

GENERAL AGREEMENT ON

RESTRICTED

SCM/M/51

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Special Distribution

TARIFFS AND TRADE

Committee on Subsidies and
Countervailing Measures

MINUTES OF THE MEETING HELD
ON 1 MAY 1991

Chairman: Ms. Angelina Yang (Hong Kong)

1. The Committee on Subsidies and Countervailing Measures ("the Committee") held a regular meeting on 1 May 1991.
2. The Committee adopted the following agenda:
 - A. Examination of countervailing duty laws and/or regulations of Signatories of the Agreement¹ (SCM/1 and addenda):
 - (i) Turkey (SCM/1/Add.28);
 - (ii) Australia (SCM/1/Add.18/Suppl.3);
 - (iii) Canada (SCM/1/Add.6/Rev.2);
 - (iv) New Zealand (SCM/1/Add.15/Rev.3/Add.1);
 - (v) Other legislation.
 - B. Notification of Subsidies under Article XVI:1 of the General Agreement (L/6630 and addenda, L/6805 and addenda).
 - C. Semi-annual reports of countervailing duty actions taken within the period 1 July-31 December 1990 (SCM/107 and addenda).
 - D. Reports on all preliminary or final countervailing duty actions (SCM/W/220/Corr.1, 225, 227 and 228).
 - E. United States - Countervailing duties on non-rubber footwear from Brazil - Report by the Panel (SCM/94 and SCM/96).

¹The term "Agreement" hereinafter means Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade.

- F. Other Panel Reports pending before the Committee:
- (i) Canada - Imposition of countervailing duties on imports of boneless manufacturing beef from the EEC - Report by the Panel (SCM/85);
 - (ii) EEC - Subsidies on export of wheat flour - Report by the Panel (SCM/42);
 - (iii) EEC - Subsidies on export of pasta products - Report by the Panel (SCM/43);
 - (iv) United States - Definition of industry concerning wine and grape products - follow-up on consideration of the Panel's Report (SCM/71).
- G. Draft guidelines on the application of the concept of specificity (SCM/W/89).
- H. United States - Initiation standards for countervailing duty investigations (SCM/106).
- I. Other business:
- (i) Composition of the Panel on the German Exchange Rate Guarantee Scheme for Deutsche Airbus;
 - (ii) United States - Administrative review of a countervailing duty order on live swine from Canada.

3. The Chairman informed the Committee that on 29 April 1991 the Republic of Poland had signed the Agreement, subject to ratification. She welcomed this development and expressed the hope that the procedures for the ratification of the Agreement by Poland would be completed very soon.

4. The observer for Poland said that the signature, subject to ratification, of the Agreement by his country was a logical and important component of the radical process of change in the economic and trade policies of Poland which had to be seen in conjunction with such fundamental developments as the abolition of the state's monopoly of trade, the consequent erosion of the government's involvement in commercial activities, the unrestricted access of all economic operators to international commerce, the adoption of market-based competitive pricing, the elimination of virtually all subsidies affecting trade and trade-related domestic activities and the introduction of internal unrestricted convertibility between the national currency and the principal internationally trade currencies. The decision by Poland to accept the Agreement was motivated by two essential objectives: firstly, to consolidate the present policies of non-subsidization given the importance of these policies from the point of view of economic efficiency and,

secondly, to offer domestic industries an instrument of legitimate defence against unfair, subsidized import competition through the adoption and implementation of procedures consistent with the provisions of the Agreement. The implementing domestic legislation would be adopted as expeditiously as possible in order to ratify the Agreement without unnecessary delay. He concluded by saying that his delegation looked forward to working closely with all members of the Committee and would keep the Committee informed of the progress in the drafting of the implementing legislation.

5. The Committee took note of the statements made.

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

(i) Turkey (SCM/1/Add.28)

6. The Chairman recalled that the Committee had been examining the countervailing duty legislation of Turkey at its regular meetings held on 26 October 1989 (SCM/M/44, paragraphs 33-35), 24 April 1990 (SCM/M/46, paragraphs 19-22) and 25 October 1990 (SCM/M/48, paragraphs 12-16). In document SCM/W/230 the delegation of Turkey had provided written responses to questions raised by the delegation of Hong Kong in document SCM/W/226. Supplementary questions raised by Hong Kong on the countervailing duty legislation of Turkey had very recently been circulated in document SCM/W/232.

7. The representative of Turkey thanked the delegation of Hong Kong for the questions which it had raised on the Turkish Law on the Prevention of Unfair Competition In Importation. In drafting this legislation, the Turkish authorities had made every effort to ensure that the legislation would be in conformity with the relevant international rules and disciplines. The main purpose of this legislation had been to prevent unfair trading practices rather than to protect domestic industries. It had to be borne in mind that the legislation had been in force only for a relatively short period of time of approximately two years and that it might have to be revised in light of developments regarding the international rules applicable in this area.

8. The representative of Turkey then replied as follows to the supplementary questions raised by the delegation of Hong Kong and circulated in document SCM/W/232. Regarding the first supplementary question of Hong Kong, she said that, as explained in document SCM/W/230, provisional and definitive anti-dumping or countervailing duties were applied to the firms which were subject to investigation in the exporting country concerned. In the case where during the investigation all exporters subject to investigation were named separately, different duty rates might be established for each exporter found to be dumping. However, when several exporters from the same country were involved and it was not practicable to name all these exporters, provisional or definitive measures could be applied in an appropriate and separate amount to all

imports of the product originating in the country subject to investigation, as provided for in Article 8:2 of the Agreement on Implementation of Article VI of the General Agreement. In response to the second supplementary question raised by Hong Kong in document SCM/W/232, she said that the Turkish authorities had not yet had to deal with the question of the treatment of exporters who started to export a product to Turkey after the initiation of an investigation. If such a case presented itself, provisional or definitive measures would be applied on a country basis to all exporters other than those from whom undertakings had been accepted.

