

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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Committee on Subsidies and Countervailing Measures

**MINUTES OF THE MEETING HELD
ON 27-28 OCTOBER 1993**

Chairman: Mr. Andrés Espinosa (Colombia)

1. The Committee on Subsidies and Countervailing Measures ("the Committee") held a regular meeting on 27-28 October 1993.
2. The Committee adopted the following agenda:
 - A. Information requirements for observers
 - B. Chinese Taipei - Request for observer status
 - C. Examination of countervailing duty laws and/or regulations of signatories of the Agreement (SCM/1 and addenda)
 - (i) Australia (SCM/1/Add.18/Rev.1/Suppl.6)
 - (ii) Brazil (SCM/1/Add.26/Suppl.3, SCM/W/294 & SCM/W/298)
 - (iii) Colombia (SCM/1/Add.29/Rev.1)
 - (iv) Korea (SCM/1/Add.13/Rev.1/Suppl.2)
 - (v) Other legislation
 - D. Notification of subsidies under Article XVI:1 of the General Agreement
 - (i) Full notifications due in 1993 (L/7162 and addenda)
 - (ii) Full notifications due in 1990 (L/6630 and addenda)
 - E. Semi-annual reports of countervailing duty actions taken within the period 1 July-31 December 1992 (SCM/156 and addenda)
 - F. Semi-annual reports of countervailing duty actions taken within the period 1 January-30 June 1993 (SCM/170 and addenda)
 - G. Semi-annual reports - Suggestions by the Chairman
 - H. Reports on all preliminary or final countervailing duty actions (SCM/W/292 and 295)
 - I. EEC - Subsidies provided with regard to thyristors: Request for conciliation (SCM/177)
 - J. United States - Measures affecting the export of pure and alloy magnesium from Canada - Report of the Panel (SCM/174)

- K. United States - Countervailing duties on certain carbon steel flat products from several Member States of the EEC - Request for conciliation (SCM/176)
- L. United States - Measures affecting imports of softwood lumber from Canada - Report of the Panel (SCM/162)
- M. United States - Countervailing duties on non-rubber footwear from Brazil - Report of the Panel (SCM/94 and 96)
- N. German exchange rate scheme for Deutsche Airbus - Report of the Panel (SCM/142)
- O. EEC subsidies on exports of wheat flour - Report of the Panel (SCM/42)
- P. EEC subsidies on exports of pasta products - Report of the Panel (SCM/43)
- Q. Canada - Imposition of countervailing duties on imports of boneless manufacturing beef from the EEC - Report of the Panel (SCM/85)
- R. Other business
- S. Annual review and report to the Contracting Parties
- T. Date of the next regular meeting

A. Information requests for observers

3. The Chairman noted that many non-signatories had begun taking countervailing measures or were putting in place the legal and institutional mechanisms that would allow them to do so. Unfortunately, there was a lack of information about developments in those countries, and there was no general notification system for obtaining such information from non-signatories.

4. The Subsidies Agreement required signatories to notify their legislation and regulations as well as their countervailing actions, and to answer question about those matters. This information was not only freely available to observers but was routinely circulated to them through SCM documents. Further, observers were permitted to participate in the discussions of the Committee. In the Chairman's view, the Committee should consider whether, in the spirit of reciprocity, observer counties should be requested to make certain information available to the Committee as well.

5. The idea was by no means unprecedented. The Council had recently modified its rules regarding observers, and had included in its new rules a provision relating to information from observers. The Chairman believed that a comparable rule regarding observers in this Committee would be appropriate. To that end, the Council rule could be made more specific with respect to countervailing duties. Since the requirement for subsidies notifications under Article XVI already applied to all contracting parties, he saw no need to repeat that obligation. For example, the Committee could adopt the following additional rule regarding observers:

[a]n Observer government should provide the Committee with any information the Observer government considered relevant to matters within the purview of the Agreement, including the text of its laws and regulations regarding countervailing duties, and information regarding any countervailing measures taken by the Observer government. At the request of any signatory or the Observer government, any matter

contained in such information could be brought to the attention of the Committee after governments had been allowed sufficient time to examine the information.

6. In informal discussions on the proposal, a number of concerns had been raised. First, the question had been raised what sanctions would be imposed for noncompliance. In this respect, the Chairman pointed out that the proposal stated that observers "should" provide certain information. This represented more a moral than a legal obligation on observers. It followed that an observer who failed to provide that type of information was not going to be denied observer status.

7. Second, it had been asked whether that information provision should apply to all observers or only to contracting party observers. It would be unfair to apply this rule selectively. It should apply to all observers, whether contracting parties or not, or to none. In any event, that provision should not represent a great burden on either category of observers. Non-contracting party observers in most cases already provided that information to the CONTRACTING PARTIES as part of the accession process.

8. The question also had been raised whether those rules could be applied to existing observers or should only apply to new observers. Basic fairness required uniform rules for all observers. The Committee had the power to adopt or modify its rules regarding observers as it deemed appropriate. Although the Committee should be sensitive to the views of existing observers, the Chairman had consulted with several lawyers in the Secretariat, who informed him that there was no legal reason why the Committee could not formulate new rules applicable to existing observers.

9. The question had been raised whether the initiative should be taken uniformly in all Committees. This question deserved careful consideration. On reflection, the Chairman had concluded that while uniformity was sometime desirable, it was also true that the various MTN agreements related to different topics and in some cases presented different needs. All Members of the Committee recognized that there was a particular need for information regarding countervailing investigations. He noted he had also consulted with the Chairman of the Committee on Anti-Dumping Practices.

10. Finally, there was the question of the relationship of the proposal to the Uruguay Round. It was of course true that after the Round took effect, all WTO Members would belong to this Committee, and therefore that special rules regarding observers would be less important. However, the Round would not come into force, in all likelihood, until 1995. In the meanwhile, there was a need for more information about anti-dumping and countervailing measures. The proposal did not send any message of pessimism about the Round. To the contrary, it demonstrated a desire to move even more quickly to improve transparency as a first step which should facilitate implementation of the Round.

11. Informal discussions indicated that there were a diversity of views among signatories on this proposal. After the Committee had heard from the Members, it would be appropriate to hear the view of the observers on the proposal.

12. The representative of Brazil cautioned that the initiative not be counter productive and against any punitive aspects to any decision the Committee might take on this matter. The Committee needed to be clear on the legal basis on which the initiative is taken. There was a difference between observers in the Council and observers in the Committee.

13. The delegate of the United States considered the initiative to be valuable. There was no need for a punitive side to the proposal. It was not unreasonable that as part of their access to the Committees observers provide information in respect of their practices. He applauded the initiative and hoped that it would move forward.

14. The delegate of Brazil explained that if all legal considerations relating to this proposal were taken into account and therefore that the Committee was taking a correct decision from a legal point of view, he would support the initiative.

15. The Chairman explained that the purpose of the initiative was transparency.

16. The Committee adopted the rule proposed by the Chairman.

B. Chinese Taipei - Request for observer status

17. The Chairman noted that the Customs Territory of Taiwan, Penghu, Kinmen and Matsu had requested, in a letter dated 7 September 1993 circulated to signatories, to be admitted as an observer to this Committee.

18. The Chairman noted that Chinese Taipei was currently negotiating its accession to the General Agreement, and for this reason considered it important to follow closely the activities of this Committee. He further noted that Chinese Taipei had indicated its intention to become a signatory of the Agreement on Subsidies and Countervailing Measures at the time of its accession, subject to certain conditions (L/7189, p. 3). Chinese Taipei was also associated with the Uruguay Round of Multilateral Trade Negotiations. It was an observer in the Council and was seeking observer status in many GATT Committees.

19. The rules adopted by the Committee indicated that the Committee could agree to allow non-contracting parties to participate as observers (SCM/M/2). The Chairman therefore proposed that the Committee admit Chinese Taipei as an observer.

20. The Committee decided to admit Chinese Taipei as an observer.

21. The Chairman welcomed the representative of Chinese Taipei as an observer to the Committee on Subsidies. He conveyed the Committee's and his own pleasure that Taipei had joined the Committee. He encouraged Chinese Taipei to report to the Committee periodically on matters relevant to the Agreement.

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

(i) Australia (SCM/1/Add.18/Rev.1/Suppl.6 and SCM/W/297)

22. The representative of Australia noted that this item had been carried over from the agenda of the April meeting. A document circulated in August provided detailed explanation of the changes involved in the legislation. He asked that the Committee agree that the item be concluded.

23. The Committee took note of the statements made and agreed that it had concluded its consideration of the Australian legislation.

(ii) Brazil (SCM/1/Add.26/Suppl.3, SCM/W/294 & SCM/W/298)

24. The Chairman noted that document SCM/W/294 set out questions on this legislation submitted by Canada and to which Brazil had replied in document SCM/298. In addition, the EEC had submitted questions in SCM/W/300.

25. The representative of the European Economic Community stated that the EEC's questions had only been provided recently and that Brazil might not yet be in a position to respond.

26. The representative of Brazil provided the following preliminary reply. Question No. 2 coincided with the two first questions by Canada (SCM/W/294) which had been replied to by Brazil (SCM/W/298). Question 4 coincided with the last Canadian question, and was replied to by Brazil (SCM/W/298). Unless further clarification was required his delegation considered that those questions had been answered. As to questions 1 and 3 he reserved the right to modify and complete the content of the replies as soon as his authorities had the opportunity to examine them more closely. The preliminary reply to question 1 was that in principle the list would include all products in chapters 1 to 24 of the Harmonized System. The preliminary reply to question 3 was affirmative. Any anti-dumping investigation in Brazil would have to comply not only with Article 6 but with all other requirements of the Code. As the Brazilian representative had pointed out at a previous meeting, Decree No. 93-962 of January 1987 contained the Anti-Dumping Code as approved by the National Congress in Brazil in its entirety by Legislative Decree No. 22 of December 1986. Decree 174 of 1991 that the EEC had mentioned in the questionnaire in Directive 444 of 1991 was of a lower level in relation to the Legislative Decree No. 22.

