and
Countervailing Measures

MINUTES OF THE MEETING HELD ON 31 MAY 1988

Chairman: Mr. K.Y. Jhung (Korea)

1. The Committee held a regular meeting on 31 May 1988.
2. The Committee adopted the following agenda:
 - A. Election of officers
 - B. Adherence of further countries to the Agreement
 - C. 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, 140 and 146)
 - (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) Laws and/or Regulations of other signatories.
 - D. Notification of Subsidies under Article XVI:1 of the General Agreement (L/6111 and addenda and L/6297 and addenda)
 - E. Semi-annual report by the United States of countervailing duty actions taken within the period 1 January-30 June 1987 (SCM/84/Add.4)
 - F. Semi-annual reports of countervailing duty actions taken within the period 1 July-31 December 1987 (SCM/86 and addenda)

- G. Reports on all preliminary or final countervailing duty actions (SCM/W/148, 150, 152 and 153).
- H. Canada - Imposition of countervailing duties on imports of manufacturing beef from the EEC - Report by the Panel (SCM/85)
- I. Panel reports pending before the Committee (SCM/42, 43 and 71)
- J. Draft Guidelines on the Application of the Concept of Specificity (SCM/W/89)
- K. United States - Countervailing duty investigation of imports of fresh cut flowers from various countries (SCM/M/35, paragraphs 83-86)
- L. 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 (SCM/M/35, paragraphs 87-92)
- M. United States - Countervailing duty investigation of imports of granite from Italy (SCM/M/35, paragraphs 94-95)
- N. Canada - Countervailing duty investigation on imports of drywall screws from France (SCM/M/35, paragraphs 96-98)
- O. Other business
 - (i) Communication from Finland on language and translation problems in countervailing duty investigations (SCM/W/154)
 - (ii) United States - Initiation of a countervailing duty investigation of imports from Canada of thermostatically controlled appliance plugs and internal probe thermostats therefor
 - (iii) Canada - Countervailing duties on imports of grain corn from the United States

A. Election of officers

3. The Committee elected Mr.. K.Y. Jhung (Korea) as Chairman and Mr. J.A. Graça Lima (Brazil) as Vice-Chairman.

B. Adherence of further countries to the Agreement

4. The Chairman informed the Committee that since its last regular meeting, held in October 1987, no country had accepted or adhered to the Agreement.

C. Examination of countervailing duty laws and/or regulations of signatories of the Agreement (SCM/1 and addenda)

(i) Australia (Australian Customs Notice No. 87/169, document SCM/1/Add.18/Rev.1/Suppl.1)

5. The Chairman recalled that Australian Customs Notice No. 87/169, which described new procedures for the processing of anti-dumping and countervailing duty petitions accepted on or after 1 September 1987, had been discussed briefly at the regular meeting of the Committee in October 1987; at that meeting, the representative of the EEC had expressed his delegation's wish to have the opportunity to revert to this Notice at the next meeting of the Committee (SCM/M/35, paragraph 5).

6. The representative of the EEC asked several questions on the Notice. Firstly, noting that the Notice had announced the establishment of an Anti-Dumping Authority and the publication by the Australian Customs Service of a new dumping manual, he asked whether further developments had taken place in this respect since the publication of the Notice. Secondly, he asked whether the changes to the Australian countervailing duty procedures announced in the Notice would be effected by means of amendments to the Australian countervailing duty law or merely by means of changes in the administrative practice. In this respect he also requested a clarification of the legal status of the dumping manual. Thirdly, he asked whether the Australian authorities had already introduced a "sunset" clause in the countervailing duty law, as had been announced in 1986.

7. The representative of Australia said that at the last meeting of the Committee he had indicated that the Australian Government intended to submit to its Parliament legislative proposals to give effect to the decision regarding certain procedural changes which had been taken by the Government following the publication, in March 1986, of the Report by Professor Gruen. The most important aspect of this decision was the proposal to establish an Anti-Dumping Authority which would give advice to the Minister as to whether or not to apply anti-dumping and countervailing duties. The legislative proposals providing for the establishment of this Authority and a definition of its rôle in anti-dumping and countervailing duty investigations had passed the House of Representatives of the Australian Parliament very recently and would be introduced in the Senate in the near future. His delegation would provide the Committee with the text of the legislative amendments as soon as these were adopted. He explained that the legislative proposals laid down a division of responsibilities between the Australian Customs Service and the new Anti-Dumping Authority. The Customs Service would examine the admissibility of anti-dumping and countervailing duty petitions and carry out preliminary determinations. The responsibility for the further examination of the complaints would be vested in the Anti-Dumping Authority which would make final recommendations to the Minister. In addition, the legislative amendments would incorporate into the law a number of procedural elements which corresponded to provisions of the Agreement and

which would lead to greater transparency. The administrative arrangements outlined in Customs Notice No. 87/169 had been included in the proposed legislative amendments. Regarding the status of the dumping manual, he said that it had no legally binding status; it would be revised after the new legislation had been adopted and copies of the manual would be provided to the Committee by his delegation. He further explained that, in conjunction with the amendment of the law, there would be a series of regulations and that the legislative amendments provided for the authority of the Minister to make particular directives. Unlike the dumping manual, these regulations and directives would be of a legally binding nature. Finally, he said that the new legislation would contain a mandatory provision for the expiration of anti-dumping and countervailing duty measures after a period of three years.

8. The Committee took note of the questions raised by the delegation of the EEC and the replies given by the representative of Australia. The Chairman said that, at this stage, the Committee had concluded its examination of Australian Customs Notice No. 87/169.

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

9. The Chairman said the Committee had started its discussion of this Resolution at its meeting in October 1987 (SCM/M/35, paragraphs 8-11); at that meeting the delegation of the United States had requested that the Resolution be kept on the agenda for the next meeting of the Committee.

10. The representative of the United States said the Resolution was rather general in nature and expressed the hope that, if more detailed implementing regulations were issued, these would be submitted to the Committee for review.

11. The representative of Brazil said that Resolution No. 00-1227 contained the text of the implementing regulations and that no further, more detailed, rules were envisaged by his authorities; in case further rules would be adopted, these rules would of course be notified to the Committee.

12. The Committee took note of the statements made; the Chairman said that at this stage the Committee had concluded its examination of Resolution No. 00-1227.

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

13. The Chairman recalled that the Committee had been discussing these Guidelines at its meetings in June and October 1987 (SCM/M/34, paragraphs 9-24, and SCM/M/35, paragraphs 12-15, respectively). At the meeting held in October 1987 the representative of Canada had reserved his

delegation's right to raise further questions on the Guidelines, while the representatives of Australia, Brazil, the EEC and the United States had indicated they wished to revert to the Guidelines at the next regular meeting of the Committee (SCM/M/35, paragraphs 13-14).

14. The representative of Canada said his delegation had no further questions on the Guidelines at this time.

15. The representative of Australia reserved his delegation's right to revert to the Guidelines at a future meeting.

16. The representative of Brazil thanked the delegation of Japan for the replies it had provided to the questions asked by his delegation and said his delegation was satisfied with these replies.

