

GENERAL AGREEMENT ON

RESTRICTED

SCM/M/46

5 June 1990

Special Distribution

TARIFFS AND TRADE

Committee on Subsidies and Countervailing Measures

MINUTES OF THE MEETING HELD ON 24 APRIL 1990

Chairman: Mr. Crawford Falconer (New Zealand)

1. The Committee on Subsidies and Countervailing Measures ("the Committee") held a regular meeting on 24 April 1990.

2. The Committee adopted the following agenda:
 - A. Election of officers

 - B. Examination of countervailing duty laws and/or regulations of signatories of the Agreement¹ (SCM/1 and addenda)
 - (i) New Zealand (SCM/1/Add.15/Rev.2)
 - (ii) United States (SCM/1/Add.3/Rev.3)
 - (iii) Revised countervailing duty regulations of the Department of Commerce (SCM/1/Add.3/Rev.3/Suppl.1)
 - (iv) Korea (SCM/1/Add.13/Rev.2/Suppl.1)
 - (v) Turkey (SCM/1/Add.28)
 - (vi) Other legislation

 - C. Notification of subsidies under Article XVI:1 of the General Agreement (L/6111 and addenda, L/6297 and addenda, L/6450 and addenda)

 - D. Semi-annual reports of countervailing duty actions taken within the period 1 July-31 December 1989 (SCM/98 and addenda)

 - E. Reports on all preliminary or final countervailing duty actions (SCM/W/219, 211, 213 and 216)

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

- F. United States - countervailing duties on non-rubber footwear from Brazil (SCM/94 and SCM/96)
 - G. 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)
 - H. Draft guidelines on the application of the concept of specificity (SCM/W/89)
 - I. United States - Countervailing duty investigation of imports of fresh cut flowers from various countries
 - J. United States - initiation standards for countervailing duty investigations
 - K. Other business
- A. Election of officers
3. The Committee elected Mr. Crawford Falconer (New Zealand) as Chairman and Ms. Angelina Yang (Hong Kong) as Vice-Chairman.
- B. Examination of countervailing duty laws and/or regulations of signatories of the Agreement (SCM/1 and addenda)
- (i) New Zealand (SCM/1/Add.15/Rev.2)
4. No further questions were raised nor comments made and the Committee decided to conclude its examination of the legislation of New Zealand.
- (ii) United States (SCM/1/Add.3/Rev.2)
5. The Chairman recalled that the Committee had continued its examination of the amendments to the countervailing duty provisions of the United States Tariff Act of 1930 at its regular meetings of 26 April 1989 (SCM/M/43, paragraphs 14-18) and 26 October 1989 (SCM/M/44,

paragraphs 9-15). Written questions had been received from the EEC (SCM/W/185), Korea (SCM/W/186), India (SCM/W/196) and Canada (SCM/W/197). The United States had replied to these questions in, respectively, documents SCM/W/192, 204, 205 and 206.

6. The representative of India referred to section 701(c)(2) concerning revocation of status of "a country under the Agreement", and said that his authorities were of the view that Article 19:9 of the Agreement could be invoked only at the time a party either accepts or accedes to the Agreement. It could not be invoked at any other time and such invocation would be null and void. He also did not see any relationship between Article 14:5 and Article 19:9. He agreed with the delegation of Korea that a party should invoke the dispute settlement procedures if it considered action by another party as inconsistent with the provisions of the Agreement. It was also inappropriate to refer to Article 19:9 in the context of obligations undertaken under Article 14:5, as there was no basis for any relationship between these two provisions. He said that his delegation was not satisfied with the answers provided by the US. If these provisions remained unchanged in the US legislation, India would reserve its rights regarding their possible application. Referring to section 1677(7)(c) he said that the US response confirmed his authorities' understanding that there was no objective criteria for determining the volume and market share of imports, which would be regarded as negligible and for what would be a discernible level of adverse impact. In his view, any such criteria should be carefully spelled out to avoid any arbitrariness in the context of countervailing duty investigations. He therefore reserved his delegation's rights on this issue as well.

7. The representative of the EEC expressed his delegation's concern about some concepts underlying certain provisions of the US legislation. He reserved his right to revert to this issue in the light of the examination of all relevant implementing regulations.

8. The representative of the United States said that his delegation's perception of the relevance of Articles 14:5 and 19:9 of the Agreement was quite different than that of the representative of India. He would, nevertheless, convey the Indian delegation's views to his authorities for further consideration. As to the second matter raised by the representative of India, he said that the US law outlined only some general criteria to determine when imports were negligible. More precise criteria would be developed by the US International Trade Commission in the course of the implementation of the law.

