

GENERAL AGREEMENT ON

RESTRICTED

TARIFFS AND TRADE

SCM/M/39

24 August 1988

Special Distribution

Committee on Subsidies and Countervailing Measures

MINUTES OF THE MEETING HELD ON 14 JULY 1988

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

1. The Committee held a special meeting on 14 July 1988.
2. The Committee discussed the following items:
 - A. United States - Collection of countervailing duties on entries of non-rubber footwear from Brazil between 1 January 1980 and 29 October 1981 - Request by Brazil for conciliation under Article 17:1 of the Agreement (SCM/87).
 - B. Canada - Imposition of countervailing duties on imports of manufacturing beef from the EEC - Report by the Panel (SCM/85).
 - C. New Zealand - Countervailing duty investigation of imports of edible rape seed oil from the Federal Republic of Germany and the Netherlands.
- A. United States - Collection of countervailing duties on entries of non-rubber footwear from Brazil between 1 January 1980 and 29 October 1981 - Request by Brazil for conciliation under Article 17:1 of the Agreement (SCM/87).
3. The Committee had before it a communication from the delegation of Brazil (SCM/87) in which this delegation had confirmed its request for conciliation made at the regular meeting held on 31 May 1988 (SCM/M/38, paragraph 38).
4. The representative of Brazil said that, as indicated in document SCM/87, bilateral consultations on this matter between Brazil and the United States, including consultations under Article 3 of the Agreement, had failed to produce a mutually satisfactory solution. His delegation therefore had been left with no other choice than to invoke the dispute settlement procedure of the Agreement. The background of this case and the reasons why his Government considered that the measures taken by the United States were inconsistent with the Agreement and with Article VI of the General Agreement had been explained in document SCM/87. In this document the Brazilian delegation had also indicated that it would eventually seek to protect its rights under the Agreement and the General Agreement in the light of relevant developments in this case.

5. The representative of Brazil said that there were essentially two reasons why his Government objected to the collection by the United States authorities of countervailing duties on non-rubber footwear from Brazil entering the United States from 1 January 1980 to 28 October 1981. Firstly, the Brazilian Government was of the view that the collection of any such duties contravened the obligation of the United States not to impose countervailing duties on imported merchandise which did not cause or threaten material injury to a domestic industry. It was undisputed that as of 1 January 1980 Brazil and the United States, as original signatories of the Agreement, had been bound by the requirements of the Agreement. The United States had adopted domestic legislation to implement the requirements of the Agreement but the United States Department of Commerce had interpreted this domestic legislation in a manner inconsistent with the international obligations of the United States when it had announced its intention to collect countervailing duties on entries of non-rubber footwear from Brazil made between 7 December 1979 and 29 October 1981 despite the fact that the United States International Trade Commission (USITC) had made a negative injury determination with respect to imports of non-rubber footwear from Brazil and despite the fact that the Department of Commerce had revoked the countervailing duty order with respect to these imports. Secondly, the Government of Brazil was of the opinion that the collection by the United States of cash deposits and the attempt to collect countervailing duties in excess of these deposits were in violation of established procedures governing the application of provisional measures. In this respect, the representative of Brazil pointed out that the United States had imposed provisional measures including the suspension of liquidation and posting of cash deposits for estimated countervailing duties, on non-rubber footwear entering after 4 January 1980. In spite of the plain meaning of Article 5:8 of the Agreement, the United States had not refunded these cash deposits after the USITC had determined on 24 May 1983 that imports of non-rubber footwear from Brazil were not causing injury to an industry in the United States. In addition, the United States authorities were attempting to collect the difference between the cash deposits and the definitive duties determined in the course of administrative reviews, which was in violation of Article 5:6 of the Agreement.

6. The representative of Brazil said that in the past his authorities had made numerous efforts in order to reach a mutually satisfactory solution of this matter. After all these attempts had failed to lead to a solution, the Brazilian Government had requested consultations with the United States under Article 3 of the Agreement. However, these consultations had not led to any positive results. Against this background the delegation of Brazil had requested this special meeting of the Committee for the purpose of conciliation under Article 17 of the Agreement. The representative of Brazil expressed the hope that this time the United States delegation would show more flexibility and respond in a positive manner to his delegation's complaint.