27. The representative of the European Economic Community thanked the Brazilian delegate for his replies. His delegation would study the questions to which a reply had already been made and if any further clarification was necessary would signal it bilaterally to Brazil.

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

(iii) Colombia (SCM/1/Add.29/Rev.1)

29. The Chairman noted that the European Economic Community had submitted some questions addressing this particular legislation. He understood that written answers would be supplied in the course of the week.

30. The representative of Colombia explained that Decree 150 modified obligations upon the administration and required the authorities to reach conclusions within given time limits, and set up a mechanism under which exporters and national producers could participate in the procedure. Colombia believed that the legislation complied with the Anti-Dumping and Subsidies Codes. Colombia had replied to the European Economic Community's questions about Article 7. No investigations had been carried out yet. Colombia had prepared its staff, and trained them, to cope with the kind of investigation contemplated by the legislation.

31. Concerning the second part of the question, regarding multiple currency practices involving various or different exchange rates for exporters, a determination must be based on sufficient and not positive evidence. Under Colombia's law, sufficient evidence corresponded to the Code's expression "positive evidence". It was a semantic distinction, so that the legislation was in line with the Code and its terminology. Concerning the question on provisional measures, no arbitrary decision could be taken. The authority had to give an opportunity to all those interested to say what they wanted to say. All interested parties now had a guaranteed right of defence, and an opportunity to put forward their arguments before a final decision was taken. The authority had to comply with the time-limit in the Decree and could not take decisions earlier, unless it had given all parties the opportunity to put forward their arguments. Questionnaires were sent out to interested parties with the resolution. Interested parties could reply within 30 days after receiving the communication, which was assumed to be 10 days after posting. Colombia was prepared to hold consultations with the EEC in connection with this legislation if necessary.

32. The representative of the European Economic Community thanked the Colombian delegate for the intervention and the replies. He would examine the written replies in detail and if any further clarification was required would raise them at the next meeting or bilaterally with Colombia.

33. The Committee decided to keep this item on the agenda for the next regular meeting.

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

34. The Chairman noted that at the meeting on 28-29 April 1993 Korea stated that it would provide written answers to questions posed by Canada regarding amendments to its legislation. Korea had not yet responded to the questions.

35. The representative of Korea stated in answer to the first question of Canada that "qualified experts" included certified public accountants, engineering technicians and computer programmers. The qualified experts' activities were limited to fact-finding, and therefore they had limited access to information. They were required to take an oath that they would not disclose information acquired during the investigation or use such information for improper purposes. Accordingly he believed that information was kept confidential. If exporters under investigation insisted that their information not be disclosed to the qualified experts, the investigating authorities could disregard the information in accordance with Article 2.7 of the Subsidies Code, unless it could be demonstrated that the information was correct.

36. In answer to the second question, he explained that the information acquired during the enquiry should be kept secret even after the investigation. The investigating authorities could take disciplinary action against experts who failed to keep information confidential. If for instance a certified public accountant disclosed a secret the authorities could prohibit that CPA from taking part in that or any other investigation, as well as asking the professional CPA association to take measures to suspend or restrain the expert's qualification.

37. Concerning the third question, the investigation team consisting of government officials from the Korean Trade Committee and the Korean Customs Administration, on completion of their investigation, submitted a report to the Customs and Tariff Deliberation Committee ("CTDC"). The CTDC Committee reviewed the necessity for a countervailing duty on the basis of the investigation report. Finally the Minister of Finance, according to the result of the review of the CTDC, decided whether to impose countervailing duties.

38. The representative of Canada expressed the view that in general that the response appeared to cover questions raised, although he would need to see the responses in writing. He had questions concerning the Colombian legislation, but could provide the questions in writing to the Committee.

39. The Chairman noted that the examination of the Colombian legislation would pass to the agenda of the next regular meeting of the Committee.

40. The Committee took note of the statements made and agreed to revert to the item following receipt of the written answers from Korea.

(v) Other legislation

41. The Chairman noted that the EEC had indicated it wished to raise questions concerning the legislation of Uruguay.

42. The representative of the European Economic Community noted that Uruguay had enacted a Decree on 6 July 1993, enabling the Ministry of Finance and Economy to fix minimum export prices

for imported products in cases where export prices were not considered to correspond to normal international prices and thereby caused injury. This question was simply whether the Decree had any impact on Uruguay's countervailing duty legislation and if so when it would be notified to the Committee. He would also like to know the relationship between these two pieces of Uruguayan legislation. As the questions on the Decree were only recently sent his delegation would be happy with any preliminary answers that Uruguay could provide.

43. The representative of Uruguay thanked the EEC representative for its concern and for raising the Decree in the Committee. The Decree concerned a complex and highly technical subject, about which a detailed reply was forthcoming from the capital. As a preliminary answer the Decree to which the EEC referred was a transitional régime for the treatment of export prices. It was the first stage to the elimination of reference prices. It was the Uruguayan Government's intention to eliminate the system. Detailed information concerning the new régime would be submitted to the Committee and the EEC at a later date.

44. The representative of Canada wished to raise a query concerning the legislation of Israel. A law passed by the Knesset in 1991 called the Trade Levies Law had apparently not been notified to the Committee for examination. His Government would like to know whether it had been notified and if not whether Israel intended to notify the relevant provisions of this law to the Committee for examination.

45. The Chairman noted that the Committee would transmit the Canadian question to Israel.

46. The Committee took note of the statements made and agreed to keep this item on the agenda for the next regular meeting.

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

(i) Full notifications due in 1993 (L/7162 and addenda)

47. The Chairman noted that each contracting party must, every three years, make full responses to the questionnaire on subsidies. On 11 January 1993 a new invitation was made to present these in document L/7162. Notifications had been received from Hong Kong, New Zealand, Australia, Canada, Finland, Colombia, Chile, Uruguay and Brazil. The Committee, at its last regular meeting, had agreed to hold a special meeting to review new notifications. Unfortunately only one third of the signatories to this Agreement had submitted their notifications. This was quite unsatisfactory. On the basis of the poor number of responses, no such meeting had been scheduled. He asked signatories to inform the Committee when their respective notification would be received.

48. The representative of Austria apologized for the delay in Austria's notification of subsidies under Article XVI:1 of the General Agreement. Austria's full notification of subsidies would be provided within a few weeks.

49. The representative of the European Economic Community undertook to supply the report by the end of the year.

50. The representative of Korea stated that his delegation had not provided a report as it had not provided any such subsidies.

51. The Chairman requested that Korea confirm that statement in writing promptly.

52. The representative of the United States apologized that it had not yet submitted its report. He undertook to provide it in the relatively near future.
53. The representative of Indonesia apologized for the delay in provision of its report due to technical reasons. He undertook to submit it by November.
54. The representative of Japan undertook to provide full notification as quickly as possible.
55. The representative of Poland undertook to provide the information by the end of the year.
56. The representative of the Sweden apologized for the delay. His Government was in the final process of compiling the notification and would provide the report in the next few weeks.
57. The representative of Turkey informed the Committee that his Government's written notification was under preparation. Turkey would submit the notification as soon as possible.
58. The Chairman thanked all delegates for their promises that they would promptly supply the information. Once he had received all notifications he would carry out the necessary consultations for the holding of a special meeting.
59. The Committee decided to revert to the item at its next regular meeting.
- (ii) Full notifications due in 1990 (L/6630 and addenda)
60. The Chairman noted that on 5 November 1992 Australia had submitted supplementary written questions to Korea and to the United States regarding their 1990 full notifications (SCM/W/283 and 284). Korea had provided a written response (SCM/W/293 and Corrigendum 1).
61. The representative of Korea explained that the measure was not designed to restrict imports of livestock products. It was operated autonomously by the National Livestock Corporative Federation, a private association, in order to alleviate the effects of declining domestic livestock prices.
62. The representative of the United States apologized to the delegation of Australia that due to pressure of other business they have not provided answers to the questions. His delegation intended to furnish such answers promptly to Australia and to the Committee.
63. The representative of Australia thanked the United States for its intention to provide answers to the questions. His Government had no further questions of Korea and thanked the delegation for its response. He also thanked the Norwegian delegation for its responses to questions from his delegation.
64. The Chairman noted that he understood that the delegation of Sweden had also notified the Committee on agricultural subsidies for 1990 and 1991.
65. The Committee took note of the statements made and agreed to maintain the item on the agenda for its next regular meeting.
- E. Semi-annual reports of countervailing duty actions taken within the period 1 July-31 December 1992 (SCM/156 and addenda)
66. The Chairman noted that on 6 July 1993 an invitation was sent out to members of the Committee to present semi-annual reports under Article 2:16 of the Agreement. Notifications had been received

from New Zealand in Add.2, Australia in Add.3, the United States in Add.4, Canada in Add.5, the EEC in Add.6 and Austria in Add.7. No reports had been received from Brazil, Indonesia and Israel. All remaining signatories had reported that they had taken no actions. He reiterated the importance of signatories providing notifications. He called on the mentioned delegations to say whether or not they had taken any measures and whether they intended to make notification in keeping with their obligations.