9. The Committee took note of the statements made and agreed to revert to the US legislation at its next regular meeting. The Chairman invited delegations wishing to raise further questions to do so, in writing, by 15 June 1990 and requested the delegation of the United States to respond to any such questions by 10 September 1990.

(iii) Revised countervailing duty regulations of the United States Department of Commerce (SCM/1/Add.3/Rev.3/Suppl.1)

10. The representative of the United States said that the Department of Commerce had prepared a new set of countervailing duty regulations in pursuance of the legislative amendments made by the Omnibus Trade and Competitiveness Act of 1988. This set of regulations had been forwarded to the secretariat for circulation to the Committee. His delegation would welcome comments and questions on these regulations.

11. The representative of Australia said that in the US legislation and implementing regulations, there were areas of concern to her authorities, as there appeared to be an increasing number of US laws and procedures implicitly based on the premise of the primacy of US domestic law. Section 1320 and 1321 were examples, as were US retaliation procedures, definition of unfair trading and unilateral revocation of the status of a country under the Agreement. All these would be carried out without any recourse to the GATT dispute settlement procedures. She said that her delegation was looking forward to a continuing review of the US legislation and the new regulations with a view to having these concerns allayed.

12. The representative of the United States said that his delegation would be ready to address any specific concern which the delegation of Australia might have. He stated that it was not his Government's intention to take any action inconsistent with its international obligations.

13. The Committee took note of the statements made and agreed to revert to the countervailing duty regulations of the United States Department of Commerce at its next regular meeting. The Chairman invited delegations wishing to raise questions on these regulations to do so, in writing, by 15 June 1990 and requested the delegation of the United States to provide written replies to such questions by 10 September 1990.

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

14. The Chairman recalled that the Committee had started its examination of the recent amendments to the Presidential Decree implementing the countervailing duty provisions of the Korean Customs Act at the meeting of 26 October 1989 (SCM/M/44, paragraphs 27-32) and had agreed to revert to it at this meeting.

15. The representative of the EEC reiterated his delegation's position that the wording of Article 4:4 of the Decree further broadened the category of persons who could act as petitioners. He considered that this concern was not to be allayed by the Korean statement that this provision would be implemented in accordance with the relevant provision of the Agreement. Consequently, the European Communities considered this provision to be inconsistent with the Agreement.

16. The representative of Australia associated herself with the position of the EEC. She noted that at the last meeting the representative of Korea had undertaken to provide written explanations and requested that this be done accordingly.

17. The representative of Korea referred to the replies submitted by his delegation in the Committee on Anti-Dumping Practices and said that they would also be circulated to this Committee. He reiterated his authorities' intention not to broaden the category of potential petitioners beyond what was provided for in the Agreement. Indeed, only producers of the like product or their associations had standing as petitioners.

18. The Chairman said that the Committee would revert to the Korean legislation at its next regular meeting. He invited the delegation of Korea to submit a written explanation on the issue raised by the EEC and Australia. He also invited delegations which might wish to submit further questions, to do so by 15 June 1990 and requested the delegation of Korea to respond to any such questions by 10 September 1990.

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

19. The Chairman recalled that the Committee had started its examination of the Turkish law on the prevention of unfair competition in importation at the meeting of 26 October 1989 (SCM/M/44, paragraphs 33-35). Written questions had been received from the EEC (SCM/W/215). The Committee had not yet received written replies from Turkey to these questions.

20. The representative of Turkey said that his authorities were in the process of preparing written replies which would be forwarded shortly to the secretariat. He said that the Turkish legislation was drafted taking full account of the provisions of the Agreement and of the Anti-Dumping Code. He also recalled that the provisions of the Agreement constituted an integral part of the Turkish national legislation.

21. The representative of the EEC said that he was looking forward to discussing the Turkish legislation as soon as the written replies had been received. He asked whether the fact that the Agreement had the force of law in Turkey meant that any private person could invoke the provisions of the Agreement before a Turkish court of law. The representative of Turkey confirmed that this was the case.

22. The Chairman said that the Committee would revert to the legislation of Turkey at its next meeting. He expected the delegation of Turkey to submit its written responses in the near future. He invited delegations which might wish to submit questions to do so by 15 June 1990 and requested the delegation of Turkey to respond in writing to any such questions by 10 September 1990.

(iv) Other legislation

23. The Committee agreed to maintain this item on its agenda in order to allow signatories to revert to particular aspects of national countervailing duty laws and regulations at a later stage.