17. The representative of the EEC made some comments on the replies given by the delegation of Japan to questions raised by the EEC in document SCM/W/136, paragraph A(i). The EEC had asked how the Japanese authorities reconciled paragraph 1(2) of the Guidelines, which allowed labour unions to file countervailing duty petitions, with the requirement of Article 2:1 of the Agreement that a petition be filed "by or on behalf of the industry affected". In its reply to this question (SCM/W/146, page 5), the delegation of Japan had stated, inter alia, that the fact that under paragraph 1(2) of the Guidelines labour unions could have standing to file petitions was justifiable given that Japanese labour unions were generally organized on a company basis and closely related with the domestic industry in Japan as a result of this company-specific organization. The representative of the EEC considered that this provision and the manner in which it had been explained by the Japanese delegation reflected too broad an interpretation of the expression "on behalf of the industry affected". He further commented on a reply given by the Japanese delegation to a question put by the EEC in SCM/W/136 regarding the word "usually" in the first sentence of paragraph 1(2) of the Guidelines; in its reply (SCM/W/146) the Japanese delegation had stated that the use of this word indicated that, in addition to the three categories listed in paragraph 1(2), there could be other domestic interested parties which could be entitled to file petitions. The representative of the EEC considered that this aspect of the Guidelines was also inconsistent with the expression "on behalf of the industry affected" used in Article 2:1 of the Agreement.

18. The representative of Japan said that, as had been explained in SCM/W/146, paragraph 1(2) of the Guidelines required that any petitions filed by any of the domestic interested parties listed in that paragraph be filed "by or on behalf of an industry in Japan". Consequently, a labour union could only file a petition if this was done on behalf of an industry in Japan. Regarding the possibility that domestic parties other than those mentioned in paragraph 1(2) could qualify as petitioners, he said that his authorities at this stage did not want to exclude that other domestic parties could be applicants.

19. The representative of the EEC said he continued to have concerns regarding the fact that labour unions could file countervailing duty petitions; on the second point which he had raised, he asked the delegation of Japan to indicate which other domestic parties could, in the view of the Japanese authorities, qualify as petitioners.

20. The representative of Japan said that at this time his Government had no specific ideas on the question which other domestic parties might be entitled to file a petition and reiterated that his Government did not wish to exclude the possibility that there could be other domestic parties qualifying as petitioners.

21. The Committee took note of the statements made and the Chairman said that at this stage the Committee had concluded its examination of the Guidelines.

- (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)

22. The Chairman recalled that the Committee had been discussing the countervailing duty legislation of Korea at its meetings held in October 1986 and June and October 1987 (SCM/M/32, paragraphs 4-9, SCM/M/34, paragraphs 27-33 and SCM/M/35, paragraphs 16-22). At the meeting held in October 1987 the representative of Australia had reserved his delegation's right to revert to the Korean legislation while the delegation of the EEC had requested a further clarification regarding the provision in the Korean legislation for the initiation of countervailing duty investigations on the initiative of the relevant authorities.

23. The representative of Australia said his delegation had no further comments to make on the Korean countervailing duty legislation.

24. The representative of the EEC said his delegation remained concerned about the criteria for the initiation of countervailing duty investigations on the initiative of the Korean authorities (Article 10:3 of the Customs Act) and about the fact that under Article 4:4(2) of the Presidential Decree of the Customs Act wholesalers and labour unions could file countervailing duty petitions. With respect to this second point he expressed the view that this provision reflected too broad an interpretation of the expression "on behalf of the industry affected".

25. In response to the concerns expressed by the delegation of the EEC regarding the criteria for the self initiation of countervailing duty investigations, the representative of Korea noted that Article 10:3 required that there be sufficient evidence of the existence of subsidized imports and material injury resulting therefrom; in addition, the Minister of Finance had to determine that the initiation of an investigation was necessary. In the light of these criteria, he considered that there was no discrepancy between Article 10:3 of the Customs Act and Article 2:1 of

the Agreement. Regarding the issue of the categories of domestic parties entitled to file countervailing duty petitions, he said his authorities intended to amend the relevant provisions of the Korean legislation in the near future; these amendments, when adopted, would be submitted to the Committee.

26. The representative of the EEC said his delegation wished to reserve its right to revert to the Korean legislation at a later date.

27. The Committee took note of the statements made and the Chairman said that, at this stage, the Committee had concluded its examination of the countervailing legislation of Korea.

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

28. The Chairman recalled that the Committee had been considering the countervailing duty legislation of the Philippines at its meetings in April and October 1986 (SCM/M/31, paragraphs 5-11 and SCM/M/32, paragraphs 10-17, respectively) and at its meetings in June and October 1987 (SCM/M/34, paragraphs 34-39 and SCM/M/35, paragraphs 23-28, respectively). At the meeting in October 1987, the representative of the Philippines had been invited to provide a written text of the answers he had given at that meeting. The Chairman informed the Committee that the secretariat had received a written reply by the Philippines to one question raised by the EEC in document SCM/W/114/Add.1.^{1/}

29. The representative of the Philippines, replying to the question put by the EEC in SCM/W/114/Add.1, said that his authorities considered that there was a distinction between the evidence required to initiate an investigation and the evidence necessary to justify application of provisional measures. Upon receipt of the necessary data, the Secretary of Finance would first verify the existence of subsidization in the exporting country concerned and determine whether there was injury, or a likelihood thereof, to a domestic industry. Only upon a preliminary affirmative finding of both subsidization and injury would a countervailing duty be imposed. If the petition did not contain the necessary data, it would be dismissed; if the petition contained the necessary data, an investigation would be initiated.

30. The representative of the EEC said that, in view of the very late circulation of the answer by the delegation of the Philippines, his delegation wished to revert to this matter at the next regular meeting.

^{1/} See document SCM/W/157.

31. The representative of the Philippines said that in the light of the internal examination which was being carried out by his authorities, he could not guarantee that his delegation would be in a position to provide further written comments on the point raised by the EEC.

32. The Committee took note of the statements made and agreed to revert to the countervailing duty legislation of the Philippines at its next regular meeting.

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

33. The Chairman recalled that this Ordinance had been on the agenda of the Committee at its meetings in April and October 1986 (SCM/M/31, paragraphs 12-17, and SCM/M/32, paragraphs 18-32, respectively) and at its meetings in June and October 1987 (SCM/M/34, paragraphs 40-42 and SCM/M/35, paragraph 29, respectively). Written questions on this Ordinance had been submitted by Australia (SCM/W/111 and 139), the EEC (SCM/W/113) and the United States (SCM/W/106). At the meeting held in October 1986 the representative of Pakistan had replied to some of these questions; in June 1987 the Chairman had invited the delegation of Pakistan to provide written replies to the remaining questions by 1 October 1987 (SCM/M/34, paragraph 42). No replies had been received from the delegation of Pakistan and the Chairman, therefore, suggested that the Committee revert to the Ordinance once the Committee had received further replies from Pakistan to the questions raised.