9. Regarding the third question raised by the delegation of Hong Kong in document SCM/W/232, the representative of Turkey explained that, as provided for in Article 6 of the Decree on the Prevention of Unfair Competition in Importation, decisions to impose definitive measures could be reviewed either upon request by one of the parties concerned or at the initiative of the responsible authorities. She noted in this respect that the main purpose of the legislation was not to protect the domestic producers but to prevent unfair competition in importation. However, definitive anti-dumping or countervailing duty measures would remain in force as long as the injurious effects of dumped or subsidized imports continued. Regarding the question raised by Hong Kong in document SCM/W/232 on the requirements in the Turkish legislation with regard to the initiation of investigations, she said that this matter was dealt with in Article 4 of the Law on the Prevention of Unfair Competition in Importation, which provided for the initiation of investigations upon written applications by natural or legal persons concerned, or by related occupational institutions, who claimed that they were being injured by, or that a threat of injury existed as a result of, dumped or subsidized imports, or that such imports had resulted in the material retardation of the establishment of an industry. In the implementation of this provision, the Turkish authorities would consider the weight these persons or institutions carried in the sector in question. Finally, in response to a further question by Hong Kong submitted in document SCM/W/233, she said that governments of exporting countries would generally be entitled to have access to non-confidential information concerning anti-dumping or countervailing duty investigations.

10. The representative of Hong Kong thanked the representative of Turkey for the answers which she had given to the questions raised by his delegation. His delegation had recently submitted an additional question regarding the right of access of foreign governments to non-confidential information (SCM/W/233) and he hoped that the delegation of Turkey would respond to this question in the near future.

11. The representative of Turkey said that his delegation would provide a written response to the question raised by Hong Kong in document SCM/W/233.

12. The Committee took note of the statements made and agreed to revert to the countervailing duty legislation of Turkey at its next regular meeting. The Chairman requested that any further questions or comments be submitted in writing by 14 June 1991 and that the delegation of Turkey reply to such questions or comments by 16 September 1991.

(ii) Australia (SCM/1/Add.18/Suppl.3)

13. The Chairman recalled that the Committee had examined the amendments to the Australian countervailing duty legislation notified in document SCM/1/Add.18/Suppl.3 at its meeting held on 25 October 1990 (SCM/M/48, paragraphs 17-19). At that meeting the representative of Australia had explained that these amendments mainly concerned anti-dumping issues. No written questions on these amendments had been received so far by the secretariat.

14. The representative of Canada said that his delegation would submit some written questions on the Australian countervailing duty legislation.

15. The representative of the EEC said that his authorities understood that the Australian Government had recently announced certain procedural changes to the Australian anti-dumping and countervailing duty legislation and asked when Australia would notify these changes to the Committee. He also noted that in a statement made in March 1991 the Australian authorities had indicated their intention to draft legislation, similar to that in place in the United States, to ensure that injury suffered by industries producing agricultural or horticultural products as a result of dumped or subsidized imports of processed products would be taken into account in anti-dumping and countervailing duty investigations. The proposed legislation would provide an avenue for redress for vertically-integrated producers of agricultural or horticultural products when there was dumping or subsidization of processed products. While his authorities acknowledged that no legislation had as yet been enacted on this matter, they were nevertheless concerned about this proposed legislation. The existing international rules on this matter were clear and had been interpreted in a consistent manner. His authorities would closely follow the developments with respect to the possible enactment by Australia of this proposed legislation.

16. The representative of Australia said that his delegation would respond to the questions announced by the representative of Canada prior to the next meeting of the Committee. On the statement made by the representative of the EEC, he said that it was correct that his authorities had indicated their intention to make certain changes to the Australian countervailing duty legislation concerning processed agricultural and horticultural products. However, the legislation had not yet been drafted, let alone enacted. When enacted, it would be notified to the Committee.

17. The Committee took note of the statements made and agreed to revert at its next regular meeting to the amendments to the Australian countervailing duty legislation notified in document SCM/1/Add.18/Suppl.3.

(iii) Canada (SCM/1/Add.6/Rev.2)

18. The Chairman recalled that at the regular meeting held on 25 October 1990 the representative of Canada had provided an explanation of the recent amendments to the Canadian Special Import Measures Act and to the Regulations implementing that Act. At the same meeting, the representatives of Australia and the EEC had indicated that they might want to submit questions on these amendments. No questions had, however, been received by the secretariat on the Canadian legislation.

19. No comments were made. The Chairman said that the Committee had concluded its examination of the amendments to the Canadian countervailing duty law and regulations.

(iv) New Zealand (SCM/1/Add.15/Rev.3/Add.1)

20. The Chairman noted that at the regular meeting held on 25 October 1990 the Committee had taken note of a statement by the representative of New Zealand regarding the nature and purpose of the amendments made by the Dumping and Countervailing Duties Act 1990. The Committee had not received any written questions on this Act.

21. No comments were made. The Chairman said that the Committee had concluded its examination of the New Zealand Dumping and Countervailing Duties Act 1990.

(v) Other legislation

22. The Chairman said that the Committee had received a notification from the delegation of Colombia containing the text of the Colombian countervailing duty legislation (document SCM/1/Add.29). While this notification would be discussed at the next regular meeting of the Committee, she understood that the representative of Colombia wished to make a statement introducing this legislation.

23. The representative of Colombia explained the circumstances which had led to the enactment by her country of a countervailing duty law as follows. In February 1990 Colombia had started a process of modernization of its economy. In respect of imports, this process had entailed, inter alia, a progressive elimination of administrative restrictions with the purpose of granting protection through customs tariffs. In this context of liberalization, an instrument was necessary to guarantee to domestic industries adequate conditions of competition and to avoid adverse effects caused by dumping or subsidization. For this purpose, and by virtue of the powers vested by law in the Government of Colombia, a Decree had been adopted which laid down provisions governing the application of anti-dumping and countervailing duties. This Decree had been adopted pursuant to the law by which in 1981 the Colombian National Congress had approved the Protocol of Accession of Colombia to the General Agreement. A first version of the Decree had entered into force in September 1990 and

certain amendments had been made in October 1990. The most recent version of the Decree had been published and widely distributed in order to make the new instrument known in Colombia.