7. The representative of the United States said that his authorities welcomed the opportunity for conciliation with the Government of Brazil under Article 17 of the Agreement. He believed that, by explaining the circumstances in which the situation referred to the Committee by Brazil had arisen, he could dispel any misunderstandings about the actions by the United States' authorities and demonstrate to the satisfaction of Brazil and the other members of the Committee that these actions were fully consistent with the obligations of the United States under the Agreement.

8. The representative of the United States said that, as part of the Tokyo Round of Multilateral Trade Negotiations which had led to the conclusion of the Agreement, the United States had agreed to revise its domestic countervailing duty law to provide for injury determinations. Previously, the lack of an injury test in the countervailing duty law of the United States had been "grandfathered" under the Protocol of Provisional Application of the General Agreement. In addition to providing for injury determinations in proceedings commenced after the new law came into effect, the United States authorities had decided to include in the new law a provision for injury reviews of existing countervailing duty orders (i.e., orders issued before the United States had been under any international obligations to make injury determinations). While injury reviews of such existing countervailing duty orders were not required by the Agreement, the United States had included in its domestic law a procedure for such reviews as an incentive for governments to accept the Agreement. The provision for the conduct of injury review of previously existing countervailing duty orders was contained in Section 104 of the United States Trade Agreements Act of 1979. This Act had been examined by the Committee. Section 104 of the Act provided that a foreign government could, for a three-year period starting on 1 January 1980, request an injury review of existing countervailing duty orders. Upon receipt of such a request, the United States authorities ceased the liquidation of entries of merchandise covered by the order subject to the injury review pending completion of the review. If the injury determination was negative, the countervailing duty was revoked and no countervailing duties were collected on merchandise imported after the date of the request.

9. The representative of the United States said that in the case referred to the Committee by Brazil, the Government of Brazil had submitted a request for an injury review of the countervailing duty order on non-rubber footwear on 24 October 1981. On 13 June 1983, the USITC had found that revocation of this order would not result in material injury. Accordingly, the United States authorities had revoked the order for non-rubber footwear entered after 28 October 1981, the effective date of the request by the Brazilian Government for the injury review. The issue in this case was the status of non-rubber footwear imported into the United States between 1 January 1980 and 28 October 1981 (i.e., imported between the time when the Government of Brazil had become entitled to submit a request for an injury review and the time when it had chosen to do so). Careful examination of the Agreement showed that it contained no obligation to conduct an injury review with respect to countervailing duty orders which

had been "grandfathered" under the Protocol of Provisional Application of the General Agreement. Instead, the obligations of the Agreement were prospective, as was normally the case under the General Agreement. Accordingly, the obligations in the Agreement to provide for an injury determination applied only to countervailing duty orders issued after implementation of the Agreement by the United States. Nevertheless, while the United States was not under any obligation under the Agreement to provide an injury test for pre-existing countervailing duty orders, the procedures enacted by the United States were entirely reasonable. In this connection, the representative of the United States emphasized that the issue in this case arose solely from the United States legislation itself; the relevant question was the relation of Section 104 of the Trade Agreements Act to the obligations of the Agreement and not, as had been suggested by the representative of Brazil, the manner in which the United States Department of Commerce had interpreted this provision. The United States had provided in its domestic law a reasonable mechanism for the conduct of injury reviews with respect to pre-existing countervailing duty orders and in the view of the United States it was the Government of Brazil which was in fact responsible for the non-application of the injury determination between 1 January 1980 and 28 October 1981. Under Section 104 of the Trade Agreements Act of 1979 foreign governments were entitled to submit requests for injury reviews beginning on 1 January 1980 and in the event of a negative injury determination no countervailing duties would be imposed on merchandise imported after the date of submission of the request for such a review. Thus, a government could ensure that no countervailing duties would be imposed after 1 January 1980 by filing on that date a request for an injury review. However, the Government of Brazil had decided to wait until 28 October 1981 to file its request in this case. The United States authorities were quite certain that the Brazilian Government had waited to make its request in order to await a more opportune time for an injury investigation. Its judgement in this regard had been entirely vindicated since the United States authorities, after examining the period selected by the Government of Brazil, had determined that revocation of the countervailing duty order would not result in material injury to the United States domestic industry. A further indication that the Brazilian Government had in this case made a deliberate decision to forego the application of the injury test to non-rubber footwear imported into the United States between 1 January 1980 and 28 October 1981 was the fact that in several other cases of outstanding countervailing duty orders it had requested injury reviews on or immediately after 1 January 1980. Since the timing of the revocation of the countervailing duty order on non-rubber footwear had been determined by the Brazilian Government the United States could not see how it could be held responsible for the delay.