34. The representative of Pakistan said that he believed that the replies he had provided orally at the meeting in October 1986 were sufficient but, if deemed necessary by the Committee, these replies could be provided in writing. He informed the Committee that his Government had decided to revive the Tariff Commission with a view to providing a co-ordinated response to the problems experienced by domestic industries in Pakistan. The rules and procedures of the Commission would be fully transparent and they would be duly published. He further said that no countervailing duty actions had been taken so far under the Ordinance, which had been in effect since 1983 and considered that it would be more useful for the Committee to conclude its examination of the countervailing duty legislation of Pakistan at this time and revert to it when implementing regulations had been adopted pursuant to Section 11 of the Ordinance.

35. The representative of the United States said his delegation did not object to the proposal made by the representative of Pakistan but reserved its right to revert to the legislation of Pakistan at a later date. He also noted that there had been reports suggesting that the Government of Pakistan was contemplating the introduction of provisions allowing for the application of embargoes on imports of allegedly dumped or subsidized imports. His delegation was interested in a further clarification of the status of this proposal which, if adopted, would be inconsistent with the Agreement.

36. The representative of Pakistan said he had taken good note of the statement made by the United States and said that if and when implementing regulations would be adopted they would be submitted for review to the Committee.

37. The representative of the EEC said that the question put by his delegation in SCM/W/113 whether the Pakistan Government would offer an opportunity for consultations prior to the initiation of a countervailing duty investigation remained unanswered and he reserved his delegation's right to revert to this matter at a later date.

38. The representative of Australia also reserved his delegation's right to revert to the countervailing duty legislation of Pakistan at a later date.

39. The Committee took note of the statements made and the Chairman said that, at this stage, the Committee had concluded its examination of this legislation.

(vii) Laws and/or regulations of other signatories

40. The representative of Hong Kong recalled that at the last regular meeting of the Committee there had been some discussion of proposed legislative amendments under consideration in the United States Congress (SCM/M/35, paragraphs 30-35). He appreciated the attitude taken by the United States administration on the trade bill which had recently passed the Congress but he nevertheless believed that there remained a threat of adoption of protectionist legislation.

41. The representative of the United States said he had taken note of the concern of the delegation of Hong Kong. The trade bill referred to by the representative of Hong Kong had been vetoed by the President of the United States and was thus without any legal status; he therefore considered it inappropriate for the Committee to discuss this matter.

42. The Committee took note of the statements made.

D. Notifications of Subsidies under Article XVI:1 of the General Agreement (L/6111 and addenda; L/6297 and addenda)

43. The Chairman said that at its special meeting on 3 February 1988 the Committee had agreed to hold a special meeting, in conjunction with its regular meeting in spring 1988, to examine in detail full notifications under Article XVI:1 of the General Agreement which had been received from signatories (SCM/M/37, paragraph 15). Informal consultations by his predecessor had, however, made it clear that delegations needed more time to prepare this special meeting. He, therefore, proposed that the special meeting be held in conjunction with the regular meeting of the Committee in October 1988. It was so agreed.

44. The Chairman brought to the attention of the Committee the fact that the delegations of Egypt, Indonesia and Pakistan had not submitted their notifications due in 1987 and urged these delegations to comply without further delay with their obligations under Article XVI:1 of the General Agreement.

45. The Chairman also expressed his concern about the fact that so far only three signatories (Austria, Hong Kong, Uruguay) had made notifications updating the information contained in the full notifications; in this respect, he reminded the signatories that even if no changes had occurred since the last full notification, this fact should still be notified and he urged all signatories to submit updating notifications without further delay.

46. The representative of Australia raised several questions regarding the full notifications by the EEC (L/6111/Add.19) and Japan (L/6111/Add.22 and Corr.1). His delegation was of the view that there were certain omissions in these notifications. Regarding the notification by the EEC, he asked what was the basis of the EEC's claim that the industrial subsidies covered by its notification were not subsidies in terms of Article XVI:1 of the General Agreement (L/6111/Add.19, page 1). Secondly, he asked what was the size and value of discounted intervention sales to assist exports in the agricultural sector and why these sales had not been mentioned in the notification. Thirdly, he noted that the EEC had claimed that it had a continuing surplus of apples to such an extent that it had become necessary to take action, in April 1988, under Article XI:2(b) of the General Agreement to restrict import of apples. He asked what were the costs of withdrawal measures by apple producer organizations taken in accordance with the provisions explained on page 31 of the notification and why these measures did not appear in the notification. Regarding the notification by Japan, he noted that the notification stated that a deficit had been incurred as a result of the surplus disposal of rice (L/6111/Add.22, page 2) and asked what was the cost of this surplus disposal and why the size of the deficit resulting from the surplus disposal had not been indicated in the notification.

47. Regarding the use of the word "omission" by the representative of Australia, the representative of the EEC wondered how one could say that there were omissions in the EEC notification given that there was no agreed definition of what constituted a subsidy. On the status of the industrial subsidies notified by the EEC under Article XVI:1, he said that these subsidies were subsidies granted for purposes mentioned in Article 11:1 of the Agreement and were, therefore, without effect upon international trade and outside the scope of application of Article XVI:1 of the General Agreement. With respect to the questions of the Australian delegation on measures in the agricultural sector, he said that his delegation would provide detailed replies to these questions at the special meeting of the Committee.

48. The representative of Japan said his delegation would transmit the questions raised by the delegate of Australia to its authorities.

49. The representative of Korea said his delegation was fully aware of the importance of the notification procedures under Article XVI:1 of the General Agreement. His delegation considered that the submission of written questions would facilitate the Committee's examination of notifications under Article XVI:1. Regarding the notification by his country (L/6111/Add.12), he said that this notification contained data on measures as of 1 January 1987; a notification updating the information contained in L/6111/Add.12 would be submitted as soon as possible.

50. The Committee took note of the statements made and agreed that, in order to facilitate the preparation of the special meeting to examine the notifications of subsidies, any questions on these notifications should be submitted in writing by the end of September 1988.

E. Semi-annual report by the United States on countervailing duty actions taken within the period 1 January-30 June 1987 (SCM/84/Add.4)

51. The Chairman recalled that at its meeting in October 1987, the Committee had agreed to revert to this report because of its late receipt (SCM/M/35, paragraph 47).

52. The representative of Israel referred to two countervailing duty investigations conducted by the United States of allegedly subsidized imports from his country and noted that in both these cases the subsidized imports accounted for a very small percentage of United States domestic consumption. Thus, in one case, involving oil country tubular goods, the imports subject to investigation accounted for 0.9 per cent of United States domestic consumption, while in the other case, involving phosphoric acid, the imports under investigation accounted for 0.7 per cent of United States domestic consumption (SCM/84/Add.4, page 7). On this second case, he added that this investigation had also covered imports from Belgium, which accounted for 1.5 per cent of United States domestic consumption. Thus, even if one assessed the impact of the imports covered by this investigation on a cumulative basis, it was difficult to understand how they could have led to an affirmative injury determination. Furthermore, the injury determination made with respect to imports from Israel was not appropriate given that the imports from Belgium had been found not to be subsidized. He also reiterated a question raised at a previous meeting (SCM/M/34, paragraph 74) whether the relevant United States authorities had taken account of the fact that Israel had accepted the Agreement in 1985 in reviewing the countervailing duty order in effect with respect to imports of roses from Israel (SCM/84/Add.4, page 14) and, more in particular, whether in reviewing this order they had made an injury determination.