C. Notification of subsidies under Article XVI:1 of the General Agreement
(L/6111 and addenda, L/6297 and addenda, L/6450 and addenda, SCM/M/41,
SCM/M/43, SCM/M/44, SCM/W/162, 165, 187, 188, 199 and 209)

24. The Chairman recalled that the Committee had held a special meeting on 27 October 1988 to examine notifications under Article XVI:1. The Committee had continued this examination at its meetings of 26 April 1989 and 26 October 1989. In several cases more information had been sought or further questions had been asked and therefore the Committee had agreed to revert to a number of notifications.

EEC (L/6111/Add.19)

25. The representative of Australia reiterated her delegation's position regarding the scope of the EEC obligation to notify subsidies and the effect on trade of certain subsidies, in particular those provided to non-ferrous metals. She said that the EEC had an obligation, under Article 7 of the Agreement, to provide information on these subsidies as requested by her delegation.

26. The representative of the EEC took note of the disagreement between his delegation and that of Australia on the scope of the EEC obligations under Article XVI:1 of the General Agreement and Article 7 of the Agreement. He believed that the EEC notification was exhaustive and that the EEC had replied in an exhaustive manner to the questions posed by Australia.

27. The representative of Australia requested that the Committee revert to this matter at its next meeting.

India (L/6111/Add.4)

28. The representative of the United States said that he could not agree with the conclusions drawn by India in document SCM/W/209 but that he had no more questions at this stage. The representative of Australia said that the exact question her delegation had submitted to India in document SCM/W/199 had been when would India expect to be able to enter a commitment on the subsidies in question as required under Article 14:5 of the Agreement. The delegation of India had replied to that question in SCM/W/209 but she would like clarifications from India as to whether that reply was indeed a commitment in relation to that subsidy. The representative of India said that he would transmit this question to his authorities and required that the Committee postpone its consideration of this item until its next meeting. The Chairman said that it would be helpful if the delegation of India submitted the requested clarification in writing.

Japan (L/6111/Add.22)

29. The representative of Australia said that having considered the responses given by Japan in document SCM/W/175, her authorities had no further comments on the Japanese notification. However, she wished to

convey their expectation that Japan would intensify its efforts at restructuring its coal industry and would make a positive contribution to the work undertaken in the group on natural resources.

Korea (L/6111/Add.12)

30. The representative of Korea referred to the statement by Australia at the meeting of 27 October 1989, to the effect that Australia could not accept the responses given in document SCM/W/187 and offered some further clarifications. He said that the objectives of the foodgrain procurement programme in Korea was to secure stable supply of the nation's main foodstuffs during an emergency situation such as war or natural disaster, as well as to minimize serious price fluctuation which might have a harmful effect not only on farmers but also on consumers. As to the operation of the programme in 1987, he noted that 14.3 per cent of the total rice harvest had been procured and that the procurement price was 97.9 per cent of the farm households' selling price. The rice produced under this programme was for domestic consumption only and not for exports; therefore, there was no relationship between the share of world export trade in rice and Korea's rice procurement programme. The programme could not be regarded as inconsistent with the provisions of the GATT. With respect to the possible displacement of rice imports by the programme, he explained that Korea had not liberalized the importation of rice mainly for food security reasons. Concerning red peppers, he said that there was a typographical error in the statistical figures his delegation had provided in document SCM/W/187. The quantity of government purchase in 1987 was 2,200 tons instead of 22,000 tons and therefore the correct rated figure would be 1.6 per cent.

31. The representative of Australia said that the additional information just provided did little to allay her delegation's concern expressed at the previous meeting. She requested that the Committee revert to this issue at its next meeting and asked the delegation of Korea to circulate its statement in writing.

Pakistan

32. The Chairman noted that since 1984 the delegation of Pakistan had not complied with its obligation under Article XVI:1 of the General Agreement. As the representative of Pakistan had not participated in the Committee's work since its special meeting on notifications of 27 October 1988 and again was not present at this meeting, the Committee agreed to revert to this matter at its next regular meeting.

United States (L/6111/Add.17)

33. The representative of Australia reiterated her delegation's concern with respect to the measures applied by the United States on sugar. She asked the representative of the United States to comment on the finding of a study by the Australian Bureau of Agricultural and Resource Economics on

the depressing effect of US subsidies on world prices of sugar and on other adverse effects. The representative of the United States said that he would convey the Australian request to his authorities.