10. With respect to the view expressed by the delegation of Brazil that the actions by the United States in this case were also in violation of Article 5 of the Agreement, the representative of the United States said that this concern appeared to reflect a misunderstanding of the countervailing duty procedures of the United States. He explained that in

the United States the issuance of a countervailing duty order resulted in the suspension of liquidation of the merchandise subject to the order and the posting of a bond in the amount of the estimated countervailing duty which would be owed at the time the order was next reviewed. Annual administrative reviews were conducted to determine the duty which was actually owed and which should be collected. This process ensured that any countervailing duty actually collected would not exceed the actual subsidy amount. It followed that the measures taken by the United States in this case were not provisional measures within the meaning of Article 5 of the Agreement, as alleged by the Brazilian delegation, but final countervailing duties subject to Article 4 of the Agreement as to which there was no allegation of non-compliance. He concluded by expressing the hope that his explanation would be sufficient to address the concerns of Brazil and to convince the Brazilian authorities and other signatories that the actions by the United States in this case were fully consistent with the obligations of the Agreement.

11. The representative of Brazil said he disagreed with the points made by the representative of the United States. On the timing of his Government's request for an injury review under Section 104 of the Trade Agreement Act of 1979, he said that the main reason why his Government had chosen to make this request in October 1981 was that it wished that a change in attitude of the US authorities would be imminent. Importers in the United States had been consulting with the United States authorities and trying to convince them to treat this case in accordance with the obligations of the United States under the Agreement. The points made by the representative of the United States were well-known to his authorities because in previous consultations the United States had expressed essentially the same views. His delegation remained of the view that in this case countervailing duties had been applied during a period of three years without there having been an injury determination. As a signatory of the Agreement Brazil should have benefited from the application of the injury criterion as of 1 January 1980.

12. The representative of India said that, on the basis of the available information, his delegation supported the Brazilian view that, in the absence of an injury determination, no countervailing duties should be levied by the United States on non-rubber footwear imported from Brazil between 1 January 1980 and 29 October 1981. He believed that there must have been other cases similar to the case referred to the Committee by Brazil because it was unlikely that in all cases of existing countervailing duty orders, parties entitled to file a request for a review under Section 104 of the Trade Agreements Act of 1979 had done so on 1 January 1980. He considered that it would be useful if the United States delegation could provide the Committee with information on such cases and the manner in which they had been treated by the United States authorities. He also raised the question whether Section 104 of the Trade Agreements Act of 1979 made it clear that, while a request for an injury review could be filed at any time during a period of three years, the effect of a negative determination would be limited to the period starting on the date of the filing of the request.

13. The representative of the United States said that, if this was considered useful by the Committee, his delegation was prepared to provide information on other cases in which requests for injury reviews had been made under Section 104 of the Trade Agreements Act of 1979. On the second question asked by the representative of India, he said that Section 104 did make it clear that a revocation of a countervailing duty order as a result of a negative injury determination would take effect on the date of the filing of the request for an injury review. His delegation was prepared to provide more detailed explanations on this aspect, if this was considered useful by the Committee.

14. The Chairman said that the Committee had heard and reviewed the facts of the matter referred to it by the delegation of Brazil. He encouraged the two signatories involved to try and reach a mutually acceptable solution to their dispute consistent with the provisions of the Agreement.

15. The representative of Brazil said that, while his authorities were prepared to make further efforts to reach a mutually satisfactory solution of this dispute with the United States, his delegation reserved its right under the Agreement to request, if necessary, that another meeting of the Committee be convened to consider the establishment of a panel in this matter.

16. The Committee took note of the statements made.

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

17. The Chairman recalled that since October 1987 this Report had been discussed by the Committee at a number of regular and special meetings. Despite the good offices of his predecessor the Committee had made no progress on this matter.

18. The representative of the EEC said that it was almost a year ago that the Panel had submitted its Report and requested the Canadian delegation to indicate whether the responsible Canadian Ministers had determined a final position on the Report and its recommendations.

19. The representative of Canada said that at the meeting of the Committee held on 31 May 1988 the Canadian delegation had indicated that the responsible Canadian Ministers had considered the Report by the Panel but had not yet reached a final decision as to their response to the Report. No new developments had occurred in this respect since that meeting. At the last regular meeting of the Committee his delegation had raised a number of questions regarding the Report and its implications. The Committee had been informed at that meeting that 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 protection in the form of countervailing duties against injurious subsidized imports and which would eliminate measures which had at least some positive impact on controlling the use of export subsidies.