53. The representative of the United States replied that in the countervailing duty investigation of industrial phosphoric acid from Belgium and Israel the United States International Trade Commission

(USITC), in considering whether it would be appropriate to assess on a cumulative basis the volume and price effects of the imports of the two countries, had examined whether the imported products from these countries competed with each other and with the domestic like product, whether the imports were reasonably coincident and whether they were both subject to investigation. The USITC had determined that the products imported from Belgium and Israel were essentially substitutable and interchangeable and had, therefore, determined that it was appropriate to assess the volume and price effects of these imported products on a cumulative basis.

54. The representative of Israel said he would transmit the reply given by the representative of the United States to his authorities.

55. The Committee took note of the statements made.

F. Semi-annual reports of countervailing duty actions taken within the period 1 July-31 December 1987 (SCM/86 and addenda)

56. The Chairman drew the attention of the Committee to document SCM/86/Add.1 which listed signatories who had notified that they had taken no countervailing duty action during the period 1 July-31 December 1987: Austria, Brazil, Chile, Finland, Hong Kong, Israel, Japan, Korea, Norway, Pakistan, Switzerland, Turkey, Uruguay and Yugoslavia. No semi-annual reports had been received from Egypt, India, Indonesia and Sweden. The Chairman urged these signatories to comply with their obligations under Article 2:16 of the Agreement and to submit their reports without further delay. Subsequent to the meeting the delegation of India informed the secretariat that no countervailing duty actions had been taken by India during this period. The Committee considered the semi-annual reports submitted by signatories who had taken countervailing duty actions during this period (Australia, Canada, New Zealand and the United States) in the order in which these reports had been circulated.

New Zealand (SCM/86/Add.2)

57. The representative of the United States pointed to the fact that in the case reported by New Zealand, involving aluminium passenger catamarans from Australia, no indication had been given of the nature of the provisional measures applied.

58. The representative of New Zealand said that in the case reported in SCM/86/Add.2 no provisional countervailing duties had in fact been applied as no importation of the product subject to the investigation had taken place. A final determination had been published in The New Zealand Gazette on 4 March 1988 and a copy of this final determination had been made available for consultation by interested delegations.¹

59. The Committee took note of the statements made.

¹See document SCM/W/155.

Canada (SCM/86/Add.3)

60. No comments were made on this report.

United States (SCM/86/Add.4)

61. The representative of Israel said that his questions and comments on the report submitted by the United States for the previous period (supra, paragraph 52) were also relevant to this report.

62. The Committee took note of the statement made by the representative of Israel.

Australia (SCM/86/Add.5)

63. No comments were made on this report.

G. Reports on all preliminary or final countervailing duty actions
(SCM/W/148 and 150)

64. The Chairman said that reports under these procedures had been received from the United States only and he asked delegations which had notified countervailing duty actions in their semi-annual reports to indicate whether preliminary or final countervailing duty actions had been taken by their authorities since October 1987.

65. The representative of Canada said that on 30 November 1987 his authorities had made an affirmative countervailing duty determination regarding imports of drywall screws from France.

66. The representative of Australia said that on 31 December 1987 his authorities had accepted an undertaking relating to imports of frozen peas from New Zealand.

67. The Chairman concluded the discussion of this item by urging signatories to promptly submit their reports on preliminary or final countervailing duty actions.

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

68. The Chairman recalled that this Report had been submitted to the Committee in October 1987 and had been examined at the regular meeting held in October 1987 and at two special meetings held on 9 December 1987 and 3 February 1988, respectively. Since the meeting held in October 1987 he

* The discussion of items H and I of the agenda took place under the chairmanship of the outgoing Chairman, Mr. L. Wasescha (Switzerland).

had held several rounds of informal consultations on this Report but insufficient progress had been made to allow the Committee to adopt the Report.

69. The representative of Canada said this was the fourth time the Committee was considering the Report. At the last meeting of the Committee on this matter, his delegation had indicated that the responsible Canadian Ministers would review the Report and its implications. This review had now taken place and, as a result, he had been instructed to raise a number of questions regarding the Report and its implications. The Canadian Ministers found it hard to understand how a GATT Panel could come out with a report which would appear to deny certain Canadian producers justified countervail protection against injurious subsidized imports and which would eliminate measures which had at least some positive impact on controlling the use of export subsidies. They were also concerned about the impact which the adoption of the Report would have on the credibility of Canadian trade remedy legislation to Canadian producers and on the credibility of the GATT as an arbiter of fair trade to Canadians. The Canadian Ministers could not comprehend a result which left the EEC free to buy its way into the Canadian market with export subsidies and left the Canadian Government unable to act to stop the injury which had been found. It should, therefore, not be surprising that the Canadian Ministers had not yet made a final decision as to their response to the Report. This delay in arriving at a final view on the Report should in no way be seen as a lessening of Canada's strong commitment to the GATT dispute settlement process. Canada remained firmly committed to this process and had never shied away from the acceptance and implementation of panel reports, even those which entailed serious consequences for Canadian interests. Rejection of the Panel Report, which would be in line with the lead shown by other major trading partners in this Committee, might have been a faster response but would not have addressed the fundamental issues at stake in this case. Instead, his delegation had sought to engage the Committee on the issues of principle which it had raised and on which it had sought the view of the members of the Committee.

70. The representative of Canada further stated that the concerns of his delegation regarding this Panel Report were not limited to its effects on Canadian economic interests but were also related to the fundamental purpose and functioning of the Agreement. In this regard he noted that his delegation's concerns had been shared by a number of other members of the Committee. A major purpose of the Agreement was to ensure that the use of subsidies would not adversely affect or prejudice the interests of other signatories. This objective was reflected in the preamble to the Agreement. Protection against adverse effects of subsidies was provided to producers either through the unilateral imposition of countervailing duties on injurious subsidized imports or, more fundamentally, through disciplines on the provision of subsidies. If the Agreement was to be equitable it followed that, in situations where the necessary protection

against injurious subsidized imports could not be provided by the imposition of countervailing measures, a solution to the injury must be available elsewhere.

71. The representative of Canada briefly recapitulated the arguments which had been presented by his delegation before the Panel. In essence, his delegation had argued that there was a single economic chain of cattle/beef production. While recognizing that the processor might be an entity separate from the cattle producer in the production of boneless manufacturing beef, his delegation had argued that the processor operated on margin and could push the domestic price of the input down to whatever level was necessary to maintain his profit level. As such, the processor did not and could not suffer any injury from subsidized imports of beef; only the cattle producer who supplied the necessary input could suffer injury from subsidized imports of beef. Driven by this economic reality and logic, his delegation had taken the view that, in these specific circumstances, the cattle producer must be considered part of the domestic industry. In its deliberations, the Panel had disagreed with the view of the Canadian delegation that economic logic should prevail. Rather, basing itself on a legal construction, the Panel had laid heavy emphasis on the argument that, in its view, "objective criteria" rather than economic circumstances were of paramount importance to the negotiators of the Agreement and of the Anti-Dumping Code and that "objective criteria" should be the basis upon which to settle the dispute on the definition of industry. The Canadian negotiators involved in the negotiation of the original Anti-Dumping Code recalled that the principle of "objective criteria" had been primarily applied in the Kennedy Round negotiations to limit the scope of application of the "regional industry" clause and had not been a factor in other areas of that Agreement such as the definition of the term "domestic industry". Whichever recollection was correct, the simple reality was that the issue of injury being shifted back to input suppliers and the question of whether or not input suppliers should therefore be considered part of the domestic industry had never been examined in the Kennedy Round negotiations on anti-dumping practices or in the Tokyo Round negotiations. In retrospect, this was an oversight. By applying the principle of "objective criteria" to the question of the definition of domestic industry, the Panel had come out with a narrow legal interpretation of the Agreement and attempted to paper over the gap which had been identified. Thus, the Committee was confronted with a Report of which the conclusions and recommendations were at variance with the economic reality of the beef industry.