34. The Committee agreed to revert to the US notification at its next regular meeting.

New and full notifications

35. The Chairman said that there might be some confusion regarding the status of various notifications under Article XVI:1 and the rôle of the Committee. It might therefore be helpful to recall some basic facts. Although the Committee paid special attention to the question of notifications, the obligations to submit subsidy notifications was a general GATT obligation, and notifications were submitted not to the Committee but to the CONTRACTING PARTIES. Every third year contracting parties should submit new and full notifications. This was a very clear obligation and it could not be met by submitting up-dated or partial notifications (e.g. limited to industrial or agricultural subsidies only). Unfortunately, a new practice had recently developed, namely that some signatories considered that it was sufficient to notify the secretariat that there were no changes to their previous notification, which itself was an up-dating notification of some past notifications. This practice was not in accordance with the agreed procedures for notifications under Article XVI:1 and every contracting party should submit, in 1990, a new and complete notification which would be a starting point for up-dating notifications in the intervening years, i.e., 1991 and 1992. The Chairman appealed to all signatories to take this matter seriously and to inform their authorities accordingly. In this regard he drew the Committee's attention to document L/6630.

36. The Chairman further said that, as customary, in the coming autumn the Committee should have a special meeting to examine these new and complete notifications which have been submitted by signatories. It was, therefore, imperative that these notifications were submitted not later than mid-September in order to facilitate the Committee's preparations for this special meeting. So far the secretariat had received notifications from Hong Kong, Australia, Turkey, Canada and Chile. Referring to the question of up-dating notifications to the previous full notifications of 1987, the Chairman recalled that at the October 1989 meeting a number of notifications had been missing and some signatories had promised that they would submit their up-dating notifications shortly. Unfortunately, the secretariat had not received such notifications from Egypt, Israel, Korea, Pakistan, the Philippines, the United States, Uruguay and Yugoslavia. As 1990 was year of full notifications, the Committee could only take note of this fact and urge these and other signatories to submit their full notifications without further delay.

D. Semi-annual reports of countervailing duty actions taken within the period 1 July-31 December 1989 (SCM/98 and addenda)

37. The Chairman recalled that an invitation to submit semi-annual reports under Article 2:16 of the Agreement had been circulated in SCM/98. The following signatories had notified that during the period 1 July-31 December 1989 they had not taken any countervailing duty action: Austria, EC, Finland, Hong Kong, India, Israel, Korea, New Zealand, Norway, Pakistan, Sweden, Switzerland, Turkey and Yugoslavia. The following signatories had notified countervailing duty actions: Canada (SCM/98/Add.2), Australia (SCM/98/Add.3) and the United States (SCM/98/Add.4). No reports have been received from: Brazil, Chile, Egypt, Indonesia, Japan, the Philippines and Uruguay.

38. The Chairman said he had two remarks to make. The first one was that there were still signatories which did not bother to inform the Committee that they had not taken any countervailing duty action. He could only associate himself with his predecessors in the Chair and express his regrets that this simple obligation continued to be neglected by some delegations and urge them to comply with their obligations under Article 2:16 of the Agreement without further delay. The second remark was that despite the assurances that the Committee had received in the past from the United States delegation about the timely submission of its semi-annual report, this report had again been received only very recently and other signatories had not had time to examine it in detail. The question of timing was very important and every delegation should have adequate opportunity to prepare itself for the examination of semi-annual reports. The Committee would therefore revert to the United States report at its next meeting.

39. No comments were made on the semi-annual reports submitted by Australia and Canada.

E. Reports on all preliminary or final countervailing duty actions (SCM/W/210, 211, 213 and 216)

40. The Chairman said that notices of countervailing duty actions had been received from the delegations of Australia, Canada and the United States. No comments were made on these notices.

F. United States - Countervailing duties on Non-Rubber Footwear from Brazil - Report by the Panel (SCM/94)

41. The Chairman recalled that the Committee had started at its October 1989 meeting its examination of the Report by the Panel established by the Committee in the dispute between Brazil and the United States on the collection of countervailing duties by the United States on imports of non-rubber footwear from Brazil (SCM/94). At the request of Brazil, the Committee had agreed to postpone the examination of this report until this meeting. The representative of Brazil had circulated his statement on this report in document SCM/96.