67. The representative of Brazil explained that there were no outstanding countervailing measures in Brazil during the semi-annual report period in question. In response to points made by some delegations during the informal consultations on format and content of semi-annual reports for the Subsidies and Countervailing Measures and Anti-Dumping Committees, Brazilian reports would henceforth contain a complete list of outstanding measures. It was due to some misunderstanding on his Government's part of the changes that were suggested during the informal consultations that the report for the first semester was delayed. The semi-annual report in the SCM/170 series would be transmitted to the Committee very soon.

68. The representative of Indonesia undertook to provide its formal notification in a short time. Indonesia had not taken any countervailing duties during the period of reporting.

69. The Chairman asked the same question of the delegate of Israel who was not present. He thanked the delegations for their replies. He looked forward to receiving notifications from Brazil, Indonesia and Israel.

70. The Committee took note of the statements made.

F. Semi-annual reports of countervailing duty actions taken within the period 1 January-30 June 1993 (SCM/170 and addenda)

71. The Chairman noted that at the meeting of 28-29 April 1993 Indonesia and Switzerland had stated they would submit written notifications that they had not taken any action during this period. They had not done so. Uruguay also had not made any notification.

72. The Committee urged those countries to submit their notification in writing.

G. Semi-annual reports - Suggestions by the Chairman

73. The Chairman explained that in August members of the Committee had received from him an informal note with suggestions about the manner in which semi-annual reports of countervailing duty actions under Article 2:16 of the Agreement could be provided. In reviewing the most recent semi-annual reports he had noted with satisfaction that most signatories were reporting in the manner suggested. This was a very positive development for the presentation of information to the Committee.

74. The representative of Japan noted that as he had expressed in the Anti-Dumping Committee, the format suggested by the Chairman was a useful guideline for semi-annual reports. He asked that the Committee adopt the suggestion.

75. The representative of Brazil commented that he did not understand to which document the Japanese delegation had referred.

76. The representative of Japan explained that he had referred to the document entitled "Some Suggestions on Information Provided in the Semi-Annual Reports - Informal Note by the Chairman", dated August 1993.

77. The representative of Brazil was aware of the informal consultations conducted by the Chairman, but noted that as the proposal was informal and had not been circulated in an official Committee document authorities in capitals had not had the opportunity to study it.

78. The representative of Australia noted that the status of the document was unclear. It was important that confidentiality concerns be addressed in the proposal. Some information could simply not be provided. In the Anti-Dumping Committee, his delegation had made statements regarding the problems of specifying whether the lesser duty approach was being applied in a particular case, which could make an implementation of Item 8 in the list rather problematical. Whether the level of subsidization was less or not depended on a myriad of factors, which would need to be recognized in the documentation.

79. The representative of Canada noted that the Canadian delegation did not have any difficulty with the proposals in the informal note. The question of the manner in which the proposal could be adopted should be resolved, but he supported the proposal, subject to the reservations made by Australia.

80. The representative of Hong Kong reiterated Hong Kong's support for the initiative, subject to the procedural point raised by Brazil. He felt that a technical solution could be found by the Secretariat, and hoped that the two questions raised as to suggestion numbers 3 and 19 raised in the Anti-Dumping Committee context and clarified in the last Committee meeting could form part of the item.

81. The Chairman stated that it was not his intention to have the guidelines adopted at the meeting but the discussion had been useful as it had highlighted the different concerns of delegations. As signatories had shown a positive approach to the ideas he exhorted all delegations to use them as guidelines for submitting semi-annual reports.

H. Reports on all preliminary or final countervailing duty actions (SCM/W/292 and 295)

82. The Chairman noted that reports had been received from the United States (SCM/W/292 and SCM/W/295). He strongly urged all signatories that had taken preliminary or final actions which had not been reported to report them in the near future.

I. EEC - Subsidies provided with regard to thyristors: Request for conciliation (SCM/177)

83. The Chairman recalled that in April 1993 the United States had requested consultations with the European Economic Community under Article 12:3 of the Agreement regarding this matter (SCM/168). On 11 October the United States requested conciliation on this matter under Part 6 of the Agreement.

84. The representative of the United States noted that in SCM/168 on 23 April 1993 the United States requested consultations with the Commission of the European Economic Community under Article 12.3 in regard to subsidies that were being provided in connection with the production of thyristors. Thyristors were electronic switching devices whose many applications included transient voltage suppression which protected electronic circuitry. On 29 April representatives of the United States and the Commission met informally in Geneva. At that meeting US representatives presented the European Economic Community with detailed allegations concerning subsidies and trade effects and specific information concerning the subsidy practice in accordance with the provision of the Subsidies Code. The EEC representative indicated that the Commission would discuss those materials with relevant Member State representatives and provide responses and information to the United States at an early opportunity. On 17 June 1993 the United States requested consultations with the Commission under Article 12:3 of the Agreement for the follow-up purposes described above and these consultations were

held during the week of 12 July 1993. Unfortunately, no mutually satisfactory solution was achieved and the matter had been referred to the Committee for conciliation.

85. The United States believed that significant subsidies had been granted to SGS Thompson by the Governments of France and Italy. The company had sustained losses close to US\$100 million each year, excepting 1989 and 1992. The losses had been sustainable because of non-commercial financial support from the French and Italian Governments. The company had embarked on a strategy of increasing its share of the world market regardless of the sacrifice in terms of short-term profit. The Governments of France and Italy had pledged additional subsidies of some US\$2 billion. Of that sum US\$1 billion was to be advanced over five years to support SGS Thompson's research programme. The funds were to be contributed in connection with the joint takeover of SGS Thompson by CEA Industries and France Telecom and Finmechania of Italy, which would further consolidate State control over the company. The takeover was approved by the European Economic Community in February of this year. The countervailable subsidy, estimated on a conservative basis for all of the subsidies granted to SGS Thompson, was over 25 per cent in 1993, rising to nearly 40 per cent in 1996.

86. The impact of the subsidies on the US industry was severe even before the US\$2 billion subsidy programme. The exporter's price war in the US market caused the average price of thyristors to decline from 1985 to 1992 by 35 per cent. The leading US manufacturer had sustained substantial injury from lost sales and reduced profitability. Its loss of market share had been accompanied by SGS Thompson's 25 per cent gain in the thyristor market share from 8 per cent in 1991 to 10 per cent in 1992. In addition it had lost business in Europe, the Far East, Australia, India, Israel and Canada. It had been forced to cut back on R&D, lay off workers and close a new production facility. The new subsidies coupled with the 14 per cent tariff barrier on imports of thyristors would enable SGS Thompson to sustain growth regardless of profit. In a public statement on 9 December 1992 SGS Thompson confirmed it needed an infusion of capital to help it double market shares of the world semi-conductor market to 5 per cent.

87. The representative of the United States stated that the subsidies provided to SGS Thompson had caused, and would continue to cause, injury to the US industry producing thyristors, and would nullify or impair benefits accruing to the United States under the General Agreement and cause serious prejudice to United States interests as well. The EEC should do what was necessary to ensure that such negative effects did not occur as a result of the provision of such subsidies by EEC member States.

88. The representative of the European Economic Community noted that although SGS Thompson had been recapitalized recently by this shareholders, a private company also had a substantial holding in SGS Thompson. The capital infusions realized so far amounted to US\$250 million and a similar infusion planned for the end of 1993 had not yet taken place. The amount quoted as an equity infusion appeared to have been extracted from a press report which predated the actual capital infusion by the shareholders. The issue of R&D support had nothing to do with the intervention by shareholders. SGS Thompson was a producer of integrated circuits and the bulk of its activity was in that area. Thyristors were a minute part of Thompson's activities. Therefore, the figure quoted by the United States of 25 per cent of values was grossly exaggerated. The capital infusions were motivated by entirely commercial considerations. SGS Thompson had undergone severe restructuring, closing seven plants and shedding over a fourth of its work force. Taking into account the cost of this restructuring SGS Thompson had incurred losses in three out of five years. Notwithstanding these costs SGS Thompson had been able to realize a small profit in two out of five years. In addition in the first quarter of this year SGS Thompson had posted substantial profits and was forecast to have profits of around US\$100 million in 1993.

89. The representative of the European Economic Community stated that the allegation of injury was unsubstantiated. The United States had supplied no information concerning market shares, pricing

or trade effects that the subsidies may have caused. Information supplied to the United States showed that the US producer's problems may have been due to rising costs of production in the United States and insufficient volume of production, so that other substantial US manufacturers had transferred their production outside the United States. The increase in SGS Thompson's market share had been realized through acquisitions for the very simple reason that Thompson had decided to invest in the sector in order to realize the volume of production necessary to enable it to lower its cost of production. The increase had not been achieved through undercutting competitors. All the above information had been supplied to the United States during bilateral consultations. He could not understand the purpose of the request for conciliation. The requirements of Article 12:4 of the Code had not been fully observed because the United States had not presented any concrete evidence of trade effects caused by the alleged subsidies. The EEC would reserve its rights on the issue.

90. The representative of the European Economic Community summed up that no subsidization was involved in this case. There were capital infusion in amounts substantially less than the United States had indicated. These capital infusions did not contain an element of subsidization. The policy of SGS Thompson had been perfectly consistent with commercial considerations.

91. The representative of Japan stated that Japan also had concerns about the EEC's possible subsidization of and high tariffs in the electronics sector.

92. The representative of the United States stated that he was puzzled when the EEC had said that no information regarding injury sustained by US industry had been substantiated. His statement had provided information indicating both price suppression and decline in market share.