72. The representative of Canada reiterated his delegation's view that in its Report the Panel had adopted an interpretation of the Agreement which would deny certain producers the protection they should justifiably expect under the countervail system. If this interpretation was to be accepted an equitable resolution to the dispute required that protection for cattle producers be provided by some other mechanism. In this regard, he noted that one simple response, which had been suggested by the EEC, was that if beef imports were causing a problem for Canadian producers, Canada should

take a safeguard measure under Article XIX of the General Agreement. His delegation, however, did not believe that this would be a sensible or equitable course of action to address a problem resulting from export subsidies. The rules guiding safeguard actions were very different and intended for different purposes. Not least of all, Canada would be placed in the ludicrous position of having to pay compensation to the EEC in a situation in which the subsidies granted by the EEC on the export of beef were the source of the problem. His delegation considered that protection against subsidized injurious imports had to be found in the Agreement. If relief in the form of countervailing duties was to be denied to Canadian cattle producers, the necessary solution laid perhaps elsewhere in the Agreement. He noted that the Panel had attached particular importance to the view that legal standards employing objective criteria must be given a preference to opinions based on judgement of economic circumstances. In this regard, he suggested that it was worth considering the nature of boneless manufacturing beef and its relation to those export subsidies prohibited under the Agreement. If it was to be accepted that cattlemen were not part of the industry producing boneless manufacturing beef because of a need perceived by the Panel to adopt the narrowest possible definition of the term "domestic industry", then it surely made equal sense that the narrowest possible meaning must also be given to the term "primary product" which was exempted from the general prohibition of export subsidies. The General Agreement defined as a primary product "any product of a farm ... in its natural form or which has undergone such processing as is customarily required to prepare it for marketing in the substantial volumes in international trade". The logical extension of the Panel's argument that legal standards must prevail over economic criteria must surely be that boneless manufacturing beef (on which the EC granted substantial export subsidies) was not a primary product as defined in the General Agreement and that the export subsidies provided by the EEC on beef were prohibited under the Agreement. While live cattle could not be shipped great distances, carcasses could. Boneless manufacturing beef was a step beyond carcasses. It was not the product of a farm or a feedlot. Its production involved a process of deboning, dividing into lots, packing and marketing. Paragraph 3.3 of the Panel Report indicated that the EEC was of the opinion that the "input product - live beef animals - could not be described as a 'like product' to boneless manufacturing beef because it could not be said to have physical characteristics identical to those of boneless manufacturing beef. At least two further stages of industrial processing were required before cattle becomes beef." The representative of Canada said that, in light of the strict legal standard commended by the Panel, one could doubt whether these further stages of industrial processing were "required for international trade".

73. The representative of Canada said his delegation had been driven to this position given the narrow interpretation of the term "domestic industry" adopted by the Panel in its Report. If this narrow interpretation and logic behind it was to be accepted and if the Agreement was to be equitable and consistent, the other parts of the Agreement had to be interpreted in the manner he had indicated. The Agreement was a carefully balanced structure of rights and obligations. The substantive

issue which the Committee had to face in addressing this Report was the injurious effect of an EEC subsidy and the view of Canada that it was entitled under the Agreement to a remedy against such injury. He would welcome the views of members of the Committee on the points his delegation had raised.

74. The representative of the EEC pointed to two elements in the statement made by the Canadian delegation. Firstly, the Canadian delegation had reiterated that it was not in a position to state a final position on the Panel Report; secondly, the Canadian delegation had expressed its serious reservations on the substance of the Report. He recalled that the Panel Report had been submitted in October 1987 and that it had subsequently been the subject of discussion in the Committee at the regular meeting held on 27-28 October 1987 and at two special meetings held in December 1987 and February 1988, respectively. At the meeting in February the delegation of Canada had indicated that the responsible Canadian Ministers had not yet adopted a position on the Panel Report and from the statement made by the Canadian delegation at this meeting it appeared that this situation had not changed. It was now more than eight months ago that the Committee had discussed this matter for the first time and exports from the EEC to Canada of boneless manufacturing beef had been totally blocked since July 1986. Regarding the arguments presented by the Canadian delegation on the substance of the Panel Report, he said that these arguments were not new and were based on possible economic implications of adoption of the Report. In this regard he recalled a statement made by his delegation at the special meeting held on 9 December 1987 in response to arguments put forward by a number of delegations:

"The fact that the Panel had drawn conclusions which in the view of these delegations had undesirable economic implications did not mean that the Panel's conclusions were unfounded from a legal point of view. If delegations were of the view that deficiencies existed in the provisions of the Agreement regarding the concept of 'domestic industry', they were free to raise this as an issue for negotiations in the Uruguay Round. However, this did not detract from their obligation to observe the existing provisions of the Agreement."
(SCM/M/36, paragraph 25)

Regarding the arguments presented by the Canadian delegation in the last part of its statement at this meeting, the representative of the EEC said that these arguments had already been considered by the Panel. Eight months after the submission of the Report to the Committee, the Canadian delegation had still not adopted a final position on the Report and continued to express the same reservations on its substance. His delegation considered that this attitude was dilatory, weakened the dispute settlement mechanism of the Agreement and was difficult to reconcile with the often expressed view of the Canadian delegation in favour of prompt and effective dispute settlement. The EEC had made numerous efforts at a bilateral level to explore possible solutions to this dispute but these efforts had been in vain. He therefore requested the Chairman of the

Committee to offer his good offices with a view to arriving at a solution to this dispute. He noted that the Canadian delegation had not given a precise indication when the Canadian authorities would be in a position to adopt a final position on the Report and reserved his delegation's right to request that a special meeting of the Committee on this matter be convened before the summer recess.

75. The representative of the United States said the United States was not in a position to agree to adoption of the Report. His delegation considered that the legal reasoning of the Panel was deeply flawed. The Panel's view that the term "domestic industry" could not be interpreted to include producers of the raw agricultural product was at odds with economic reality when the only use of that raw agricultural product was the further production of a processed agricultural product and led to the counter initiative result that an orange grower would not be part of the industry producing orange juice, or that a cattle producer was not part of the industry producing beef. Since this result seemed directly at odds with economic reality and the reasoning of the Panel was unpersuasive, his delegation did not see at this point a way to adoption of the Report. On the legal interpretation proposed by Canada, he said this interpretation was very interesting but his delegation had some questions about the relationship between this interpretation and the Note to Article XVI of the General Agreement, and about the close correspondence established in this interpretation between Articles VI and XVI of the General Agreement. His delegation would study in greater detail the merits of the Canadian interpretation.