24. The representative of Colombia said that among the principal criteria which had guided her authorities in the drafting of the Decree was the need to ensure conformity of the Decree with definitions and rules contained in international agreements to which Colombia was a party, in particular the Agreement, the General Agreement and the Decision taken pursuant to the Cartagena Agreement concerning trade distortive practices. She noted that all these legal instruments had been incorporated into the Colombian domestic legal order. Regarding the institutional framework for the application of the Decree, she said that the Institute for Foreign Trade (INCOMEX), a body which operated within the Ministry of Economic Development, was the competent body for the conduct of anti-dumping and countervailing duty investigations. A Trade Practices Committee had been established to evaluate the results of such investigations and the Ministry of Economic Development was the competent authority to decide on the definitive application of anti-dumping or countervailing duty measures. Investigations could be initiated ex officio or at the request of interested parties. In the first phase of proceedings under the Decree, there would be an examination of the complaint to see whether it was properly documented. At a second stage, the merits of the complaint would be evaluated and a decision taken as to whether or not to initiate an investigation. In a third phase, after the initiation of the investigation, a decision would be taken on whether or not the imposition of an anti-dumping duty was appropriate. Investigations were to be concluded within nine months from the date of the initiation, subject to a possible extension of the three months. She noted that in case of anti-dumping or countervailing duty investigations which fell within the competence of the Cartagena Agreement, the Decree provided for the necessary steps to be taken by INCOMEX to initiate the proceedings referred to in Decision 283 of the Cartagena Agreement. Finally, she said that the provisions of the Decree notified in document SCM/1/Add.29 had not yet been applied.

25. The Committee took note of the statement made by the representative of Colombia. The Chairman invited delegations wishing to raise questions on the Colombian countervailing duty legislation to do so in writing by 14 June 1991 and requested the delegation of Colombia to respond to possible questions by 16 September 1991.

26. The Chairman said that in document SCM/1/Add.16/Rev.2 the Committee had received a notification from the delegation of Chile regarding amendments to the Chilean countervailing duty legislation. She invited the representative of Chile to make an introductory statement on this notification.

27. The representative of Chile said that on 24 January 1990 the authority for the conduct of countervailing duty investigations had been transferred from the Central Bank of Chile to a National Commission, chaired by the

National Economic Commissioner, and composed of two representatives of the Central Bank of Chile, representatives of the Ministry of Finance, the Ministry of the Economy, Development and Reconstruction, the National Director of Customs and of the Ministry of Foreign Affairs. Her delegation would be happy to respond to any questions, preferably in writing, on the notification circulated in document SCM/1/Add.16/Rev.2.

28. The Committee took note of the statement made by the representative of Chile. The Chairman invited delegations wishing to raise questions on the Chilean countervailing duty legislation to do so in writing by 14 June 1991 and she requested that the delegation of Chile provide written answers to such questions by 16 September 1991.

29. The representative of Israel informed the Committee that on 1 January 1991 a new trade law had entered into force in his country which in one of its chapters contained provisions on the application of anti-dumping and countervailing duties. His delegation would notify this legislation to the Committee in the near future.

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

31. The Chairman said that the Committee would keep the item "Other legislations" on the agenda of its next regular meeting.

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

(i) L/6111 and addenda

32. The Chairman said that since October 1988 the Committee had been examining full notifications of subsidies due in 1987 (L/6111 and addenda). This examination had not yet been completed, in some cases because of the absence of certain delegations at the last two regular meetings of the Committee and in other cases because questions had been raised which remained to be answered.

India (L/6111 and addenda)

33. The representative of Australia recalled that in document SCM/W/199 his delegation had raised a question regarding a programme under which the Government of India permitted domestic companies and resident non-corporate tax payers to claim tax deductions for the "whole of the income derived by the assesseees from the export of goods or merchandise". In the response to this question (document SCM/W/209), the delegation of India had indicated that India was "aware of the requirement of Article 14:5 and reaffirms its intention to reduce or eliminate export subsidies when the use of such export subsidies is inconsistent with its competitive and development needs". At the meeting held in April 1990 his delegation had asked whether this statement amounted to a commitment within the meaning of Article 14:5 by the Government of India in relation to this subsidy programme.

34. The representative of India said that the reply provided by his delegation to the question raised by Australia on the export subsidy programme in question reflected India's understanding of its obligations under the Agreement and was not intended to constitute a commitment. The need for the continuation of particular incentives was regularly reviewed by the Government of India in light of the competitive and development needs of India. It was not possible for his delegation to give a precise time frame for the phasing out of a particular subsidy programme.

35. The representative of Australia said that it was not entirely clear to him what the reply of the Indian delegation was to the question raised by his delegation. He noted that, while in document SCM/W/209 the delegation of India had stated that it was aware of the requirement of Article 14:5, in the statement just made by the representative of India he had indicated that this did not mean a commitment under Article 14:5. He reserved his delegation's right to revert to this matter at a later stage.

36. The representative of India noted that Article 14:5 of the Agreement provided that a developing country "should endeavour to enter into a commitment"; it did not provide that a developing country should enter into a commitment. In document SCM/W/209 his delegation had stated that India was aware of this requirement, i.e. of the requirement to endeavour to enter into a commitment, and that India reaffirmed its intention to reduce or eliminate export subsidies when the use of such export subsidies was inconsistent with its competitive and development needs. Thus, this statement did not amount to a commitment to phase out a particular programme by a specific date.

37. The Committee took note of the statements made.

Pakistan

38. The Chairman said that no notification of subsidies had been received from the delegation of Pakistan since 1984. She asked the representative of Pakistan to explain his authorities' intentions with respect to their notification obligations under the General Agreement.

39. The representative of Pakistan said that he had taken note of the Chairman's statement and would revert to this matter as soon as possible.