93. The representative of the European Economic Community clarified that the EEC did not receive detailed information during the consultations and had only received the public version of a complaint to the US authorities from the US producer. He reserved his position on that issue. As for the information concerning the reference to Thompson's increase in market share from 8 to 10 per cent of the world market, which could be present as a 25 per cent increase which sounded much higher than an increase from 8 to 10 per cent, a 2 per cent of the world market, increase. He could not say whether those figures were correct. The statement about a decline in prices was plausible but he queried whether that was evidence of injury caused by subsidization. This was a mature product, produced with mature technology, not a product on which new developments had taken place in recent years or were expected to. Thyristors were a product where competition was based on cost of production and volumes which was why Thompson pursued a policy of acquisition in order to achieve the critical mass of volume and be able to compete. US producers had made a different choice, delocalizing their production to third countries to lower the cost of production. The only producer which had not chosen to do so could well be experiencing problems. Without evidence it was impossible to comment as to an allegation of injury.

94. The representative of Brazil noted that Brazil was very interested in the matters raised by the United States in this case. On the basis of the information given by the United States it would be difficult to have further discussions on evidence of injury. One specific procedural aspect of this case that interested Brazil was the doubt raised as to whether the United States' allegation of subsidization was a synonym for equity infusion. The United States had a right to request conciliation under Article 12:3 but Brazil did not agree that equity infusions should be automatically identified with subsidization.

95. The representative of the United States responded to Brazil that the assertion was not that an equity infusion equalled a subsidy, but rather that an equity infusion on a non-commercial basis could be a subsidy.

96. The Chairman noted that views had been stated by the parties involved and from other signatories on this matter. He encouraged the United States and the European Economic Community to continue their efforts in an attempt to reach a mutually satisfactory solution as provided for in paragraph 2 of Article 17.

J. United States - Measures affecting the export of pure and alloy magnesium from Canada - Report of the Panel (SCM/174)

97. The Chairman recalled that at the meeting of 5 March 1992, the Committee had established a panel to examine the dispute between Canada and the United States regarding the decision by the United States to initiate a countervailing duty investigation on imports of pure and alloy magnesium from Canada (SCM/56). The report of the Panel was circulated on 9 August 1993 (SCM/174). The report indicated that Canada had withdrawn its complaint and that the Panel therefore considered that the proceedings had been terminated.

98. The Committee took note of the report.

K. United States - Countervailing duties on certain carbon steel flat products from several member States of the EEC - Request for conciliation (SCM/176)

99. The Chairman recalled that these investigations had been the subject of a number of consultations. The European Economic Community had requested consultations regarding preliminary countervailing duty determinations by the US Department of Commerce on 2 February 1993 (SCM/159). The EEC requested consultations regarding the definitive countervailing duties determinations by the US Department of Commerce on 13 July of this year (SCM/171) and finally, on 27 September, the EEC had requested consultations regarding the definitive determination by the US International Trade Commission (SCM/175). The European Economic Community had requested conciliation regarding these investigations (SCM/177).

100. The representative of the European Economic Community mentioned that in the document circulated as an addendum to the request, concerning injury determinations, some of these issues concerning preliminary injury determinations by the ITC on speciality products were not sufficiently clear in the original request and although they had been clarified in the additional document, the United States had not had sufficient notice of this issue to be able to participate fully in these conciliation proceedings. He asked that the Committee review these matters at a later meeting to be convened according to normal procedure.

101. As to the other issues, this was not the first time that the issues had been brought before the Committee. The EEC had submitted the same cases for conciliation when the United States Department of Commerce issued its preliminary determination. The EEC also requested conciliation concerning the final determination. In neither case had conciliation borne any positive results and the Committee, at the request of the EEC, had established a Panel to review the compatibility of the lead and Bismuth bar decisions with the Code. The EEC and the United States had held further bilateral consultations on the hot-rolled steel decisions, but the consultations had not yielded positive results. Accordingly the EEC now requested conciliation.

102. The decisions involved many of the same issues considered by the Panel in the Lead and Bismuth Bar case. However, none of the changes to the methodology of the US Department of Commerce arising from the bismuth bar cases or the preliminary determinations in the present cases had eliminated the EEC's objections. The objections could be found in past statements made before the Committee, in past conciliation documents and in the request for the establishment of the lead and bismuth panel. Any apparent change in methodology had not brought the US decisions one inch nearer to conforming

to the Code. The final determinations by the United States in the flat-rolled product cases gave rise to some new issues. He noted in particular the aspects of the determinations which dealt with privatization and treatment of aid to workers. The objections to the United States methodology were contained in the EEC's conciliation document.

103. The EEC felt that the United States had stretched the concept of a countervailable subsidy beyond the limits set by the Code. Instead of simplifying the method of application of countervailable duties, the decisions reflected a further growth of the mechanism which contradicted logic economic reality and the facts under investigation. Hypothesis and presumptions were used to displace objective and verifiable facts, if such facts had not been disregarded altogether. Decisions were often based on speculation and subjective opinions. The result of this was that the United States had infringed the provisions of the Code, and the determinations were based on manifest errors or misinterpretation of the facts as well as in some cases arbitrary choices by the US investigating authorities.

104. Concerning the injury determinations by the US International Trade Commission, although some of the issues would have to wait for another Committee meeting, the EEC believed that the final decisions could have been more balanced and in better conformity with the Code. The ITC had in its final determinations corrected some of the objectionable aspects of the preliminary determinations but many others remained which were contrary to the provisions of the Code. All this confirmed that the administration of countervailing duty law in the United States had become so complicated and abstract that the conduct of these investigations had lost touch with reality, and was not compatible with the provisions of the Code. The mechanism of a legitimate trade instrument designed to afford relief to producers adversely affected by the use of subsidies was being used to impede international trade in an unjustifiable manner, which was what the drafters of the Code had sought to avoid. The Code was designed to prevent that by creating an agreed framework of rights and obligations. The European Economic Community would assert its rights created by the Code. He asked that the Committee assist in ensuring that the limits to the use of countervailing duties set by the provisions of the Code were respected.

105. The European Economic Community reserved all its rights under all applicable multilateral rules, to pursue the matter if it determined that it was appropriate to do so. This applied to all aspects of the determinations, and the fact that a particular aspect of any relevant issue has not been expressly mentioned did not imply the European Economic Community's acceptance of the underlying methodological choices.

106. The representative of the European Economic Community stated that despite enormous efforts made by all the defendant companies, despite the many consultation meetings sought to demonstrate to the United States authorities its objections of a legal, economic or procedural nature, the reality of the determinations was that the United States had adopted a position inconsistent with its international obligations. The United States continued either to find subsidies in cases where none existed, or to impose duties far in excess of the amounts of the subsidy that were determined. Some issues of concern in the determinations relating to the flat-rolled steel products had already been addressed in greater detail in the conciliation meeting on the preliminary determinations on 28 April as well as in the pending Panel proceedings on the lead and bismuth steel bars, but required further mention.

107. Concerning the allocation over 15 years, contrary to the facts of the cases, the guidelines adopted by this Committee and to its own Court decisions, the United States continued to countervail subsidies over an arbitrary period of 15 years. The result of that approach was that subsidies whose effect had long ago disappeared were countervailed. This also meant that subsidies found to have been granted today would lead to countervailing duties far beyond the year 2000. The United States also continued to recalculate non-recurring subsidies in such a way that the total amount countervailed over time largely exceeded the actual amount of the subsidy. The United States continued to countervail equity infusions

by public authorities in what it called "unequityworthy" companies as if the infusions were grants, thereby ignoring the crucial differences between the two.

108. The United States used an allocation methodology for equity infusions to a multinational steel company which, by presuming that alleged subsidies were tied to the production in only one country, resulted in a doubling of the countervailing duty. The United States maintained its artificial methodologies in order to determine whether a company was worth the equity or worth the credits it had obtained. Some changes had been made. The objectionable use of IMF interest rates as benchmark rates had been corrected by using rates nearer to market rates, but the core of the methodology still stands and leads to exaggerated subsidy findings. The EEC had not seen any change in the United States determination to construe the independent decision by some German banks to forgive part of the debts owed to them by steel companies as being a subsidy. This was one of the most clear examples that the United States was stretching the concept of a subsidy to involve even independent private behaviour.

109. Concerning the definitive flat-rolled steel determinations, the EEC would concentrate on three issues; the treatment of subsidies granted prior to privatization of a company at fair market value, the countervailing of social subsidies, and the imposition of disproportionate CVD rates. Concerning the other issues raised in the various consultation meetings, the EEC reserved its rights and noted that non-mention of those issues should not be interpreted as an indication that the EEC was not pursuing the issues.

110. The United States had changed its methodology several times concerning the treatment of subsidies granted to a company prior to its privatization. Despite these changes the result was that subsidies granted to a company which was subsequently privatized remained countervailable. British Steel allegedly received subsidies between 1977 and 1986. In 1988, the British Government sold 100 per cent of the shares on the stock markets to private investors who paid a fair market price. In this final determination, the United States accepted that a company which was privatized and purchased by private shareholders was a different entity than before privatization. The United States admitted that new shareholders had paid the full market price for obtaining the company. The United States decided, however, to countervail the subsidies on the grounds that privatization of itself could not eliminate countervailability.