76. The representative of Australia said the views of his delegation on the substance of the Report were in line with a number of the points made by the delegation of Canada and had been outlined in previous meetings of the Committee on this matter. He considered that the Canadian statement made at this meeting was constructive; the Canadian delegation had not blocked the adoption of the Report but had merely asked for more time. He also pointed to the positive attitude adopted by Canada in other GATT bodies where it had recently been faced with Panel Reports which had serious economic implications. The position of the EEC in this case that economic consequences should not be taken into consideration was not consistent with the attitude of the EEC in a number of other dispute settlement cases.

77. The representative of Hong Kong said his delegation supported the findings and conclusions of the Panel and was in favour of adoption of the Panel's Report.

78. The representative of Israel said his delegation supported the adoption of the Report and urged all signatories concerned to take all necessary steps to enable the Committee to adopt the Report as soon as possible. Regarding the questions raised by the delegation of Canada, he said these questions were interesting and pertinent and should be discussed either in the Committee or in the Uruguay Round Negotiating Group on Subsidies and Countervailing Measures.

79. The representative of New Zealand said his delegation remained concerned at the practical implications of aspects of the Panel's findings and feared that adoption of the Report would open the door wider to export subsidization with impunity of processed agricultural products, with little hope of redress for the actually affected parties. In practice it would be rare for a processor of an agricultural product to suffer injury; competition from subsidized processed products would lead to a decline in the price of the input. Thus, in the case of certain primary products, it would be the farmer who would be most affected by subsidized imports of processed products but he would be left with even less redress than ever. He added that his delegation did not consider that the finding of the Panel on what constituted the "like product" undermined his delegation's view that boneless manufacturing beef was a processed product subject to article 9 of the Agreement. If anything, it only reinforced that view.

80. The Chairman said that in the discussion on this matter at this meeting arguments had been made which were similar to the arguments made by the delegations in question at previous meetings of the Committee on this subject. Thus, the EEC had reiterated its view that the arguments of the Canadian delegation were based essentially on the possible economic implications of adoption of the Panel Report and not on legal grounds. The EEC had also pointed to the economic harm resulting from the continued application by Canada of countervailing duties on imports of boneless manufacturing beef from the EEC. The delegation of Canada had again raised a number of substantive questions regarding the Panel Report and had invited the other members of the Committee to express their views on these points. It had also indicated that the responsible Canadian authorities had not yet taken a final position on the Report. The Chairman said that the task of the Committee was to consider the legal aspects of this case; if there were economic realities not adequately reflected in the legal provisions of the Agreement, this should be discussed in the context of the Uruguay Round. He further said that he had taken good note of the request of the EEC that he offer his good offices and of the reservation by the EEC of its right to request a special meeting on this matter before the summer recess.

81. In response to the reference made by the Chairman to the Uruguay Round of Multilateral Trade Negotiations, the representative of the EEC said that the fact that these negotiations were taking place did not detract from the obligations of signatories to observe the existing provisions of the Agreement. He further reiterated that the continued application by Canada of countervailing duties had a serious economic impact on exports of boneless manufacturing beef from the EEC.

82. The Chairman urged all signatories to co-operate with his successor in order to find a solution to this dispute.

I. Panel Reports pending before the Committee (SCM/42, 43 and 71)

83. The Chairman recalled that at its last regular meeting the Committee had agreed to revert to these Reports and had invited its Chairman to hold

further informal consultations. Such consultations had taken place but had not produced any satisfactory results. He then made some comments of a general nature on the fact that the Committee found itself in a situation in which it was faced with four Panel Reports which had not yet been adopted despite lengthy discussions. Before making these comments, he emphasized that the fact that these comments related to all these four Reports did not mean that there was any link between the Reports.

84. The Chairman recalled that, at the meeting of the Committee held on 23-24 October 1985, the then Chairman of the Committee had noted that there was a growing feeling among many signatories that the Committee was in a deadlock situation. He had added that, although the Committee's activities relating to countervailing measures proceeded in a routine like manner, the work of the Committee on disciplines over the use of subsidies was practically blocked. The Chairman said that since that meeting of October 1985 the situation had deteriorated further; the Committee now found itself in a situation in which not only the rules on the use of subsidies but also the rules on application of countervailing measures were subject to divergent interpretations. This did not augur well for the negotiations taking place in the context of the Uruguay Round and for the future operation of the Agreement. He wondered what guarantee there was that new obligations which might result from the negotiations would be observed when the existing obligations were reneged. The blockage of the dispute settlement mechanism in the Committee not only had negative consequences for the functioning of the Committee itself but might also have wider consequences for the dispute settlement mechanism of the General Agreement. Another dangerous phenomenon was that the growing frustration with the operation of the Agreement had already caused some countries to take countermeasures outside the GATT or to take recourse to bilateral arrangements outside the GATT. There existed a real danger that such practices could escalate and negatively affect the interests of signatories not directly involved in the disputes in question by weakening the international agreement to which signatories had contributed in good faith.

85. The Chairman said that in the course of the last year he had offered his good offices, believing that despite the existence of important divergences regarding the interpretation and application of basic provisions of the Agreement, there was enough political will to try and make a common effort to overcome the deadlock situation in which the Committee found itself. Such a common effort would give the long-expected signal that the Committee had returned to normal, constructive business. Perhaps the time was not yet ripe for such an effort. He offered the following suggestions regarding the manner in which the Committee could try to resolve the problem of the pending Panel Reports. Firstly, the Committee could request the Chairman of the Negotiating Group on Goods to take all necessary steps to ensure that all controversial issues raised by the disputes in question would be examined with urgency within the appropriate framework in the relevant negotiating bodies. At the same time the Committee should try and work out some form of legal recognition of these Reports which could mean that it would take note of some of these

Reports and adopt the other Reports; such legal recognition of the Reports should be accompanied in each case by an understanding that the controversial legal issues addressed in the Reports should be examined in the Multilateral Trade Negotiations and that the action of the Committee in relation to the Reports would not prejudice the outcome of the negotiations or the position of any signatory in these negotiations.

86. The representative of Hong Kong thanked the Chairman for his analysis and suggestions but he wondered how the proposed legal recognition of the Reports would result in implementation of the recommendations of the Panels, especially if the Committee would only take note of the Reports.

87. The Committee took note of the statements made by the Chairman and by the representative of Hong Kong.

J. Draft Guidelines on the Application of the Concept of Specificity
(SCM/W/89)

88. The Chairman recalled that, at the meeting of the Committee held in October 1987, his predecessor had informed the Committee of the results of his informal consultations on the Draft Guidelines; on that occasion he had stated that, although the delegation of the United States remained unable to agree to adoption of the Draft Guidelines, the United States authorities continued to apply the principles laid down in SCM/W/89 in its countervailing duty practice. In addition, he had 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" (SCM/M/35, paragraph 61).

89. The Chairman proposed that the Committee adopt the proposal made on this matter by the previous chairman of the Committee at the meeting held in October 1987; it was so agreed.