42. The representative of the United States repeated his Government's belief that the report should be adopted and asked whether Brazil now was able to agree to adoption.
43. The representative of Brazil recalled that at the last meeting of this Committee, on 26-27 October 1989, the Government of Brazil had presented its substantive objections to the report, which had been circulated to the Committee on 5 March 1990 (SCM/96). He believed that other delegations had had an opportunity to review these comments. Specifically, the Committee could see that the objections raised to the Panel Report were substantive and went to the nature and timing of obligations under the GATT and the Agreement.
44. He said that the first objection to the report could be summarized as follows: by adopting inconsistent procedures in the implementation of its obligation to provide an injury test upon the expiration of the exemption provided by the Protocol of Provisional Application, the United States had denied most-favoured-national treatment to Brazil. This issue had been acknowledged by the Panel (paragraph 3.11 of the Report) but never addressed in its Findings and Conclusions. Brazil requested the Committee to review this aspect of the Report and would like to hear the opinion of the Committee with respect to this issue. Brazil reserved the right to raise the m.f.n. issue before the GATT Council.
45. He further said that the Panel had misconstrued the provisions of the Agreement and the General Agreement. The General Agreement required a "determination" of subsidy and injury prior to the "levy" of countervailing duties. Timing was the very essence of this obligation - it required a determination of injury prior to a "levy" of countervailing duties. On the date on which the exemption of the Protocol of Provisional Application with respect to imports from Brazil had expired - i.e. the date on which both the United States and Brazil had acceded to the Agreement - a new obligation to make a determination of injury had been created with respect to countervailing duties imposed under an earlier order (paragraph 4.5 of the Report). The Panel had sought a "practical solution" and had applied the doctrine of mutatis mutandis to Article 4:9 on the stated assumption that no new obligations had been created by the Agreement (paragraph 4.10 of the Report). This practical solution had changed the basic rights and obligations resulting from Article VI:6(a) of the General Agreement since it permitted the United States to levy countervailing duties without making a determination of injury prior to the levy of countervailing duties in the case of entries which had occurred prior to the request for an injury test. He believed that the Panel was in error. He also believed that his authorities' position was consistent with the position taken by the United States in the cases of Wire Rod from Trinidad and Tobago, Fasteners from India, Lime from Mexico and Textiles from Mexico. The disagreement with the United States was that the same logic and procedures had not been applied to Brazil.

46. He also said that the Report considered duties deposited prior to the injury determination to be final rather than provisional duties. Even the United States recognized that duties deposited after Brazil's request for an injury test had been provisional. Brazil was unaware of any provision - either in the Agreement or in logic - which provided that some estimated duties deposited prior to an injury determination were final and some were provisional depending solely on the date of request for an injury determination. This was especially true when all of the estimated duties were deposited pursuant to a single suspension of liquidation. He invited other signatories to comment on these issues.

47. The representative of Chile said that her delegation wished to support Brazil on the most-favoured-nation aspects of this case. She expressed her concern that different standards had been applied in four cases than the standard applied to Brazil. If such a different treatment had been upheld, it would create a very dangerous precedent.

48. The representative of India was of the view that the Agreement obliged the United States to levy countervailing duties only after a determination of injury. This obligation had become effective for the United States on the day it had assumed obligations under the Agreement, i.e. 1 January 1980. He did not agree with the view taken by the Panel that Brazil was not entitled to claim revocation of countervailing duties from 1 January 1980, on the ground that it had submitted its request only at a later date. The point to be considered was whether the Agreement had permitted the United States to continue to levy countervailing duties without an injury determination. He held the view that as there had been a negative injury determination from 1 January 1980, the United States should not impose countervailing duties on non-rubber footwear. Hence, the United States action did not appear to have been consistent with its obligations under the Agreement.

49. The representative of the EEC said that he did not wish to comment on the substance of this case, but noted that the whole issue had originated in the fact that the United States continued to invoke the so-called "grandfather clause" under the Protocol of Provisional Application of the General Agreement. He recalled that his delegation had contested this practice in other fora. He further said that his authorities continued to examine the report, in particular regarding the relevance of the references to the Vienna Convention and the extent to which the Brazilian argument on discrimination had been fully addressed. He considered that even if this argument had not been relevant, it should have been fully explained. He said that his authorities needed more time to complete their examination of this report. The representative of Korea said that it would be helpful for the examination of the report to hear more explanation or reasons which had led to certain conclusions.

50. The representative of the United States said that any linkages between this issue and issues which had been discussed in other fora should be avoided. He further said that he could not see any basis for allegations

that some points had been argued by a party but had not been considered by the Panel. The Panel had decided in a particular way in full knowledge of all arguments, and the fact that the Panel's findings were difficult for Brazil to accept was quite a different story.