111. The representative of the European Economic Community considered that the United States determination made clear that the new company British Steel never obtained any new subsidy. The question which remained was whether subsidies continued to provide benefits to the company after its privatization at full market value. This could not be the case. The Department of Commerce determined that the privatization of British Steel was at arms-length in which the sale price paid presented the fair market value of the company at that time. The significance of fair market value was that the price paid was the price the free market would pay for a company including its assets and obligations. Consequently the price so paid include the residual value of any remaining subsidy benefits that the old firm had received in the past. In those circumstances, no market distortion could take place, and the products produced by the privatized company did not enjoy any competitive advantage.

112. The United States took a completely new approach on which none of the parties involved in the proceedings had a chance to comment. This was a clear infringement of Article 2:5 of the Code, which provided that "parties shall be given an opportunity to submit their views to the investigating authorities". The new approach implied that a portion of the price paid at privatization could represent a repayment of subsidies. The United States constructed an abstract and theoretical formula which resulted in countervailing the largest amount of the subsidies found prior to the privatization. For the European Economic Community, this issue was clear. Privatization at full market value eliminated

benefits from previous subsidizations to a state-owned company. The justifications put forward by the United States as to the countervailability did not withstand scrutiny.

113. The European Economic Community considered that the United States had an obligation to prove to the Committee and to the parties involved that a privatized company would benefit from subsidies granted to its predecessor. In this respect, he drew the attention of the Committee to some reasons given by the Department of Commerce. The Department of Commerce had stated that "The Department's practice is to countervail the value of subsidies at the time they are provided to a company ... without regard to the actual use by that same company or their effects on its subsequent performance." The Subsidies Code recognized in one of its recitals that the emphasis of the Agreement should be on the effects of subsidies. The United States now explained that the effects of a subsidy need not to be taken into account. The United States had previously insisted on the need to consider the benefit to the recipient instead of the cost to a government. The United States now said that it was no longer relevant. What purpose did countervailing duties serve if subsidies no longer had a competitive benefit? The United States had often contradicted itself in the same determination where it had often applied a one-sided benefit approach. The Committee should ask the United States to explain itself on this issue. The United States twisted the rules in order to find subsidy margins where none existed. The United States could not have it both ways.

114. The United States traditionally countervailed aid it considered relieved a company from legal or contractual obligations. In this case the United States had stretched its concepts in such a way that social aid which it paid in favour of workers made redundant was countervailed on the basis of an assumption that social aid by the government would have relieved a company of its obligations. The Department of Commerce considered that if a government was willing to provide assistance and that was known to the company at the time it was negotiated social plans for redundancies, that knowledge was likely to have an effect on the negotiations. The Department of Commerce did not determine to what extent its knowledge had in fact influenced negotiations. The United States simply assumed that one-half of the government payments went to relieve the company of obligations that would otherwise have existed. The EEC submitted that countervailing duties should only be imposed if the investigating authority had proved on the basis of factual evidence that a subsidy had been granted and that the subsidy resulted in a benefit to recipients. In contrast the Department of Commerce had based its conclusions on speculation and unfounded assumptions. Article 4:2 of the Code and the conclusions of the Pork Panel both made clear that countervailing duties must be based on positive evidence that a subsidy exists and that it benefits the recipient.

115. Disproportionate rates of subsidy margins were calculated. One Belgian steel producer was found to receive a subsidy margin of not more than 1.05 per cent. To the astonishment of the EEC, the Department of Commerce imposed a countervailing duty of 5.85 per cent, which was five times higher than the rate of subsidy found. Department of Commerce rules prescribed application of an individual countervailing duty rate to a company only if the rate was at least 5 percentage points higher or lower than the weighted average of the subsidy calculated on a countrywide basis. The issue there was not of the definition of the subsidy nor was it an issue of calculation or of allocation. It was an issue of administrative convenience for the US authorities, which could not justify a flagrant infringement of the obligation laid down in Article 4:2.

116. The representative of the European Economic Community then turned to issues raised by the injury and causation findings by the US International Trade Commission. During the conciliation meeting on 28 April of this year, the EEC had asserted its rights under the GATT and the Code on the preliminary injury findings by the ITC in flat-rolled steel cases. In both its permanent and final determinations the ITC had, in reaching a finding of material injury, cumulated imports from a large number of countries. US law required the ITC to do so unless the record contained clear evidence

that there was no material injury at all, and no likelihood existed that any contrary evidence would arise in a final investigation.

117. US law required the ITC to do so, unless the imports were negligible and had no discernible impact on the domestic industry. The ITC was only to apply that exception if imports were truly negligible and had no discernible impact at all. The EEC submitted that the burden of proof was unacceptably reversed. The ITC therefore had to cumulate unless other conditions were met. The Subsidies Code stated in Article 2:12 that when the administering authority found that the effect of the alleged subsidy on the industry was not such as to cause material injury the investigation must be terminated. If the investigation was pursued on the basis of such a low threshold of injury it would constitute a violation of the Code.

118. Concerning the definitive injury findings published in August by the ITC, the EEC objected to several matters. In the cut-to-length carbon steel plate case the ITC had found that cumulated imports from 11 countries had caused injury. The increase in market share of the cumulated imports was due to four countries which raised their market share from 3.9 per cent in 1990 to 8.3 per cent in 1992. Imports from all the other countries fell from 8.6 per cent in 1990 to 5.7 per cent in 1992. Germany's market share decreased from 1.1 per cent in 1990 to only 0.4 per cent in 1992. The United Kingdom's market share decreased from 0.8 per cent in 1990 to 0.4 per cent in 1992, a drop of 50 per cent. In view of the fact that the market had also shrunk the decline in imports was even greater in terms of volume. The EEC wondered how the United States initiated a case and subsequently discovered a "discernible adverse impact to its domestic industry". In the circumstances of the case, the extremely low market shares from exporters originating in the United Kingdom and in Germany should have been considered negligible and their imports excluded from the enquiry.

119. In the cold-rolled carbon steel case the ITC had found that imports of carbon steel from Germany threatened material injury to the United States domestic industry. Article 6 of the Code laid down the requirements for a determination of injury and footnote 17 to that Article required that an injury determination be based on positive evidence. The United States did not meet the requirements for the following reasons: first, the market share of Germany had stagnated; it was 1.1 per cent in 1990, 1.0 per cent in 1991, 1.2 per cent in 1992. Given the small quantities involved, the variations were insignificant and did not justify the conclusion of an upward trend. US producers had increased their sales between 1991 and 1992. The ITC argued that the prices of German cold-rolled steel had a suppressing or depressing effect on prices in the United States on the grounds that German average prices had declined over the period of investigation. The EEC considered that any attempt to assess future price developments should take account of prices charged by other importers. German prices were the second highest of all importing countries, and the decrease of German prices was considerably less than the price decrease of several other importers.

120. The ITC also relied on the risk of increase in volume of German steel exports towards the United States. The findings were not based on positive evidence, nor on a proper consideration of all the facts available. Since anti-dumping and countervailing duties were imposed by the United States on exports of corrosion-resistant steel and other products, the ITC concluded that German exporters might have to reduce those exports and compensate the resulting loss by increasing exports of cold-rolled steel. The EEC questioned that conclusion. The low level of anti-dumping and countervailing duties on corrosion resistant steel of only 4.8 per cent made such a shift unlikely.

121. The weak and declining German home market and fall in German exports to third countries other than the United States had been relied on by the ITC to suggest that Germany might shift its exports to the United States markets. Such an increase would also be fuelled by an increase from Eastern European steel imports in Germany. This reasoning contradicted the evidence appearing on the record of the ITC. It ignored the fact that demand for steel in all countries had fallen due to the worldwide

recession. For many other countries the assumption of an increase in exports to the United States was made and it was unclear why German exports were expected to follow a pattern different from those countries. Regarding the effect of steel imports from Eastern European countries, the ITC findings ignored completely the measures taken by the European Economic Community to monitor such imports. The ITC's conclusions were contradicted by the fact that when in 1990 German exports to third countries decreased by 126,000 tonnes, its exports to the United States also decreased by 75,000 tonnes. This demonstrated that German exporters had not diverted their exports to the US market and were not likely to do so in the future.

122. The next issue was whether imported steel products were the actual cause of the injury claimed by the US domestic integrated industry. This issue was raised repeatedly by the defendant companies. Article 6:4 of the Code stipulated that if there were other factors such as competition by certain domestic producers which injured the rest of the domestic industry, injury caused by such other factors must not be attributed to the subsidized imports. In the EEC's view, that issue had not been examined in sufficient detail by the ITC.

123. The EEC considered that the United States found subsidies where none existed, or imposed duties in excess of the subsidies found to exist. The United States had also ignored procedural rights laid down in the Code and had reached affirmative injury determinations in situations where they were not warranted, by applying standards which allowed identification of injury in circumstances where no material injury nor threat thereof could have been found against imports from the EEC if the standards established under the Code had been applied.

124. The representative of the United States agreed that consultations had failed to yield a mutually satisfactory solution, but hoped that the EEC would agree that the consultation process had clarified the facts of the case. The EEC had indicated a number of issues for which conciliation was being requested, or was the subject of another panel proceeding. The issues included the allocation of subsidies over time, recalculation of non-recurring subsidies, treatment of equity infusions including the issue of equityworthiness along with creditworthiness. There were also issues of allocation of subsidies over production and debt forgiveness through government restructuring efforts. The United States' position with respect to those issues had not changed. He referred the Committee to the statement delivered by his delegation at the last regular meeting of the Committee on 28-29 April 1993 (SCM/M/65). There were, however, three new issues raised by the EEC in its intervention.