40. The Committee took note of the statements made.

Korea (L/6111/Add.12)

41. The representative of Australia recalled that there had been an exchange of views between his delegation and the delegation of Korea regarding the Korean food grain procurement. While he did not have further specific questions on this programme, he emphasized that his authorities remained unsatisfied with the explanations provided by the delegation of Korea and he reserved his delegation's right to revert to this matter at some future time.

42. The Committee took note of the statement made by the representative of Australia.

United States (L/6111/Add.17)

43. The representative of Australia said that his delegation would in the near future submit specific questions based on a study by the Australian Bureau of Agricultural and Resource Economics on the depressing effects of subsidies granted by the United States on world prices for sugar.

44. The Committee took note of the statement made by the representative of Australia.

(ii) L/6630 and addenda

45. The Chairman said that, according to the decision taken on this matter by the CONTRACTING PARTIES, each contracting party should have submitted a new and full notification of subsidies in 1990. While her predecessor had intended to hold a special meeting in January 1991 for the purpose of examining these notifications, it had not proved possible to hold such a meeting because of the fact that a number of signatories, including some major trading nations, had not fulfilled their obligations under Article XVI:1 of the General Agreement. So far, full notifications had been received from Hong Kong (Add.1), Australia (Add.2), Turkey (Add.3), Canada (Add.4), Chile (Add.5), Japan (Add.7 and Corr.1), Norway (Add.8 and Corr.1), New Zealand (Add.9), Finland (Add.10), Switzerland (Add.11), Austria (Add.12), Sweden (Add.14), Korea (Add.15), the United States (Add.16) and the Philippines. Most recently, the delegation of Egypt had submitted a full notification.

46. The representative of Brazil said that his delegation would as soon as possible submit a full notification of subsidies.

47. The Chairman expressed the hope that the delegation of Colombia would shortly submit a full notification of subsidies.

48. The representative of India said that his authorities had been seized of this matter and that a full notification of subsidies would be submitted by his country in the near future.

49. The Chairman noted that the delegation of Indonesia, not represented at this meeting, had not yet submitted a full notification of subsidies. She also noted that no notification had been received from Uruguay (not represented at this meeting).

50. The representative of Israel said that, while he was not in a position to give a present date, he hoped that his delegation would be able to submit a full notification shortly.

51. The representative of Pakistan said that his delegation was to submit a full notification shortly.

52. The representative of the EEC said that his delegation would submit its full notification during the course of the present meeting of the Committee.

53. The Chairman said that it was clear that the present status of full notifications due in 1990 was unsatisfactory and that it seemed that repeated appeals by previous chairmen to some signatories had remained without effect. It also seemed that the Committee could not hold a special meeting on notifications of subsidies at which only notifications made by a limited number of signatories would be examined, while other signatories would be asking questions. On the other hand, the Committee had to hold such a meeting before the next period for new and full notifications. She therefore proposed that the Committee agree that all pending notifications should be submitted by 20 September 1991 at the latest and that the Committee hold a special meeting, in conjunction with its next regular meeting, to examine all full notifications. Participation in that special meeting would be open only to those signatories who had submitted their full notifications. It was so decided.

54. The representative of Brazil said that in 1990 the Brazilian Government had started an extensive programme to liberalize and deregulate the Brazilian economy. This explained the delay in the submission of a full notification of subsidies by his delegation. However, it was the intention of his authorities to submit that notification as soon as possible.

55. The Committee took note of the statement made by the representative of Brazil.

(iii) L/6805 and addenda

56. The Chairman noted that only two signatories (Hong Kong and Japan) had so far submitted up-dating notifications due in 1991 (L/6805/Add.1 and 2). She understood that some of the recently received full notifications covered the latest developments and could thus be considered to include the up-dating notifications due in 1991. However, the fact remained that only two signatories had submitted their full and up-dating notifications in strict accordance with the decision taken on this matter by the CONTRACTING PARTIES.

57. The Committee took note of the statement made by the Chairman.

C. Semi-annual reports of countervailing duty actions taken within the period 1 July-31 December 1990

58. The Chairman said that document SCM/107/Add.1 listed those signatories which had informed the Committee that they had not taken any countervailing duty actions during the second-half of 1990: Austria, Brazil, the EEC, Finland, Hong Kong, India, Israel, Japan, Korea, Norway, Pakistan, Switzerland, Turkey and Yugoslavia. More recently, the delegation of the

Philippines had informed the Committee that its authorities had not taken any countervailing duty actions since January 1988 and the Committee had also received a notification from the delegation of Egypt. Countervailing duty actions taken in the second-half of 1990 had been notified by the delegations of New Zealand (Add.2), Australia (Add.3), Canada (Add.4), the United States (Add.5) and Chile (Add.6). No semi-annual reports had been received from the delegations of Colombia, Indonesia, Sweden and Uruguay. The Chairman noted that some signatories regularly failed to comply with their notification obligations under Article 2:16 of the Agreement. She urged those signatories to reconsider their attitude and to submit their semi-annual reports without any further delay.

59. No comments were made on the five semi-annual reports circulated in documents SCM/107/Add.2-6.

D. Reports on all preliminary or final countervailing duty actions (SCM/W/220/Corr.1, 223, 225 and 227)

60. The Chairman said that reports under these procedures had been received from the delegations of Australia, Canada and the United States.

61. No comments were made on these reports.

62. The representative of Norway, referring to document SCM/W/229, informed the Committee that her delegation had requested bilateral consultations with the United States under Article XXIII of the General Agreement regarding countervailing duties imposed by the United States on fresh and chilled Atlantic salmon from Norway. She noted that this matter also involved the application of anti-dumping duties.