20. The representative of Canada summarized the main elements of his delegation's views on the Report as follows. The concerns of his delegation with respect to this Report, which were shared by a number of other signatories, were not limited to the effects of the Report on Canadian economic interests but were also related to the fundamental purposes and the operation of the Agreement. A main objective 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 the possible 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 use of subsidies. If the Agreement was to be equitable, it followed that in situations where the imposition of countervailing duties could not provide the necessary protection against injurious subsidized imports, a solution to the injury must be available elsewhere in the Agreement. By applying legal standards employing objective criteria rather than looking at the economic realities of the case in question, the Panel had come out with a narrow interpretation of the Agreement. His delegation was of the view that this interpretation 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. However, this protection should be found in the Agreement itself. The Panel had attached particular importance to the view that legal standards employing objective criteria must be given a preference to opinions based in judgement of economic circumstances. 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 a "primary product" as "any product of farm, ... in its natural form ... which has undergone such processing as is customarily required to prepare it for marketing in substantial volume in international trade." The logical extension of the Panel's preference for legal standards based on objective criteria, must surely be that boneless manufacturing beef (on which the EEC granted substantial export subsidies) was not a "primary product" as defined in the General Agreement and that the export subsidies granted by the EEC 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". 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." The representative of Canada said that, if the narrow interpretation adopted by the Panel and the logic behind it were 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 which he had explained. The Agreement was a carefully balanced structure of rights and obligations. He reiterated that the substantive issue which the Committee had to face in addressing this Panel 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 concluded by saying that when his delegation had raised these points at the meeting held on 31 May 1988, there had been only limited comments from other delegations; he hoped that delegations had had the time to reflect on these points and he welcomed the views of other delegations which could be useful to the Committee in working towards resolving this issue.

21. The representative of Australia said the views of his delegation on the Panel Report remained the same and were well known. His authorities were of the view that the Report was fundamentally flawed. His delegation found it difficult to accept that when export subsidies granted on a product such as boneless manufacturing beef caused injury to an industry in another country, no effective remedy against such injury would be available under the Agreement. In the view of his delegation the overriding objective of the Agreement was to ensure that the use of subsidies did not adversely affect or prejudice the interests of any signatory to the Agreement. It followed that the use of countervailing measures was justified where the subsidized product had, or threatened to have, a prejudicial effect on the domestic industry in an importing country. Consequently, the point of departure of the evaluation of the Panel Report should be the fifth paragraph of the preamble to the Agreement which provided that a main objective of the Agreement was "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." In light of this objective his delegation was of the view that the Report by the Panel was not in conformity with the spirit of Articles VI, XVI and XXIII of the General Agreement on which the Agreement was based. In this respect he noted in particular the view expressed by the Panel that beef and live cattle were not "like products". In the case referred to the Panel, the "industry" consisted of an integral process which produced a final commodity, i.e. beef. Cattle producers produced beef and the processors then transformed the beef into a marketable form. This approach was entirely consistent with Ad Article XVI of the General Agreement, Section B, paragraph 2, which defined the term "primary product" as "any product of farm ... in its natural form or which has undergone such processing as is customarily required to prepare it for marketing in substantial volume in international trade." Other instances of transformations of form for

marketing in international trade were fresh and frozen peas, fresh and canned tomatoes, sugar cane and raw sugar, and sheep and wool. Since it was not usual to move large quantities of live cattle between international markets, the meat packing establishments facilitated the transformation of the product into a form suitable for international trade, rather than producing an essentially different product. It followed that the Panel had adopted too narrow an approach to the definition of the term "domestic industry" in Article 2:1 of the Agreement. In this regard, he also noted that Article VI of the General Agreement referred to injury to "an industry" and not to a domestic industry defined in terms of producers of like products. Consequently, his authorities interpreted Article 2:1 of the Agreement as allowing for "an industry" rather than a particular industry to file a petition for countervailing duty relief. Similarly, Article 6 of the Agreement, if viewed in its entirety, allowed for a wider interpretation of the concept of "domestic industry" than the one adopted by the Panel. Given that the Agreement constituted an interpretation not only of Article VI but also of Articles XVI and XXIII of the General Agreement, and that Article XVI did not contain a definition of the concept of "domestic industry", it would be reasonable to assume that where producers in a primary industry were seeking countervailing duty relief under Article VI of the General Agreement and Article 2:1 of the Agreement, the definition of "domestic industry" would be conditioned by the definition of "primary product" in Ad Article XVI, section B, paragraph 2 of the General Agreement in order to take into account the degree of processing customarily required to prepare the product in question for marketing in international trade.