125. The first concerned the issue of privatization and the sub-issue of treatment of subsidies provided before privatization. The EEC had alleged that when a company was privatized in an arms' length transaction at fair market value there was no basis to find countervailable subsidies in the new privatized company. They said that the price paid by private investors included the residual values of any countervailable subsidies received, therefore stating that it must be demonstrated that old subsidies pass through to the new entity. The Subsidies Code delineated procedures for countervailing duty investigations as well as rules for the levying of countervailing duties to offset the injury caused by subsidized imports. The Code provided little guidance as to what constituted a countervailable subsidy and how such subsidies should be valued. Article 4:2 of the Code and the footnote to 4:2 stated that an understanding among signatories should be developed setting out the criteria for the calculation of the amount of the subsidy. No such understanding had been developed. The Subsidies Code did not establish subsidy valuation methodologies. Instead, the Code obliged investigating authorities to support their decision on the basis of a fair and reasonable analysis of the facts in a manner consistent with the Code. The Department of Commerce had done this. The EEC stated that the Department was legally required to show the benefit of subsidies paid to privatized companies and thus demonstrate that the privatized companies benefit from pre-privatization subsidies. The United States did not agree. The Subsidies Code did not require an examination of the use to which subsidies were put or their subsequent effect on the recipient. The United States believed that the EEC was not interpreting the

Code in an objective and legally correct manner. The United States could not understand the link between the Pork Panel decision and the analysis by the Department of Commerce of the privatization issue. The Department considered all relevant facts including comments submitted by the interested parties. The issue in Canadian pork was whether subsidies to one product passed through to another product which was not like the product originally subsidized. This case involved the same like product both before and after privatization.

126. The EEC had argued that whenever a company was privatized in an arms' length transaction at fair market value there was no basis to find countervailable subsidies in the new privatized company. The United States believed that information submitted by one of the companies located in the EEC was an illustration of the EEC's contradictory approach. The European Economic Community's assumption that pre-privatization subsidies no longer benefited a company after the privatization was at odds with the preamble to British Steel's 1988-1989 annual report. That report came out after its privatization. In it the Chairman stated "we are now benefiting from the restructuring programme we had been maintaining in recent years and as a result we have been able to respond to the increased demand on the basis of efficient plants operating at high through puts and utilization rates giving rise to lower costs and improved margins." In the United States' view these were effects resulting from massive subsidization.

127. The EEC alleged that the Department of Commerce had violated Article 2:5 of the Code because it did not afford the parties involved in the proceeding an opportunity to comment on the Department's calculation methodology. The EEC apparently believed that this provision precluded the investigating authorities from basing their determination on an approach that was not previously disclosed to the interested parties. Throughout the steel investigations the Department of Commerce examined extensive comments provided by the parties to the proceeding. Some comments were voluntarily submitted by the interested parties, other were specifically solicited by the Department. The Department held meetings with the interested parties in which many issues related to the steel investigations were discussed. The Department only developed its calculation methodology after an exhaustive analysis of all of these comments that were received. Consequently, the final decision did take into account the comments of all interested parties.

128. The United States did not share the view that Article 2:5 of the Code should be interpreted to preclude investigating authorities from basing any decision on an approach not previously discussed with the interested parties. Such an interpretation would inevitably impose a much shorter period of time for the investigating authorities to examine all information submitted during a countervailing proceeding. Such an approach would require proposed determinations to be made well before the issuance of a final determination in order to allow interested parties to comment on every determination and allow the investigating authorities to incorporate such comments into the final decision. Such a process could become never-ending. It would also prevent the investigating authorities from making any definitive determination different from the preliminary determination. That could not have been intended by the drafters of the Code.

129. In reply to the EEC's complaint concerning the calculation of individual company rates as opposed to the application of a countrywide subsidy rate, the United States was of the view that the Code allowed investigating authorities to impose a countervailing duty subject to the provisions of the Code. The Code was not explicit concerning calculation methodology, leaving it to authorities to use different approaches. The general direction of the Code allowed the computation of the duty on the basis of the total value of the subsidies divided by the total value of the subsidized product on a country basis. The United States had chosen to follow the general rule of one product, one country, one rate, except when particular producers received subsidies at a rate significantly greater or lesser than the average rate on the like product. That methodology was not in any way inconsistent with the provisions of the Code, and was a reasonable approach to calculating subsidy rates.

130. In reply to the EEC's complaints concerning pre-pension programmes, the United States recalled that the Code did not provide specific guidance on what constituted a subsidy. The requirement to show that pre-pension or worker assistance programmes relieved a company of expenses it would otherwise incur was a part of United States practice and was not a requirement of the Subsidies Code. The Code stipulated that investigating authorities had an obligation to support their decisions with a fair and reasonable analysis of the facts in a manner consistent with the rules of the Code. The Department had met this obligation. The Department found two ways in which governments conferred benefits on the steel workers. First, the rules for hiring replacement workers and the rules for early retirement were eased for steel companies. That occurred in Belgium and Italy. Second, governments undertook to pay a certain portion of early retirement benefits received by the workers. That occurred in Germany and France.

131. In each instance, the Department explained the nature of the obligation which the steel companies faced. In Belgium, the steel companies were relieved of the general obligation and expense of hiring new workers to replace workers that were laid off. That provided a benefit to the steel firms. In Italy, the company had the option of simply firing its unneeded workers. Instead it chose to use an early retirement scheme that was preferential to the steel industry. A company official stated that "legally the company was under no obligation to use early retirement but labour unions could put pressure on the company making early retirement more feasible than lay offs". The Department concluded that firing the workers was not a real option for that company. Therefore, by availing itself of the early retirement plan that was preferential to steel, those companies also received the benefits.

132. In the German and French cases, the national governments were willing to assume some portion of early retirement payments. Other portions were paid for by the ECSC and the companies themselves. The issue of whether the steel companies were relieved of any obligations revolved around the question of what amount the steel companies would have paid but for the government contribution. The steel companies argued that the government contribution had no effect on the level of payments they undertook to pay workers who retired early. The Department of Commerce found that where there was evidence that the steel companies and their workers knew that the government would make a contribution at the time the labour agreement was negotiated, this knowledge played a role in the negotiations with two results. First, the steel workers who retired early received higher benefits than they would have received without the government contribution, and second the steel companies paid less in early retirement benefits than they otherwise would have paid absent the government contribution. This latter result in turn gave rise to a benefit to the steel companies. Without specific evidence as to how the government contribution was divided between the workers and the companies, the Department found that each benefited equally in the transaction. As a result, one half of the government contribution was countervailed. The Department of Commerce believed that the assumption the EEC would employ was less realistic, i.e. that the steel companies were prepared to pay a certain amount in early retirement but that the government contribution had absolutely no influence in determining this level.

133. Concerning the US ITC's injury determination, the United States had already spoken of those issues in the course of the meeting of the Anti-Dumping Practices Committee. Concerning the issue of cumulation and negligibility, Article 2:12 of the Code required the immediate termination of an investigation when the volume of dumped imports was negligible. The EEC asserted that this implied that there must be a minimum specific penetration level of imports which was *per se* negligible. The Code did not identify a particular import penetration level or importation level. The Code required a determination of whether the volume of subsidized imports was negligible. The United States considered negligibility based on a number of factors including the price sensitivity of the particular market, the trend of imports, whether increasing or decreasing, lost sales, the extent of competition between a particular country's imports and domestic products, the isolated or sporadic nature of the imports as well as import penetration level and the actual volume of imports. The International Trade Commission concluded after analysing all of those factors that the imports were not negligible. Contrary

to the EEC's assertion that the United States had ignored that some countries had very small market shares, the application of the negligibility analysis resulted in findings that subsidized imports from many sources, including a number of EEC countries, were not negligible.

134. The EEC's real objection was that the United States conducted an analysis of the function of the imports in the market instead of applying a mechanistic test that would have excluded the EEC's imports from analysis. The EEC singled out the ITC's findings that certain EEC imports were not negligible, and the cumulation of those subsidized imports. While the import penetration levels for Germany and the United Kingdom were low, those two countries' imports could not be viewed as *per se* negligible. The imports constituted 21,000 tonnes in 1992. The Commission found that the plate market was price sensitive and that smaller volumes of imports were more likely to have an adverse impact on the domestic industry. The imports of subsidized EEC plate entered all regions of the United States, were imported in each of the 36 months of the investigation period and undersold comparable domestic plate. The United States cumulated imports from several sources when certain competitive conditions were present unless the ITC further determined that the imports were negligible. When a cumulative analysis was performed the United States, like the EEC, analyzed the imports collectively. Though it could be possible to desegregate imports it did not undermine the determination that the collective impact of the imports was to materially injure the domestic industry.

135. The EEC also asserted that US law required two findings on negligibility and discernible adverse impact and that that was inconsistent with the Code. The United States assessed negligibility in determining *inter alia* whether the imports had any adverse impact which was certainly consistent with Article 2:12.

136. Concerning the issue of threat of injury, the EEC had argued that threat must be found only in circumstances which were not present in investigations involving cold-rolled steel from Germany and the Netherlands. Threat of material injury was one of three equally acceptable modes of injury analysis under Article 2, Note 6, together with present material injury and material retardation. There was no higher evidentiary standard for threat than there was for present material injury. With respect to the German threat case four Commissioners identified a number of factors supporting their conclusion that German steel would cause injury which was clearly foreseen and imminent. Those factors included volume and percentage increase in German imports between 1991 and 1992, continued high level of unused capacity by the end of 1992, evidence that German imports would contribute to the price suppression of domestic prices in the future, evidence that German producers reduced home market sales and sales to third country markets while increasing exports in equivalent volumes, evidence that shifting had occurred in 1992 to the United States market decreasing German domestic demand, potential product shifting from corrosion resistant products to cold-rolled products and finally the possible negative impact of cold-rolled imports on domestic US investment and production facilities. Thus there had been no mere assumption that German imports would injure the domestic industries. Rather, the ITC had concluded on the basis of positive evidence that material injury was threatened.