51. The representative of the United States said that the representative of Brazil had again raised issues that had been before the Panel. The Panel had found in favour of the United States on those issues. He thought it might be instructive briefly to review the Panel's reasoning and its findings and recommendations to this Committee on the very points Brazil had just raised. The Panel held clearly that "The obligation regarding injury determination of a Code signatory with respect to pre-existing decisions to impose countervailing duties would be satisfied so long as the signatory subject to such a decision had a right to an injury examination as of entry into force, through the Code, of Article VI:6(a) obligations." (paragraph 4.6) Thus, the United States was under an obligation to "extend to Brazil a procedure" for determining whether the subsidization would be causing injury if the countervailing duties were eliminated (paragraph 4.11). The Panel had also found that nothing in Article VI required that the procedure be provided dating to the time of a new signatory's accession to the Agreement. Similarly, nothing in Article VI "excluded another procedure for the injury examination, i.e. an examination upon request." (paragraph 4.6) The United States had provided precisely such a procedure through its domestic trade legislation (section 104 of the Trade Agreements Act of 1979), and, in so providing, had satisfied its obligations under the Agreement and the GATT. Finally, the Panel explicitly had held that "there was nothing arising from the Code that would require retroactive application", as Brazil had argued in its briefs to the Panel and suggested again at this meeting (paragraph 4.9). Thus, the Panel had correctly found that the United States had satisfied its obligations under the Agreement by providing the injury review. He said that the Panel's findings made sense for several reasons. The United States had offered Brazil and every other signatory to the Agreement the opportunity to immediately request an injury review of all outstanding countervailing duty orders issued without the benefit of an injury test, or to choose any time within three years to make such a request. The review had been conducted as of the date of the country's request, in essence allowing each country to pick the optimal time, from its perspective, for the injury review. Brazil had been aware of the procedure and of the opportunity for an injury review, but had chosen to wait some eighteen months to avail itself of that opportunity. Notwithstanding the Panel report and its recommendations to the Committee, Brazil now argued that in addition to all of the above, the GATT and the Agreement required that the effect of the injury should have been retroactive to the date at which Brazil could have, but had not chosen to avail itself of such a review. As the Panel had found, such a result was not required by the GATT and the Agreement and, in fact, would not make sense.

52. Referring to the alleged denial of the most-favoured-nation treatment, the representative of the United States said that it was not correct to argue that this issue had not been raised before the Panel. For example

paragraph 3.7 of the Report made clear that Brazil had raised this issue and referred to three of the four decisions now cited by Brazil. The fourth one, namely the case of textiles from Mexico, had been exactly of the same nature as the other three and thus could not add any new legal element. The Panel had, therefore, acted in the full knowledge of these arguments. This had been confirmed by the Chairman of the Panel in his statement before the Committee at its October 1989 meeting when he had stated that all issues raised by the representative of Brazil in his statement had been considered by the Panel in its deliberations. The representative of the United States concluded by saying that the adoption of this Report had already been delayed for six months to allow Brazil the opportunity to present again to the Committee the same arguments it had presented and lost before the Panel. The Committee should therefore adopt the Report without further delay.

53. The representative of Brazil said that his statement had clearly indicated new elements inherent in the case of textiles from Mexico. Furthermore, he could not agree with the US formulation that the United States had offered Brazil an opportunity to have the benefit of the injury test as of 1 January 1980. The injury test was a Brazilian right under the General Agreement and the Agreement and therefore there was nothing to offer. The second point he wished to make was that the problem was not that of the procedure for the transitional period. On the contrary, this procedure was perfect. The problem was its implementation, i.e. that the right to the injury test as of 1 January 1980 should not be nullified. Nowhere in the US law was it written that the injury test would be applicable as of the date of the request. Consequently, if the obligation had started as of 1 January 1980, it could not be changed by a later date of the request. As to the most-favoured-nation treatment, he considered that although the Panel had acknowledged this point, it had not addressed this issue. For all these reasons his delegation was not in a position to adopt this report. It might wish to raise some of these issues before the GATT Council.

54. The representative of the United States said that he could not agree that it would be appropriate to raise before the Council issues contained the Panel report. This was a matter involving the Subsidies Code, and so should be considered by the Committee.

55. The Chairman said that the Committee had had a full examination of the Report and it was clear that, at this stage, Brazil was not in a position to adopt this Report. At least one other delegation had asked for more time and there had been some concerns raised and some views expressed in relation to those concerns. The Committee would therefore revert to this issue at its next meeting. He expressed his hope that the discussion in the Committee had been helpful for the process of further reflection, and that all signatories would bear in mind that when the Committee would revert to this Report at its next meeting, it would be exactly one year after it had been submitted by the Panel.