K. United States - Countervailing duty investigation on imports of fresh cut flowers from various countries (SCM/M/35, paragraphs 83-86)

90. The Chairman recalled that, at its meeting held in October 1987, the Committee had reverted to this matter and taken note of statements made by the delegations of Canada and the EEC (SCM/M/35, paragraphs 84 and 85, respectively).

91. The representative of the EEC said that in the final affirmative countervailing duty determination made in this case the United States Department of Commerce had used the concept of de facto specificity in determining whether the measures subject to investigation constituted countervailable domestic subsidies. Thus, it had determined that certain programmes were countervailable on the basis of the intensive use made of these programmes by firms in a given sector. His delegation had its doubts whether the criterion of de facto specificity applied in this case

was consistent with the spirit of the Agreement. The Government of the Netherlands had requested an administrative review of the countervailing duty order and his delegation wished to have the opportunity to revert to this matter at the next regular meeting of the Committee in the light of possible developments in the context of this administrative review.

92. The representative of Canada recalled that at the last meeting his delegation had informed the Committee that the Canadian authorities had made representations to the United States in which they had described their views on this case (SCM/M/35, paragraph 84). His authorities had received a response from the United States and his delegation did not intend to pursue this matter in the Committee.

93. The representative of Chile said his country had been affected by the practice of cumulative injury assessment in anti-dumping and countervailing duty investigations. In 1986 Chilean exports to the United States of flowers covered by this investigation amounted to US \$70,000, which accounted for less than 0.05 per cent of apparent consumption in the United States. Given this insignificant level of imports from Chile, it was difficult to understand how these imports could have caused injury to domestic producers in the United States. He considered that the cumulation of imports from various countries, for the purpose of an injury determination, reflected an interpretation of the Agreement, and in particular Article 6 thereof, which was not in accordance with the intentions of the drafters of the Agreement; in his view, the injury criterion required that the effects of imports from each country be assessed separately.

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

L. United States - Collection of countervailing duties on imports of non-rubber footwear from Brazil (SCM/M/35, paragraphs 87-93)

95. The Chairman recalled that, at its meeting in October 1987, the Committee had heard a statement by the representative of Brazil on the collection of countervailing duties by the United States on imports of non-rubber footwear from Brazil between 1 January 1980 and 28 October 1981 and that it had agreed to revert to this matter at its next regular meeting (SCM/M/35, paragraphs 87-93).

96. The representative of Brazil said that, at the meeting in October, his delegation had explained the background of this case and the reasons why his authorities considered that the collection by the United States of countervailing duties on imports of non-rubber footwear from Brazil between 1 January 1980 and 28 October 1981 was inconsistent with the United States obligations under Article VI of the General Agreement and the relevant provisions of the Agreement. At the same meeting his delegation had also indicated that, in the light of further developments in this case, Brazil would take the necessary steps to protect its rights under the Agreement

and the General Agreement. He did not consider it necessary to repeat in detail the objections of the Government of Brazil to the attempt of the United States authorities to collect countervailing duties on entries of non-rubber footwear from Brazil between 1 January 1980 and 28 October 1981. The Brazilian Government had made numerous efforts to reach a mutually satisfactory solution to this matter but these efforts had been in vain. In the context of the administrative reviews carried out by the United States authorities of the countervailing duty order on non-rubber footwear from Brazil (which had entered into force in 1974) a number of meetings had taken place between Brazilian and US officials to discuss the treatment of non-rubber footwear from Brazil entered into the United States in 1980-1981; in addition, two official letters had been submitted to the United States authorities to explain the position of Brazil. The first of these letters, dated 19 July 1983, had accompanied the response by Brazil to an administrative review questionnaire of the United States Department of Commerce relating to entries of non-rubber footwear from Brazil between 7 December 1979 and 31 December 1980. The second letter was dated 26 July 1985 and had been filed in response to a request by the Department of Commerce for comments on the preliminary results of its administrative reviews of the entries made in 1981. The Department had rejected the argument put forward by the Brazilian Government that the Department had no authority to impose countervailing duties on the non-rubber footwear subject to these reviews and that the collection of countervailing duties on goods found not to be injuring the United States domestic industry would be in violation of the international obligation of the United States not to collect countervailing duties in the absence of injury to a domestic industry. Following the publication of a notice by the Department of the final results of its administrative review, requiring the payment by importers of the difference between the 1 per cent ad valorem cash deposits paid on entities made during the period 7 December 1979-31 December 1980 and the amount of subsidization found in the review, an action had been initiated in the United States Court of International Trade. A second action in the Court of International Trade had been initiated following another notice by the Department indicating that it would instruct the Customs Service to liquidate the entries of non-rubber footwear from Brazil with countervailing duties in the amount of 6.04 per cent ad valorem plus interest.

97. The representative of Brazil said that, in order to seek a solution to this dispute and protect its rights under the Agreement and the General Agreement, the Government of Brazil had requested bilateral consultations with the United States under Article 3 of the Agreement; these consultations had taken place on 30 May 1988. During these consultations, the Brazilian delegation had expressed its view that the imposition of countervailing duties on footwear imported into the United States during the period 1 January 1980-28 October 1981 was in violation of Article VI:6(a) of the General Agreement and Article 1 of the Agreement because it had not been preceded by an affirmative injury determination. The imposition of these duties was also inconsistent with the procedural requirements of Article 2 of the Agreement. Furthermore, the attempt to

collect these duties violated Article 4 of the Agreement because no determination had been made that the subsidized imports were causing injury and because the countervailing duty order had not been revoked completely after the USITC determination. Finally, the collection and retention of cash deposits for a period of seven years violated the provisions in Article 5 of the Agreement on the use of provisional measures. The Brazilian delegation had therefore requested that the United States Government take the necessary steps to give effect to the negative injury determination by the USITC for entries of non-rubber footwear between 1 January 1980 and 28 October 1981 and avoid an interpretation of its domestic law which would put it directly in conflict with its obligations under the General Agreement and the Agreement. The bilateral consultations, however, had not resulted in a satisfactory resolution of the problem. Given the fundamental differences between the positions of the two governments and the lack of any progress toward a resolution of this problem over the past five years, the Government of Brazil had concluded that further consultations on this matter were not warranted and, in light of the disruption which had occurred in footwear trade between Brazil and the United States, it had decided to pursue its rights under Part VI of the Agreement. The representative of Brazil believed that the United States delegation would agree that a conciliation procedure under Article 17 of the Agreement would not resolve the matter but only result in further delay; more positive results might be achieved by the immediate establishment of a panel. Referring to footnote 35 to Article 18 of the Agreement, he requested that the Committee establish a panel. However, if the United States delegation would indicate that a change in its position was not to be ruled out and that it believed that a conciliation procedure would resolve the matter, the delegation of Brazil would agree to such a procedure and request the Committee to conciliate this dispute pursuant to Article 17:1. In that event, his delegation would stress that the conciliation period should be limited and that, should the matter not be resolved through the conciliation process, the Committee should promptly establish a panel under Article 18:1.

98. Following further discussion, the representative of Brazil expressed his delegation's wish that the matter raised by his delegation regarding the collection of countervailing duties by the United States on imports of non-rubber footwear from Brazil between 1 January 1980 and 28 October 1981 be the subject of a conciliation procedure under Article 17 of the Agreement.¹

99. The Chairman said that at its next meeting the Committee would consider this matter under the provisions of Article 17 of the Agreement.