22. The representative of the EEC said that the arguments presented by the delegation of Canada at this meeting were the same as the arguments put forward by the Canadian delegations during previous discussions of the Committee on the Report. All these arguments had already been taken into consideration by the Panel. The Committee found itself in a situation in which, because of reasons of economic opportuneness, the dispute settlement mechanism was being blocked. Almost one year had passed since the Panel had submitted its Report and Canada still had not stated its formal position on the Report and its recommendations. The Canadian delegation continued to raise the same questions which it had raised before the Panel. This attitude of the Canadian delegation was surprising in light of the general attitude of the Canadian delegation in favour of a strengthening of the dispute settlement mechanism in GATT. In this respect he quoted from a communication from Canada to the Uruguay Round Negotiating Group on Dispute Settlement in which the Canadian delegation had stated that:

"An effective dispute settlement system rests on three elements: efficient, reliable procedures for handling disputes; clear and precise rules of trade; and a political commitment to respect the findings, rulings and decisions of CONTRACTING PARTIES."

"...improved rules and efficient procedures cannot in the end make up for a lack of political commitment to abide in the system. Such a commitment requires a judgement that the system overall works in the better interests of each Contracting Party."

The representative of the EEC wondered whether in the case under consideration in the Committee the Canadian authorities had indeed taken into consideration that an efficient dispute settlement system overall worked in the better interest of each contracting party. From the same Canadian submission to the Negotiating Group on Dispute Settlement he quoted the following passage:

"In cases where parties have been found to maintain measures inconsistent with the GATT, the party which brought the dispute bears the burden of the damage to their trade interests throughout the course of the dispute settlement process, which as the Secretariat note suggests, takes an average of 14,5 months to the date of the adoption of the report. A delay in implementing an adopted report prolongs even further the damage to trade interests."

The representative of the EEC said that his delegation fully agreed with the Canadian view in this communication regarding the effects of a delay in the adoption and implementation of Panel Reports. In the case under consideration by the Committee, the EEC continued to suffer economic damage as a result of the Canadian attitude. He noted that in past cases in which the EEC had found it difficult to agree to the adoption of a Panel Report, it had at least taken measures to remove any economic harm to the other party to the dispute. In this case, however, Canada had done nothing to alleviate the economic impact of its measures on the EEC and had only caused further delay. He further noted that in its communication to the Negotiating Group on Dispute Settlement, Canada had stated that:

"It would, however, be useful to explore in greater detail the question of compensation and time limits in order to encourage more expeditious implementation of panel reports and to reinforce the need for governments to respect panel findings and recommendations."

In view of the contrast between the attitude reflected in the quoted passages and the attitude taken by Canada in the particular dispute before the Committee, the representative of the EEC said that one could ask how serious the Canadian proposals on the improvement of the dispute settlement mechanism should be taken. His delegation was struck by this contrast. He reserved his delegation's right to revert to this dispute in any appropriate forum.

23. The representative of Canada said there were reports which had been pending before the Committee much longer than the Panel Report on boneless manufacturing beef; his delegation had no lessons to receive when it came to the issue of compliance with dispute settlement procedures. In this connection, he reiterated Canada's commitment to an effective GATT dispute settlement system as recently demonstrated by the adoption of two GATT Panel reports. He disagreed with the contention by the EEC representative that his delegation had not raised any new issues; at this meeting and at the previous meeting of the Committee his delegation had made the point that, if the Agreement was to be equitable, it followed that, where

adequate protection against injurious subsidization could not be granted in the form of countervailing measures, such protection had to be found elsewhere in the Agreement. Furthermore, his delegation had expressed the view that if one extended the logic followed by the Panel, one would have to conclude that the subsidies granted by the EEC on boneless manufacturing beef were prohibited under Article 9 of the Agreement. His delegation had sought the views of the other signatories on these points in order to help the Committee to find a solution to the issue.

24. The representative of New Zealand said that his delegation's views on the Report had not changed. This delegation remained concerned about the practical implications of the Panel Report and feared that the adoption of the Report would open the door wider to export subsidization of processed agricultural products. In relation to the views expressed by the Canadian delegation, he said that the findings of the Panel as to what constituted a "like product" did not undermine 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.