63. The Committee took note of the statement made by the representative of Norway.

E. United States - Countervailing duties on non-rubber footwear from Brazil (SCM/94 and 96)

64. The Chairman recalled that the Panel Report contained in document SCM/94 had been discussed by the Committee at its regular meetings held on 26 October 1989, 24 April 1990 and 25 October 1990. The delegation of Brazil had not agreed to the adoption of this Report on the grounds that it would be able to evaluate its position with respect to this Report only after the conclusion of the proceedings initiated by Brazil under Article XXIII of the General Agreement. The United States had strongly disagreed with this approach and had taken the view that issues properly subject to dispute settlement in this Committee should be settled in the Committee. In light of these differing positions, the Committee had at its meeting held in October 1990 decided to revert to this matter (SCM/M/48, paragraphs 60-62).

65. The representative of the United States said that, in view of the fact that this was the fourth time the Committee had before it the Panel Report in document SCM/94 and the fact that on 24 April 1991 the GATT Council had

established a Panel to address the separate concerns of Brazil related to this matter, his delegation expected that the Panel Report could now be adopted by the Committee without further delay.

66. The representative of Brazil said that at least four delegations had in past discussions in this Committee on the Panel Report pointed to short-comings in the Panel Report. At the regular meeting of the Committee in October 1990 his delegation had stated that "it was important to take this issue to the Council and to clarify it. After the conclusion of the Article XXIII proceedings, Brazil would be in a better position to evaluate its position on the Panel Report in this Committee" (SCM/M/48, paragraph 60). On 24 April 1991 the GATT Council had established a Panel to examine Brazil's complaint that the United States had denied most-favoured-nation treatment to Brazil. His delegation would be ready to consider again the Report in document SCM/94 after completion of the proceedings under Article XXIII of the General Agreement.

67. The representative of the United States said that Brazil had referred this matter to the Committee for dispute settlement under the provisions of the Agreement. Brazil's proposal that the Committee await the outcome of the proceedings under Article XXIII of the General Agreement would make a mockery of the dispute settlement mechanism of the Agreement. Brazil had previously indicated that it was prepared to adopt the Panel Report if its concerns were addressed. Notwithstanding the serious concerns of the United States regarding the importance of the principle of res judicata, the United States had recently agreed to the establishment of a Panel under the provisions of the General Agreement to examine Brazil's complaint. Against this background, the work of this Committee and the work done by the Panel established by the Committee in this matter would be seriously undermined if the Committee did not immediately adopt the Panel Report in document SCM/94. His authorities wondered whether Brazil would ever intend for the Committee to be able to adopt this Panel Report.

68. The representative of Brazil reiterated his delegation's view that further consideration of this Panel Report should await the outcome of the dispute settlement proceedings under the General Agreement in which aspects of this matter would be addressed which had not adequately been dealt with in this Panel Report. He expressed his surprise about the attitude of the United States with respect to this Panel Report given the position taken by the United States at a recent meeting of another Committee on a Panel Report pending before that Committee.

69. The representative of the United States asked whether Brazil would agree to the adoption of the Panel Report if the Panel established under the General Agreement would make findings in favour of the United States, and what Brazil's position on the Report would be if the Panel made findings in favour of Brazil.

70. The representative of Brazil said that his authorities would determine their position when the findings of the Panel established under the General Agreement were known.

71. The representative of the United States said that he remained somewhat puzzled, given that Brazil had itself stressed that the issues to be addressed in the proceedings before the Panel established by the GATT Council were distinct from the issues dealt with in the dispute addressed in the Panel Report presently before this Committee.

72. The representative of Brazil said that he had nothing to add to his earlier statements.

73. The representative of the United States said that the comments made by the representative of Brazil were not helpful, in particular in light of the proceedings which had recently been initiated under the provisions of the General Agreement. He asked that this matter be kept on the agenda of the Committee and reserved his delegation's right to request a special meeting of the Committee on this matter.

74. The representative of the EEC said that his delegation felt some sympathy for the situation in which Brazil found itself. This case underlined the problem of a fragmented dispute settlement system with the consequent risk of "forum shopping".

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

F. Other Panel Reports pending before the Committee

76. The Chairman reminded the Committee that for a number of years it had before it the following reports: (i) EEC subsidies on export of wheat flour (SCM/42); (ii) EEC subsidies on export of pasta products; (iii) United States - Definition of industry concerning wine and grape products (SCM/71); (iv) Canada - Imposition of countervailing duties on imports of boneless manufacturing beef from the EEC (SCM/85). Although there were no formal links between these reports and each of them should be discussed and adopted separately, the common feature of all of them was that their adoption had been blocked by the party losing the case and this negative attitude had sometimes found some supporters among other members of the Committee. The Chairman further said that her predecessors had expressed, on several occasions, their concern about the breakdown of the dispute settlement procedure under the Agreement. A similar concern had been expressed by the Director-General of GATT in his recent report on developments in international trade. She shared this concern and it was aggravated by the fact that signatories directly involved were those which, being major trading nations, had a special responsibility for the functioning of the Committee and the implementation of the Agreement. The previous chairmen had tried to find a practical solution based on a scenario under which all four reports, once negative trade effects of the incriminated measures have been removed, would be adopted at the same meeting, each adoption accompanied by an appropriate understanding. Unfortunately, so far all these efforts had not produced any concrete results. She would therefore like to seek the advice of this Committee as to the future course of action. In fact, the alternative the Committee

was facing was as follows: either the Committee would recognize the fact that the dispute settlement process in this Committee was completely blocked and therefore it had to draw appropriate conclusions concerning the relevance or rather irrelevance of the Agreement and the functioning of the Committee, or the signatories directly involved would decide finally to assume their responsibilities and a practical solution enabling the adoption of these reports would be found without further delay.