M. United States - Countervailing duty investigation on imports of granite from Italy (SCM/M/35, paragraphs 94-95)

100. The Chairman recalled that, at its meeting in October 1987, the Committee had heard a statement by the delegation of the EEC on this matter

¹See also document SCM/87.

and had agreed to revert to it at its next regular meeting (SCM/M/35, paragraphs 94-95).

101. The representative of the United States said that the manner in which his authorities had conducted this investigation had to be seen in the context of their general approach to investigations involving a large number of companies. Because the number of companies subject to this investigation was very large, the Department of Commerce had followed its standard practice of requesting the government of the exporting country to identify the largest producers and exporters accounting for 60 per cent of the value of the merchandise subject to investigation. Subsequently the seven companies which accounted for that 60 per cent had requested that they be excluded from the application of any eventual countervailing duty order in view of the fact that they had received no subsidies or that the subsidies they had received were de minimis. Following this request for exclusion, the Department had chosen a new representative group of companies and requested questionnaire responses from the additional companies on the ground that responses from these additional companies were necessary to ensure that the investigation covered a group of companies representative of all Italian companies involved in the export of the product in question. Regarding the point made by the representative of the EEC at the October meeting on the comparison between United States import statistics and Italian export statistics for the products subject to investigation, he said that initially, as a result of the manner in which these products were classified in the Italian export statistics, there appeared to be a discrepancy between the United States import statistics and the Italian export statistics. This problem had been resolved and the United States authorities had eventually used estimates based on United States import statistics.

102. The representative of the EEC said his delegation had no further comments on this case.

103. The Committee took note of the statements made.

N. Canada - Countervailing duty investigation on imports of drywall screws from France (SCM/M/35, paragraphs 96-99)

104. The Chairman recalled that the Committee had discussed this matter at its meeting in October 1987 and had agreed to revert to it at its next regular meeting (SCM/M/35, paragraphs 96-98).

105. The representative of the EEC said his delegation still had its doubts on the appropriateness of the criteria used by the Canadian authorities on regional specificity.

106. The representative of Canada said that in the course of this investigation his authorities had been prepared to discuss the case with the EEC but, unfortunately, the EEC had not used the opportunity for consultations.

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

0. Other business

- (i) Communication from Finland on language and translation problems in countervailing duty investigations (SCM/W/154)

108. The representative of Finland introduced the communication from his delegation by saying that in a recent anti-dumping investigation conducted by his authorities the embassy of the exporting country had presented a request for an English version of the complaint and the supporting evidence on the ground that in the absence of such a translation the exporter would not be in a position to prepare its responses. Since this issue had broader implications, not only for anti-dumping duty investigations but also for countervailing duty investigations, his authorities had deemed it appropriate to bring this matter to the attention of the Committee.

109. The Chairman said that this issue had also been raised in the Committee on Anti-Dumping Practices and that it was perhaps useful to have this matter considered by the Ad Hoc Group on the Implementation of the Anti-Dumping Code.

110. The Committee took note of the statements made.

- (ii) United States - Initiation of countervailing duty investigation on imports from Canada of thermostatically controlled appliance plugs and internal probe thermostats therefor

111. The representative of Canada brought to the attention of the Committee the recent initiation by the United States of a countervailing duty investigation of imports from Canada of thermostatically controlled appliance plugs and internal probe thermostats therefor. On 15 April 1988 a countervailing duty petition with respect to these imports had been filed with the Department of Commerce. The petitioner had alleged that production in Canada of the products in question was subsidized, without however, providing any evidence to support that allegation. The petition had simply listed two programmes (the Programme for Export Market Development and the Regional Development Incentive Programme) and had suggested that the production in Canada of the products in question would have been eligible for assistance under the first programme and that funds might have been made available to producers of these products under the second programme, although it had noted that this second programme had been terminated in 1985. On 4 May 1988 the Canadian authorities had brought these and other deficiencies in the petition to the attention of the United States authorities and had expected that the petition would be rejected as required by Article 2:1 of the Agreement. However, on 6 May 1988 the Department of Commerce had determined that the petition contained sufficient evidence to initiate a countervailing duty investigation. Since then the Canadian authorities had requested consultations with the United States under Article 3:2 of the Agreement in

order to seek clarification of the grounds for the initiation of this investigation. The representative of Canada pointed out that under Article 2:1 of the Agreement signatories were under an obligation to initiate a countervailing duty investigation only after they had satisfied themselves that the complaint contained sufficient evidence of the existence of subsidized imports and injury to a domestic industry resulting therefrom. Signatories had the right to expect that investigations would be initiated only if necessary and justified. The Agreement made it clear that a complaint needed to be accompanied by sufficient evidence within the meaning of Article 2:1; while there was no precise definition of what was to be considered as "sufficient evidence", it was clear that this should at least be evidence which was more than trivial. His delegation was of the view that suggestions that producers would have been eligible under a programme, or that funds might have been distributed to producers under a programme which no longer existed, did not constitute sufficient evidence within the meaning of Article 2:1. He concluded by expressing concern that the extremely low standard of evidence which appeared to have been used in this case by the United States could result in the filing of frivolous petitions.

112. The representative of the United States explained that under United States domestic law the Department of Commerce had twenty days after the receipt of a countervailing duty petition to decide whether the petition contained sufficient evidence to warrant an investigation. It could sometimes be difficult for a petitioner to obtain specific information on whether subsidies had actually been received by a particular company. In the particular case referred to by the representative of Canada, the United States authorities had concluded that the evidence provided by the petitioner was sufficient to justify the initiation of an investigation. His authorities remained prepared to consult with Canada on this matter.

113. The representative of Finland made some comments on the meaning of the expression "sufficient evidence" in Article 2:1 of the Agreement. While the word "sufficient" was difficult to define with precision, he considered that the word "evidence" had a precise legal meaning and meant something more than just an allegation. Regarding the period of twenty days available to the United States authorities to examine the adequacy of a petition, he said this time-limit was only relevant to the decision by the Department of Commerce whether or not to initiate an investigation; petitioners had an unlimited period of time to prepare a case and to gather the necessary evidence to support their petition.

114. The representative of Canada supported the statement made by the representative of Finland. On the remarks made by the representative of the United States, he said that his authorities had found no evidence in the petition which could justify the initiation of a countervailing duty investigation.

115. The Committee took note of the statements made.

(iii) Canada - Countervailing duties on imports of grain corn from the United States

116. The representative of Canada recalled that, at the meeting of the Committee in October 1987, his delegation had informed the Committee that the Canadian authorities had received a report from the Canadian Import Tribunal under Section 45 of the Canadian Special Import Measures Act (SCM/M/35, paragraph 81). In response to this report, the Canadian Government had decided on 4 February 1988 to lower the duty from CAN \$1.10 to 46 cents per bushel.

Date of the next regular meeting

117. The Chairman said that, in accordance with the decision taken by the Committee in April 1981 (SCM/M/6, paragraph 36) the next regular meeting of the Committee would take place in the week of 24 October 1988.