25. The representative of the EEC noted that it had been suggested by several delegations that the Panel Report had adopted too narrow an interpretation of a particular provision of the Agreement. However, members of the Committee were well aware that the same interpretation had been adopted by another Panel in an earlier dispute settlement proceeding; it was therefore amazing that some signatories were surprised by the adoption of this interpretation in this particular case. If signatories were of the view that certain provisions of the Agreement were too restrictive, they were free to raise this in the Multilateral Trade Negotiations but in the meantime the existing provisions of the Agreement should be observed. His delegation was not surprised by the fact that certain signatories who had benefited from the measures taken by Canada, supported the Canadian position but he doubted that such an attitude could contribute to an improved functioning of the dispute settlement mechanism.

26. The representative of Israel said his delegation's views on the Panel Report were reflected in SCM/M/38, paragraph 78. His delegation was of the view that it was in the general interest of all signatories to comply strictly with dispute settlement proceedings. In relation to the points raised by Canada, he said that it was important that there be disciplines both on the use of subsidies and on the use of countervailing measures. A number of delegations had raised interesting questions which could be explored more in detail in the current Multilateral Trade Negotiations; in the meantime, it was, however, necessary to ensure prompt adoption of the Panel Report and implementation of its recommendations.

27. The Chairman said that it appeared from the discussion that the positions of the delegations concerned remained the same and that special efforts were necessary to arrive at a solution to this dispute. He proposed to hold informal consultations on this matter with the delegations concerned.

28. The representative of the EEC said that while he did not object to the suggestion made by the Chairman on informal consultations, he reserved his delegation's right to raise this matter in other fora.

29. The Committee discussed the proposal made by the Chairman; in this discussion divergent views were expressed regarding the scope of the informal consultations suggested by the Chairman. The Chairman concluded this discussion by saying that he would contact the delegations involved to examine how the Committee should proceed in this matter. He also noted that, if delegations so wished, other pending Panel Reports could be on the agenda of the Committee at its next regular meeting.

30. The Committee took note of the statements made.

C. New Zealand - Countervailing duty investigation of imports of edible rape seed oil from the Federal Republic of Germany and the Netherlands.

31. The representative of the EEC brought to the attention of the Committee, the concerns of his delegation regarding a countervailing duty action by New Zealand with respect to imports of edible rape seed oil from the Federal Republic of Germany and the Netherlands. In the view of his delegation the authorities of New Zealand had provided insufficient information and had not allowed enough time for consultations. He reserved his delegation's right to revert to this case at a future meeting of the Committee.

32. The representative of New Zealand said he disagreed with the contention by the representative of the EEC that in this case his authorities had not allowed enough time for meaningful consultations and that they had not provided sufficient information. He noted that the representative of the EEC had referred to a countervailing duty "action" and said that no "action" had yet been taken by his Government as the investigation was still in the preliminary phase. He explained that the request for an initiation of a countervailing duty investigation had been accepted by his authorities on 21 April 1988. Following the acceptance of this request, his authorities had immediately informed the EEC of the acceptance of the complaint and had invited the EEC for consultations. However, it had taken the EEC Commission nearly two months to respond to this offer for consultations. In an attempt to provide adequate opportunities for consultations with the EEC, his authorities had delayed the initiation of the investigation for a period of 33 days and had initiated the investigation only on 24 May 1988. On that date, a questionnaire had been sent to the EEC with the request that it be returned by 17 June 1988. The EEC had not managed to meet that deadline but had returned the questionnaire very recently. He assured the delegation of the EEC that the replies by the EEC would be fully taken into account by his authorities and that they remained prepared to consult with the EEC on this matter. Finally, he reiterated that the investigation was still in the preliminary phase.

33. The representative of the EEC confirmed that his authorities had made an attempt to reply to the questionnaire provided by the Government of New Zealand. However, the information which had been supplied by the authorities of New Zealand in this case had been so scarce that the replies to the questionnaire could only be of limited relevance. In this respect, he mentioned as an example the fact that when, in the course of the consultations, his authorities had requested to see evidence put forward in the complaint regarding the existence of a causal link between the allegedly subsidized imports and the existence of material injury to a domestic industry, the reply by the Government of New Zealand had been that almost all the information on this point was confidential. His delegation considered that, faced with such an attitude, it was very difficult to rebut the arguments presented by the complainant.

34. The Committee took note of the statements made.