77. The representative of Colombia regretted that the Committee had to have such an item on its agenda. The panel reports had been pending before the Committee for a long time, some of them since 1983. However, the GATT was, above everything else, a guarantee of a stable multilateral system. The Agreement and this Committee were a guarantee of the balance in multilateral disciplines applicable to subsidies and countervailing duties. Without effective dispute settlement procedures both fora would lose credibility. The GATT Council had already heard a warning by its Chairman that there were five old disputes pending before the Council. It was alarming that because of political objections on the part of some major trading countries to some panel reports, the credibility of the system was being undermined. If these countries really wanted to improve the multilateral trading system this situation could not continue. He considered that the work of this Committee depended in great measure on the functioning of the dispute settlement procedure, including the right to a panel and the implementation of its report. The representative of Colombia said that the Chairman should be requested to make another effort to work out a solution. The parties involved must all support her in this enterprise. The Chairman would certainly have his delegation's support in carrying out this mission. He strongly hoped that the parties involved would be able to find an appropriate solution and that a better multilateral system would emerge as a result.

78. The representative of Japan recalled that at the last GATT Council meeting the Chairman had expressed his serious concern that some panel reports had not been implemented or had been incompletely implemented and had said that such a situation would damage the credibility of the GATT. Similarly in this Committee there were four or even five panel reports which had remained unadopted for many years, some of them since 1983. He considered that this was absolutely unacceptable and that the situation in the Committee was even worse than that in the GATT Council. He, therefore, strongly urged the Chairman and the parties involved to find a solution, at the latest before the next Committee meeting in the autumn.

79. The representative of Chile expressed her delegation's concern because of a fundamental problem which had arisen regarding the adoption of these four different reports. This problem created a danger for the dispute settlement system, not only in the case of subsidies but for GATT as a whole. It also created a lack of balance between rights and obligations of different parties to the Agreement. Furthermore, there was the risk that the Agreement would cease having any meaning for disciplines in the field of subsidies and countervail. Her delegation held the view that

this situation could not continue and therefore she urged the interested parties to accept the panel reports and to assume their responsibility, in particular concerning the functioning of the dispute settlement system which was indispensable for all contracting parties.

80. The representative of Korea shared the concerns expressed by the previous speakers. He felt that the Committee had reached a dangerous impasse in the application of the dispute mechanism of the Agreement. Losing parties were continuing to block the adoption of the panel reports, and despite the efforts of the previous chairmen no resolution was in sight. Korea for its part was very worried about the present and the future effectiveness of the Agreement's dispute settlement procedure. This procedure had to operate smoothly if the credibility of the GATT system was to be maintained. He noted that that the major trading countries were blocking the adoption of the panel reports. However, these countries set tone both in this Committee and in the Uruguay Round negotiations. In order to make the Agreement and the Uruguay Round negotiations more credible and effective these countries must set a positive tone by accepting the pending panel reports. He also requested the Chairman to continue to make every effort to resolve this problem.

81. The representative of Austria expressed his disappointment that these reports had been before the Committee for so many years. He said that an efficient dispute settlement procedure was of a great importance, in particular for smaller countries, and here there were bad examples of how disciplines could be undermined. Those who were directly involved in these dispute settlement cases had a particular responsibility for the very functioning of this system. Therefore, his delegation would support the Chairman if she intended to conduct consultations with the parties concerned with the aim to come to the adoption of the reports. He thought that the best thing would be if the parties concerned agreed without further delay and if the Committee could adopt these reports at this meeting.

82. The representative of New Zealand said that it was a matter of considerable concern to her delegation that this item remained on the agenda with no signs of progress being made towards breaking the log-jam of unadopted panel reports that had been steadily building up. It was a matter of principle here, rather than any question of the merits or trade interests that might be involved in individual cases. The fact that these four major reports remained pending before the Committee, in some cases for almost a decade, was as others had earlier suggested, seriously undermining the Agreements's credibility through its dispute settlement procedures, and her delegation was worried by the implications this had for the future. Not only in the case of the Agreement where the ability of signatories to defend their legitimate rights under the Agreement was likely to be seriously undermined because of the precedent of non-adoption that had been set, but also more broadly she, like the delegate of Chile, saw the potential for that disease to spread not only into other Code Committees but also possibly into the GATT dispute settlement system as a whole. All other members of the Committee were awaiting the outcome of the Uruguay

Round and they all had hopes and expectations that its results would include substantial improvements to the GATT system, including with respect to the rules on dispute settlement and to the Agreement. Nevertheless, awaiting the Round's conclusions should not provide an excuse for doing nothing in the interim and GATT and the Agreement's Signatories were bound by the rules as they existed. She, therefore, urged that the parties concerned in these four disputes consult seriously to come up with satisfactory solutions, acceptable not only amongst themselves but to the Committee as a whole, that would allow the process to be unblocked. Referring to the two options the Chairman put before the Committee, she said that her delegation would be most reluctant to concede defeat and accept the first option. She hoped very much that the parties concerned would opt for the second approach and would participate in consultations held under the Chairman's good offices since she thought that these would provide the best prospects overcoming the procedural impasse in a way which would reinforce the credibility of the Agreement. She urged the parties concerned to agree to this approach with the primary objective of getting these outstanding issues off the agenda and clearing the way for the proper functioning of the Agreement in the future.

83. The representative of Finland, speaking on behalf of the Nordic countries (Finland, Norway and Sweden) associated himself with those speakers who had expressed their full support for the Chairman to pursue consultations with the parties concerned in order to find a solution concerning the panel reports still awaiting adoption. A solution must be found to this situation which was undermining the credibility of the Agreement and its dispute settlement system and the parties concerned must spare no efforts to find an outcome from this impasse. It was not very encouraging that the outstanding reports, the adoption of which remained blocked under the dispute settlement procedures of the Agreement or under Article XXIII of the General Agreement, all involved the major trading nations of the GATT. This unsatisfactory state of affairs and the effects it had on the whole system of the GATT was clearly reflected in the interventions of a number of participants in the latest GATT Council meeting. He further said that the unadopted reports that had remained on the Committee's agenda for years now seemed to confirm the impression that the possibility to object to panel reports had become a prerogative of big trading nations. A smaller party to GATT, for which the functioning of the system was of vital importance, could not but get the impression that the rules only concerned some but not all of the parties to the Agreement. It was conspicuous to note that those countries which in the Uruguay Round negotiations had called most energetically for an improved GATT dispute settlement system were those which for several years had put doubts on the effectiveness of the existing system by preventing the adoption of the outstanding panel reports. The Nordic countries wished to underline the importance of a credible dispute settlement system that would be regarded as equitable and just by all parties affected. These concerns had often been expressed by the Nordic countries in the Uruguay Round negotiations on the improvement of the dispute settlement system of the GATT itself. It was evident that the same principles must apply to dispute settlement, notwithstanding the forum where it was conducted, also within the forum

where it was conducted, including the framework of the Agreement. He concluded by emphasizing once again the responsibility the main actors had in the functioning of the multilateral trading system and expressed the hope that a solution would be found urgently for the open issues at hand in order to maintain the credibility of the dispute settlement system of this Agreement and of the GATT system in general.