G. 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)

56. The Chairman recalled that the Committee had continued its discussion of this Report at the meeting of 26 October 1989 (SCM/M/44, paragraphs 95-98) and agreed to revert to it at this meeting.

57. The representative of the EEC asked whether the position of Canada with respect to the adoption of this Report had changed. The representative of Canada said that the matter remained under consideration and that, subsequent to the last meeting, there had been a high level meeting between Canada and the EEC at which the matter had been discussed. There was a clear indication of the willingness to continue this discussion. The representative of the EEC noted that Canada had decided it was worth talking about a practical solution. He said that the door in Brussels was always open for such a discussion.

58. The Committee took note of the statements made and agreed to revert to this Panel Report at its next meeting.

- (ii) EEC - Subsidies on export of wheat flour (SCM/42) and EEC subsidies on export of pasta products (SCM/43) - follow-up on consideration of Panel Reports

59. The representative of the United States said that agenda item 9 should be looked at as a whole and he doubted whether a solution could be found for any part of it without finding a solution for the other parts at the same time. The Committee agreed to revert to these reports at its next meeting.

- (iii) United States - Definition of industry concerning wine and grape products - follow-up on consideration of the Panel's Report (SCM/71)

60. The representative of the EEC associated himself with the statement made by the representative of the United States under the preceding agenda sub-item. The Committee agreed to revert to this Report at its next meeting.

General issues relating to all four Reports pending before the Committee

61. The representative of the United States referred to efforts undertaken by the previous chairmen with a view to finding an arrangement which would allow the adoption of these four reports pending before the Committee. He said that his delegation would be delighted if the present Chairman would continue these efforts. He offered his delegation's strongest support for such an initiative. The representative of the EEC said that his delegation was equally ready to explore solutions which would lead to

clearing the agenda of these four Reports on the basis of practical solutions. He noted that the only case where no practical solution had been found was the manufacturing beef case. The representative of Canada said that he also shared the concern of the United States and other members of the Committee and continued to be prepared to explore possible solutions which would resolve these cases in a manner satisfactory to all signatories.

62. The Chairman said that he had been informed by the previous chairman that in the three cases, namely, those concerning wheat flour, pasta products and wine and grape products, the delegations involved had managed to resolve the issue of adverse trade effects and therefore were prepared to consider a scenario which would allow adoption of these reports by the Committee. In the fourth case there continued to be an important trade effect and his effort had been directed at finding a solution which would bring this fourth case into the same category as the other three cases. Unfortunately, he had not been able to report to the Committee any positive outcome of his consultations. The Chairman further said that he would continue his predecessor's efforts with a strong determination to find a satisfactory solution and to restore the credibility of the dispute settlement procedure under the Agreement. He expressed his hope that all members of the Committee would support his efforts.

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

63. The Chairman recalled that at its meeting held on 31 May 1988, the Committee had expressed a desire that the principles contained in the Draft Guidelines continue to be applied by all signatories. At the meeting held on 26 April 1989, the representative of the United States had stated that the Omnibus Trade and Competitiveness Act of 1988 contained a provision on the specificity concept which was consistent with the letter and spirit of the Draft Guidelines.

64. The representative of the United States said that, while his authorities continued to apply the specificity principle in practice, they were unable to agree to the formal adoption of the Draft Guidelines at this time.

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

J. United States - countervailing duty investigation of imports of fresh cut flowers from various countries

66. The Chairman recalled that the Committee had continued its discussion of this matter at its regular meeting held on 26 October 1989 (SCM/M/44, paragraphs 121-125). At the request of the delegation of the EEC, the Committee had agreed to revert to this matter at its next meeting.