137. Concerning the analysis of other factors, the EEC suggested that the Code imposed an obligation to analyze other factors of injury. The EEC contended that US minimills were another factor and that the ITC's failure to treat minimills as such was inconsistent with the Code. While the Code cautioned that injury from other factors should not be attributed to subsidized imports, there was no requirement in Article 6:4 or elsewhere that a signatory determine whether an industry was injured by other factors. The United States took account of the impact of minimills and other low cost domestic producers as factors and conditions of trade in the hot-rolled steel determination. The majority of the ITC found such mills to be a factor in domestic pricing. In the plate determination the majority of Commissioners found considerable evidence that even reconstituted mill plate producers prices were consistently undercut by plate importers from the EEC.

138. The EEC had asserted that under Article 2:5 of the Code, multiple opinions could not provide adequate public notice of how the ITC resolved various issues. In the opinion of the United States the detailed and comprehensive discussion in each of these opinions clearly set forth the facts. Together the opinions provided clear notice on the basis of the ITC's determinations.

139. Finally, concerning the question of allegedly lower standards, with respect to the EEC's claims with respect to the US standards for negligibility, cumulation, threat of material injury, injury and causal link, the United States believed it had acted in full consistency with all of the requirements of the Subsidies Code.

140. The representative of Brazil remarked that the European Economic Community was aware of Brazil's shared concern in relation to the countervailing actions by the United States on steel products. If bilateral consultations failed, he considered that the Committee should employ its good offices to encourage both parties to renew their efforts.

141. The representative of Canada referred to his comments at the 28-29 April meeting of the Committee. An aspect of particular concern was the treatment by the United States of pre-privatization subsidies. The United States' explanation of this issue reminded him of Alice in Wonderland sitting down to tea with the Queen of Hearts. The Queen of Hearts, on being challenged by Alice about a particularly outrageous statement that she had made, said that she had no difficulty in believing impossible things. In fact, she made it a point to believe three impossible things every morning before breakfast. The United States' position on pre-privatization subsidies, although perhaps based on some logic, was certainly very difficult to believe.

142. The representative of Japan drew to the Committee's attention that Japan had expressed concern at the US anti-dumping and countervailing determinations regarding steel products on various occasions.

143. The representative of Finland supported certain concerns brought up by the EEC. Some of those issues had been raised in other forums, and in addition Sweden, on behalf of the Nordic countries had discussed those issues with the United States.

144. The representative of the European Economic Community thanked the other signatories for their encouraging interventions. He noted that privatization was not an issue about calculation of a subsidy. It was not an issue that would fall under Note 15 to Article 4:2. It was an issue about the definition of a subsidy and the need to prove that a subsidy existed which gave a recipient a benefit and put that benefiting company in a more advantaged position compared to its competitors. The EEC reiterated that countervailing duties should only be imposed if negative effects were being caused by such a subsidy and if the authority could prove that a negative effect had indeed occurred. The United States quotation from a 1988 report by the Chairman of British Steel in which he had said that British Steel had benefited because of the restructuring programmes of the past was self-evident. Of course the restructuring had paid off. British Steel had become a sound company and shareholders had been prepared to pay the price they paid for that restructured company. He agreed that investigating authority could not have endless discussions with interested parties on all issues but that did not mean that a party should not have any chance at all to comment on a new methodology.

145. On the pre-pension schemes the United States admitted that it could not produce evidence to prove that benefits were being transferred from the Government to a company. To the EEC the point was whether you based a decision to impose countervailing duties on facts. There was no explicit penetration level mentioned in the Code to define negligible, but permitted volumes of exports that were minimal when compared to the domestic output could not be the basis of material injury. The EEC strenuously queried that finding. The EEC considered that threat was an exceptional case and

should only be found in very specific cases on the basis of facts. The EEC had mentioned a number of points when there were no facts to support the threat finding made by the ITC.

146. He agreed that consultations with the United States had been extremely helpful in clarifying the situation, and had also clarified the disagreement were even stronger than expected. The question of pass-through was just as relevant to subsidies given to one recipient as to a different privatized company recipient. The simple fact was that the United States had found a subsidy of 1 per cent and had imposed a countervailing duty of nearly 6 per cent. No reasonable calculation would justify that result.

147. He noted that labour unions could put pressure on a company, as could the conscience of an entrepreneur who could decide to retrench rather than fire because he is good-hearted. Would that be a countervailable benefit?

148. Turning to injury, he disagreed with the United States representative. The Code said that injury by other factors must not be attributed to the allegedly subsidized imports, and if the other factor had been raised it should be investigated and assessed.

149. The Chairman recalled the request made by the European Economic Community to hold a new meeting of the Committee given that certain aspects were not sufficiently explained, and the United States could have the opportunity to consider those aspects.

150. The Committee invited both parties to pursue their efforts with a view to arriving at a mutually satisfactory agreement pursuant to the terms of the Code.

151. The Chairman agreed to convene a special meeting of the Committee on 10 November 1993.

L. United States - Measures affecting Imports of Softwood Lumber from Canada - Report of the Panel (SCM/162)

152. The Chairman recalled that at a special meeting on 16 December 1991 the Committee had established a Panel pursuant to Article 18.1 of the Agreement at the request of Canada, in document SCM/M/56. The report of the Panel was circulated on 19 February 1993 and was discussed in the Committee at its meeting of 28-29 April 1993. He asked if the Committee was prepared to adopt this report.

153. The representative of Canada noted that this item was one of the longest running disputes between Canada and the United States. He hoped that the Committee could reach a solution which pleased both sides. Canada had spoken on this report at the last meeting of the Committee and provided the Committee with a written statement of its detailed views on the report.

154. The Panel report demonstrated the inconsistency with the Code of the unilateral application of a bonding requirement under Section 301 of the United States Trade Act of 1974. This Panel decision clearly underlined that Section 301 could not be used to circumvent the provision of the GATT and its Codes. Canada believed that the United States should implement the Panel report as soon as possible. The United States should cancel bonds currently held, refund cash deposits and terminate the suspension of liquidation of entries.

155. Canada was disappointed with the Panel's treatment of the standards for initiation. The shortcomings in the report were recognized by the Panel in a letter to the Committee from the Panel's Chairman. Canada recommended that that letter become an integral part of the Panel decision. Canada disagreed with the Panel conclusions that the United States' self-initiation was justified by the existence

of "special circumstances" in the form of the termination of the MOU. This meant that Canada could never have terminated the MOU without creating a special circumstance. Some of the Panel's rulings on subsidies were in fact empirical matters. Part of the Panel's report was *obiter dicta* and consequently without binding authority. The Panel's inclusion of opportunity cost in the meaning of cost to government was not supported by the Code, the General Agreement, or by reasoning of the Panel. The use of price comparisons as a measure of opportunity cost was not valid and could lead to absurd results. Price comparisons between jurisdictions could result in a subsidy being found in one jurisdiction simply because of a pricing change enacted by another government over which the government in the former jurisdiction had no control.

156. Canada's April 28 statement had expressed strong concerns regarding the Panel's findings on injury. The Panel found, in effect, that the threat of subsidy which is inherent in all governments, was sufficient to find threat of injury for the purpose of initiating a countervail case.

157. Canada contested the decision of the panel not to examine whether measures affecting the export of logs were in fact subsidies. Since this issue was not examined by the Panel, Canada might wish to return to it at a later date in the Council or in the Committee. Canada was strongly of the view that measures such as export or import restrictions could not be considered subsidies under the General Agreement and that was regrettable that the Panel had failed to address that issue.

158. Canada considered that the Panel's Report contributed to the work of the Committee by its important finding regarding the US Section 301 action. Other aspects of the Panel's findings caused Canada considerable concern. He referred the Committee to the more detailed April statement.

159. Canada asked that the Panel report be adopted, and that the United States bring its practices into conformity with its GATT obligations by immediately releasing the Section 301 bonds. Canada's willingness to see the Panel report adopted was based on the fact that the *obiter dicta* in the report did not set any precedent regarding interpretation of the subsidy or injury issues involved. Canada asked that its written and oral statements of concern made at the October and April Committee meetings form part of the record of adoption of this Panel report.

160. The representative of the United States noted that the Panel in the softwood lumber case addressed two issues. One was self-initiation by the US Department of Commerce of the CVD investigation in 1991 following Canada's termination of the Memorandum of Understanding with the United States on softwood lumber exports. The Panel concluded that the US investigating authorities had complied fully with the Code in self-initiating the CVD investigation. At the meeting of the Committee on 28-29 April 1993 the United States expressed its concern over the level of scrutiny and breadth of detail contained in the Panel's analysis regarding initiation. That level of analysis was only appropriate for a review of a final determination, rather than a review of an initiation of an investigation. The United States was heartened by other aspects of the Panel's approach to the initiation issue. The Panel declined invitations to second guess the authorities' actions. The report recognized that this would have exceeded the scope of the enquiry entrusted to the Panel which was to determine whether the authorities' actions had violated a provision of the Code. The Panel's approach properly respected the very different roles of panels and investigating authorities. The Panel also properly recognized that the nature of the findings that an authority must make are a function of the stage of the proceeding at which it is making its determination. At paragraph 384, the Panel declined to resolve the issue of whether price comparisons for the purpose of determining injury were more appropriate because resolution of such an issue was inappropriate in reviewing an initiation position. At paragraph 392, the Panel correctly recognized that Article 6.4 did not require that imports under investigation be a more important cause of injury than other factors. Article 6.4 only required that injury caused by such other factors not be attributed to the subsidized imports under investigation. The Panel concluded

that a violation would exist at the initiation stage only if material injury to domestic industry was entirely explained by factors other than the subsidized imports.