84. The representative of India shared fully the deep concern and regrets that the Chairman and other delegations had expressed regarding the fact that a large number of panel reports remained unadopted on account of being blocked for so many years. He agreed with previous speakers that this fact reflected adversely on the dispute settlement system and affected adversely the credibility of the multilateral trading system. He considered that this should be a matter of great concern that all these reports had been blocked by the large trading entities in international trade. He hoped that these countries would rise up to their responsibility and display the necessary political will and courage to adopt the panel reports and remove the blockage. His delegation would support the suggestions that the Chairman should undertake informal consultations with a view to finding a solution out of this impasse.

85. The representative of Switzerland also expressed his delegation's concern that a number of reports had not been adopted and that the Committee had such a poor record in dispute settlement. Many attempts had been made in the past to solve this problem, regretfully these efforts had remained without success. All members should be well aware of the negative consequences the existing situation had on the credibility of the multilateral trading system. He, therefore, thought that no effort should be spared to permit the adoption of the panel reports and that it was not the right moment for this Committee to show passivity. He associated himself with the suggestion of the previous speakers that the Chairman should have consultations with the parties concerned and wished to assure the Chairman about the full support of the Swiss delegation.

86. The representative of Hong Hong expressed his hope that the message was now getting across to those delegations who were continually blocking the panel reports in the Committee. He shared greatly the concern expressed by many other delegations at the blockage of these panel reports and at the extent to which this did affect the credibility of the dispute settlement mechanism of the Agreement. He strongly urged the parties concerned to live up to their full responsibilities and he supported the suggestion that the Chairman use her good offices to find with those parties an acceptable solution which would lead to the implementation of all pending reports in the very near future.

87. The representative of Egypt regretted that the Committee was not in a position to adopt the pending panel reports. In spite of the fact that preceding chairmen had tried very hard to draw some scenarios to solve this problem, they were not able to get the full co-operation of the parties concerned. The parties directly involved in this process were the major trading countries and it would not have been possible to blame smaller

countries if they had adopted the same approach. He referred to the report of the October meeting of the Committee when the chairman expressed his hope that all of these panel reports would be solved prior to the adoption of any new dispute settlement procedures and supported this approach. He also supported the idea of asking the Chairman to continue her efforts in order to solve this problem in the very near future.

88. The representative of Israel associated himself with those delegations which had expressed their concern about the blockage of the panel reports and called for their adoption. He would support any effort made by the Chairman to find a solution.

89. The representative of the United States said that he wished to associate his delegation with all of the well-spoken remarks that had been made. His delegation's view was that the outstanding panel reports should be acted upon promptly, that it was in the interest of the credibility of the dispute settlement system under this Agreement and under the GATT more generally and he reaffirmed his delegation's strong commitment to work with the Chairman so that a solution could be reached. He requested the Chairman to continue her efforts in that regard.

90. The representative of Brazil said that it was not the intention of Brazil to ask the Chairman to include in Item F of this agenda issues covered by Item E. His delegation had a very different attitude to the latter. The Chairman said that the panel report concerning Brazil and the United States had been put under a different agenda item from the other pending reports. She did hope that this report would not have to be included in the same item with the others. However, if the situation continued in time it would. At this stage she had every confidence in the Brazilian delegation that it would prevent this report from getting into the same situation as the four other reports.

91. The representative of Canada wished to echo to a large degree the comments made by the representative of the United States. He too shared the concerns expressed generally by delegations in this Committee about the need to maintain the integrity of the dispute settlement system, and his delegation remained as it had in the past, ready to work with the Chairman and with other delegations in order to find an acceptable resolution to this issue.

92. The representative of the EEC said that one could not but concur with the concept which had been echoed several times in this Committee. He agreed about the importance of a sound multilateral system and about the instrumentality of a good dispute settlement system to enforce the rules in the subsidies area like in any other area. His delegation had appreciated the efforts made by previous chairmen in this Committee to bring about a solution to this issue, and his delegation would continue to co-operate as much as it could. He wanted to point out that the purpose of the dispute settlement system was to solve disputes, and of all the outstanding disputes in this Committee there was at least one where the trade aspects of the dispute were still there. Therefore, if the EEC had to adopt a

solution to the problem of the pending panel reports it could not ignore these trade distortions. Otherwise it would be defeating the purpose of the whole system. He further said that the issues of principle underlying these reports had caused problems also for some signatories which were not parties to the disputes and had contributed to the blocking of these reports. However there was, at present, a chance to address those issues in the outstanding multilateral negotiations, and he sincerely hoped that that would happen. It was obvious that an efficient multilateral dispute settlement system could only work on the basis of clear rules, while in the case of ambiguous rules nobody could hope to provide an answer to questions which had been left purposefully unanswered by former negotiators.

93. The Chairman said that in view of the sentiments and the opinions expressed by the members of this Committee and the proclamation of co-operation and readiness to work with her stated by the parties directly involved in these four cases, she would make another effort between now and the next meeting in October to try to find a practical solution with the parties concerned. At the October meeting she would submit to this Committee a detailed report on her consultations, irrespective of their results.