67. The representative of the EEC said that his authorities had studied the results of the administrative review carried out by the US authorities on their original countervailing duty determination. They were pleased to find that the countervailable subsidy, and thus the countervailing duty, had been reduced to slightly above 0.5 per cent. However, the decision left untouched all the concerns that the EEC had expressed on the US interpretation of the concept of specificity - in particular regarding "aids to co-operative organizations". The EEC continued to object to the fact that the United States had chosen to focus on actual beneficiaries in the Netherlands of a Community-wide programme, and to ignore general availability of the programme throughout the Community, and the wide use of it in other member States. Regarding a Dutch programme (the so-called "guarantee fund for agriculture"), although the United States had not found it countervailable any longer because it had found "no difference between the commercial interest rate in the Netherlands and the rate charged by the Fund for its guarantees". However, this did not seem to have modified the US opinion on the specificity of this programme which was generally available to a wide range of agricultural producers, even if "horticulture received a disproportionate share of loan guarantees under this programme". He reiterated his delegation's opinion that these criteria were much less than sufficient for an investigating authority to show that a programme which was generally available, was in fact administered in a specific manner. He could fully agree with the need to avoid formalistic interpretations of concepts such as specificity, in order not to render countervailing duty procedures meaningless and easy to circumvent, but he could not agree with practices and interpretations that made some concepts unpredictable and open-ended. He concluded by saying that he did not consider, especially in the light of the concrete results of the administrative review, that the matter should remain on the agenda of the Committee, but wished to state that the EEC considered that some US interpretations were not in conformity with the spirit of the countervailing duty disciplines.

J. United States - Initiation standards for countervailing duty investigations

68. The representative of Canada recalled that for some time his delegation had been raising in this Committee a problem relating to the opening by the US authorities of a number of countervailing duty investigations despite the fact that petitions which had led to those investigations had not contained the necessary evidence required by Article 2:1 of the Agreement. He quoted the relevant part of Article 2:1 and said that in his delegation's view the required sufficient evidence entailed providing enough prima facie evidence of the existence of subsidization and injury to prevent unjustified harassment of exporters through initiation of unwarranted countervailing duty investigations. Evidence, in his view, had to be more than trivial. It was Canada's contention that the US authorities did not require sufficient evidence when initiating countervailing duty investigations, and that there were many cases where petitions contained no evidence that the industry in question might have received subsidies or was eligible to receive subsidies. His

delegation was therefore concerned that the US authorities were not examining petitions to ascertain whether or not sufficient evidence had been provided. The objective of Article 2:1 was to provide a balance between the right to take an appropriate action as provided for under the Agreement and the need to ensure that there had been sufficient evidence of subsidy, injury and a causal link to avoid any harassment. It was Canada's view that the US authorities might not be properly interpreting Article 2:1 of the Agreement.

69. The representative of Canada further said that since the last meeting, there had been bilateral consultations between his authorities and the United States on this issue. Based on the evaluation of the results of these consultations, his delegation would submit a discussion paper on this issue for consideration at the next meeting of the Committee. The issue was of a wider interest as the US approach had set a dangerous precedent which would encourage other US industries to file unsubstantiated petitions which would, in turn, lead to further harassment of exporters to the United States. He requested that this issue remain on the Committee's agenda for its next meeting.

70. The representative of the United States recalled his statement made at the October 1989 meeting (SCM/M/44, paragraph 131) and said that in the US practice a petitioner was required to submit in a petition all information reasonably available to him and such information had to provide sufficient evidence of the existence of subsidization. The US practice also was to look at whether the alleged subsidies in question were programmes which had already been found in previous investigations to constitute subsidies. He further said that the United States applied the standard of "sufficient evidence" in conformity with the Agreement. This matter had been discussed in bilateral consultations with Canada but he was not, as yet, aware of the results of these consultations. He would, however, be prepared to revert to this matter in the Committee in the future.

71. The Committee took note of the statements made and agreed to revert to this agenda item at its next meeting.

Other business

72. The representative of the EEC said that his delegation had requested the delegation of Australia to consult under Article 12:1 of the Agreement on the issue of export subsidies allegedly granted by the Australian Government to Kodak Australasia. The request had been circulated for information in document SCM/101. These consultations had taken place but no mutually satisfactory solution had been found. He therefore requested the Committee to undertake efforts at conciliation as provided for in Article 17:1 of the Agreement.

73. The representative of Australia said that in the course of consultations which had been held on 5 April 1989, the EEC delegation had asked a number of questions, some of them very detailed, which were still under consideration and preparation in Canberra. She therefore did not

consider it appropriate to undertake the conciliation before these responses had been provided and examined with a view to arriving at a mutually satisfactory solution.

74. The representative of the EEC said that he had made his request for conciliation in accordance with Article 17:1 of the Agreement. This did not mean that he requested the Committee to examine the matter immediately. His delegation would submit a detailed description of the matter referred to the Committee, and the Committee could meet at an appropriate time.

75. The Chairman noted that the EEC had requested conciliation under Article 17:1 of the Agreement and that it agreed to hold the conciliation meeting at an appropriate date to be decided by him in consultations with the parties concerned.

Date of the next regular meeting of the Committee

76. The Committee agreed to hold its next regular meeting in the week of 22 October 1990.