G. Draft guidelines on the application of the concept of specificity
(SCM/W/89)

94. The Chairman recalled that the Committee had discussed this item at some length at its regular meeting held in October 1990. It seemed that the implication of the statement made at that meeting by one delegation which had concerns about the draft text in document SCM/W/89 was that it was unlikely that the question of specificity could be resolved in this Committee. However, the Committee had agreed to keep this item on its agenda.

95. The representative of the United States recalled that at the last regular meeting of the Committee his delegation had indicated that, in the context of the negotiations taking place in the Uruguay Round, the United States had been giving further consideration to the concept of specificity as reflected in SCM/W/89 and had concluded that this concept was flawed, notwithstanding the fact that it had originated in the practice of the United States. The United States continued to have doubts regarding the economic rationale and intellectual merits of the specificity concept. His delegation recognized that there was no consensus in the Committee to remove this matter from the Committee's agenda and would not make a formal request to that effect. Nevertheless, the United States remained of the opinion that the Uruguay Round was the proper forum for a careful consideration of this matter. Thus, while the United States continued to apply the specificity concept embodied in document SCM/W/89, it could not agree to the adoption of this document.

96. The representative of Chile said that the concept of specificity was not sufficient to decide whether a subsidy should be actionable; a non-specific subsidy could be as harmful as a specific subsidy.

Accordingly, further criteria, some of which were being considered in the Uruguay Round, were necessary for determining which subsidies should be actionable.

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

H. United States - Initiation standards for countervailing duty investigations (SCM/106)

98. The Chairman recalled that the Committee had examined this matter at its meetings held on 24 April 1990 and 25 October 1990 and that the Canadian delegation had explained its position on this matter in document SCM/105.

99. The representative of Canada asked whether the representative of the United States was now in a position to give a detailed reply to the communication from the Canadian delegation in document SCM/105.

100. The representative of the United States said that to a large extent the United States agreed with the sentiments expressed by Canada in document SCM/105. Thus, no one could take issue with the statement that "sufficient evidence" should be interpreted to mean enough proof of the existence of subsidization and injury to prevent the unjustified harassment of exporters due to unwarranted initiation of countervailing duty investigations. However, the United States disagreed with the criticism expressed by Canada of the initiation standards of the Department of Commerce. In this respect it was important to bear in mind the delicate balance between the need to avoid unjustified impediments to legitimate trade and the need to provide effective means to offset injurious subsidization. One had to be realistic and recognize that subsidies were not always provided in a transparent manner and in particular for private firms it was often difficult to know the details of the actual amount of subsidies received by firms in foreign countries. His delegation had on previous occasions commented on some of the specific cases mentioned by the Canadian delegation. He concluded by saying that his authorities took the concerns expressed by Canada very seriously and would in their practice take into account the views contained in the communication from the Canadian delegation.

101. The representative of Canada said that while he was glad that the representative of the United States had stated its agreement with the broad sentiments expressed by the Canadian delegation in document SCM/105, there appeared to be a difference of opinion as to what those sentiments meant in practice. His authorities remained concerned about what they regarded as insufficiently high standards applied by the United States in the initiation of countervailing duty investigations. He mentioned in this respect in particular the ability of producers in the United States to get countervailing duty investigations launched on the basis of a simple reference to the existence of programmes previously found to be

countervailable without submission of evidence that the specific products in respect of which such investigations were requested actually benefited from these programmes. He reserved his delegations' right to revert to this matter at a later stage, if necessary.

102. The Committee took note of the statements made.

I. Other business

- (i) Composition of the Panel on the German Exchange Rate Guarantee Scheme for Deutsche Airbus

103. The Chairman informed the Committee that, as authorized by the Committee, she had, after securing the agreement of the signatories concerned, on the following composition of the Panel on the German Exchange Rate Guarantee Scheme for Deutsche Airbus:

Chairman: H.E. Ambassador Julio A. Lacarte-Muro

Members: Mr. Pekka Huhtaniemi
Mr. Peter Hussin

104. The Committee took note of the statement made by the Chairman.

- (ii) United States - Administrative review of a countervailing duty order on live swine from Canada

105. The representative of Canada expressed his authorities' dissatisfaction with the conduct of the United States' Department of Commerce in regard to administrative reviews of countervailing duties on live swine. The first administrative review, requested in 1986, had been completed in January 1989. The preliminary results of the second and third administrative reviews which had been combined in order to "catch up", had been issued in May 1990, more than two years after the "catch up" request had been made to the Department of Commerce by the Canadian industry. The final result of the combined second and third administrative reviews had eventually been published on 12 March 1991. It had thus taken from 1987 to 1991 for the publication of the results of the second administrative review. Despite these delays, the Department of Commerce had managed to publish the preliminary results of the fourth administrative review on 12 February 1991 and had begun to work on the fifth administrative review. The final results of the fourth administrative review were expected in June 1991. Canada's experience in this matter led it to question whether administrative reviews conducted by the Department of Commerce were expeditiously completed when duty rates were expected to increase and inordinate delays were encountered when the duties were expected to decrease. This conclusion was supported by the preliminary results of the combined second and third administrative reviews which indicated that the deposit rate should be de minimis and result in a full refund of the US\$10 million of duty deposits paid over the two year

period and a zero deposit rate until completion of the next review. Preliminary results of the fourth administrative review, despite delays experienced in the second and third administrative review, had been published and indicated that the duty deposit rate would increase.

106. The representative of the United States objected to the suggestion of the representative of Canada that the size of the expected amount of countervailing duties might somehow have an impact on the timing of the completion of administrative reviews by the Department of Commerce. He noted that at a recent meeting of the Committee on Anti-Dumping Practices the delegation of Canada had recognized that there had been significant improvements as regards the completion of administrative reviews in anti-dumping cases; his authorities sought to achieve the same objective for the review of countervailing duty orders. His delegation would be happy to provide detailed information on the specific case raised by the Canadian delegation at a later stage.

107. The Committee took note of the statements made.

Date of the next regular meeting of the Committee

108. 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 21 October 1991.