161. The United States was, however, concerned about remarks contained in a letter from the Chairman of the Panel separate from the Panel report regarding the data and methodology used in the initiation. The role of a dispute settlement panel was to determine whether a signatory's actions were consistent with the Code. The United States disagreed with Canada's request that this letter be looked upon as part of the report. The United States hoped that future panels would refrain from commentary unrelated to an assessment of Code consistency.

162. The second issue addressed by the Panel was the suspension of liquidation and the requirement that bonds be deposited on entries of lumber for a five-month period between the time of the termination of a bilateral Memorandum of Understanding between the United States and Canada and the preliminary subsidy and injury determinations. The MOU had resulted in the termination of an earlier CVD investigation. The actions taken by the United States following termination of the MOU were in the nature of provisional measures. Duties were applied on the entries at issue only if and when the final determination of subsidy and injury was issued. Article 4.6 of the Code granted signatories explicit authority to impose provisional measures in cases in which another signatory departed from an undertaking related to termination of a prior CVD investigation. The United States disagreed with the Panel's conclusion that the 1986 MOU was not an undertaking under the Code and that therefore the action by the United States was inconsistent with the Code. The Panel's conclusion appeared to rest in large part on the fact that the MOU had not been formally notified to this Committee. The United States did not believe the absence of notification would prevent the accrual of rights under the Subsidies Code. In suspending liquidation, the United States had employed Section 301 of the Tariff Act of 1974. The United States had taken that action simply because other domestic laws did not provide for such actions in cases involving termination undertakings, only in cases involving suspension undertakings. The statutory mechanism employed by a signatory had no bearing on the signatory's rights under the Code. The Panel recognized that basic principle and did not base its determination on the fact that the US action was taken under Section 304.

163. The remedy portion of the Panel's findings were of concern to the United States. In paragraph 415 of the report, the Committee recommended that the United States terminate the bonding requirements, release and bonds refund bonds, and cash deposits, and terminate the suspension of liquidation. The United States strongly believed that specific and retroactive Panel recommendations of that sort were not appropriate. The Panel should go no further than to recommend that the violating party bring its practices into conformity with code obligations. Unlike specific and retroactive recommendations, general recommendations were consistent with the overall goal of dispute settlement, to create conditions that permitted the parties to reach mutually satisfactory solutions. More recent Panel reports had followed this proper course and where Code violations were found, had not made specific recommendations. The United States did not accept the recommendation made by the Panel in the Lumber case. The United States did not view the Panel's recommendations as having any precedential value. The United States' future actions would be along the lines suggested by the Panel but would not be because of the Panel's recommendations. Because of the unusual circumstances, recognizing that the United States did not accept the recommendations made by the Panel, the United States would not stand in the way of adoption of the report.

164. The representative of Japan considered that the measures taken under Section 301 by the United States regarding imports of soft lumber were inconsistent with the Agreement. Although Japan had concerns about certain interpretations of the Panel in relation to initiation, Japan would like to see the adoption of the Panel report.

165. The representative of the European Economic Community noted that the EEC was still studying this report and had some reservations about part of the reasoning within it. Of particular concern was the Panel's approach to review of administrative action.

166. The representative of Australia noted that Australia had strong reservations about the Panel's recommendations on remedies, which was beyond the standard recommendation of bringing actions into consistency. In this regard, Australia joined with the United States in its reservations about that aspect of the Panel report and also did not regard it as being of precedent value.

167. The Committee took note of the statements made and adopted the report.

M. United States Countervailing Duties on Non-rubber Footwear from Brazil - Report of the Panel
(SCM/94 & 96)

168. The Chairman recalled that the report of the Panel was circulated on 4 October 1989 and had been examined in various meetings since that time.

169. The representative of the United States recalled that the report had been before the Committee for quite some time now and hoped that it would be possible for it to be adopted at the meeting.

170. The representative of Brazil commented that the GATT dispute settlement system had designed to solve concrete problems. The United States had been found to have discriminated against Brazil by the Panel established by the Council. The discrimination referred to the m.f.n. clause - the pillar of the GATT. The Panel established by the Committee did not address the issue although it had been invoked by Brazil. Perhaps the Panel was not competent, but the Panel established by the Council had found that Brazil was in fact discriminated against. The GATT Council had adopted its report more than a year ago. Although Brazil did not ask for specific remedies so that the United States could choose the best way to bring itself into conformity with the basic principle of the GATT - the m.f.n. principle - nothing had happened since.

171. The implementation of the Panel report adopted by the Council would solve Brazil's problems. The adoption of the report of the Panel established by this Committee would only confuse the issues. Brazil believed the United States should implement the Panel report adopted by the Council. That was why Brazil, which had been supported by other delegations in finding flaws in the report, was not prepared to accept the adoption of this report at this stage.

172. The representative of the United States stated that with respect to the Panel report of the GATT Council, there was a difference of view between the Government of Brazil and the United States Government as to what was required by that report, and the proper place to resolve that was not in the Committee. The United States was disappointed that the report of the Panel, which was duly constituted and which had reached decisions and made recommendations to this Committee under the terms of this Agreement, would not be accepted by Brazil.

173. The Committee took note of the statements made and agreed to revert to the item at a later meeting.

N. German Exchange Rate Scheme for Deutsch Airbus - Report of the Panel (SCM/43)

174. The Chairman noted that the report of the Panel was circulated on 4 March 1992 and had been reviewed at various meetings since.

175. The representative of the European Economic Community regretted to inform the Committee that it was not in a position to agree to the adoption of the report.

176. The representative of the United States recalled that this matter was of some importance as it dealt with a prohibited subsidy which was important to the administration of the Agreement. The United States was disappointed that it was not possible to agree to adoption of the report at the meeting.

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

O. EEC Subsidies on Exports of Wheat Flour - Report of the Panel (SCM/42)

178. The Chairman noted that the report of the Panel (SCM/42) had been circulated approximately ten years ago. At the last ordinary session, he had proposed that the Committee take note of the report and remove it from its agenda. He noted that there were only a few choices; to take note of the report; to adopt the report; to reject it; to remove it from the agenda or to keep it on the agenda forever.

179. The representative of the European Economic Community noted that previous discussions of what exactly "take note" meant had been inconclusive. If, however, the Chairman proposed adoption of the report the EEC would not stand in the way.

180. The representative of the United States noted that this was almost an ancient report. Under the circumstances, given the nature of that Panel report, the United States would not agree to adoption of the report.

181. The representative of the European Economic Community noted that in light of the United States refusal to agree to the adoption of the report, he suggested that resort should be had to the Chairman's last option; to keep it on the agenda forever.

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

P. EEC Subsidies on Exports of Pasta Products - Report of the Panel (SCM/43)

183. The Chairman noted that the report was circulated ten years ago also and had been reviewed at various meetings since that time. At the meeting held on 28-29 April 1993 the Committee had agreed to revert to this matter at the next meeting.

184. The representative of the European Economic Community was not in a position to agree to the adoption of this report for the same reasons put forward ten years ago. The EEC did not agree with the reasoning of the report and its interpretation of the rules of the Code. The EEC had altered its practices to remove the trade aspects of this dispute.

185. The Committee took note of the statement made and agreed to return to the matter at its next regular meeting.

Q. Canada - Imposition of Countervailing Duties on Imports of Boneless Manufacturing Beef from the EEC - Report of the Panel (SCM/85)

186. The Chairman noted that at its meeting of 28-29 April 1993 the Committee agreed to revert to this matter at the next meeting.

187. The representative of Canada stated that Canada was not ready to see the report adopted.

188. The representative of the European Economic Community was very disappointed by the statement from Canada. The case had a continuing and very important trade effect. Exports of beef to Canada had ceased with the imposition of duties and had never been resumed.

189. The Committee took note of the statements and agreed to revert to the item at its next regular meeting.

190. The Chairman emphasized that the situation in the Committee with respect to dispute resolution was simply unacceptable. The Members of this Committee had been advocates of a strong dispute resolution system. Whenever a Panel Report was submitted to the Committee, Members not parties to the dispute urged the parties as a matter of principle to accept the Panel's decision and accept adoption of the Report. Yet when Members found themselves in the opposite situation, that of a losing party in a dispute, this principle was often forgotten. Rather than acting in a manner consistent with all Members' long-term interests in a strong dispute resolution system, the tendency was to focus on the short-term interests in the dispute in question and to refuse to support adoption.

191. It seemed to the Chairman that the parties to disputes in the Committee went through elaborate procedures with respect to consultations and conciliation before they sought establishment of a panel. Only when a mutually satisfactory solution was not possible did they revert to the panel process. The panel invested a great deal of time and effort in arriving at recommendations regarding a dispute, which they sent back to the Committee in the form of a Report. Then the whole discussion resumed, with each Member rearguing its case as if a Panel Report had never been provided. Under those circumstances, why the Committee should even bother to establish Panels?

R. Other business; Glacé Cherries - Imposition of Countervailing Duties on Imports of Glacé Cherries from France and Italy under the Australian Customs Amendment Act of 1991

192. The Chairman informed the Committee that he had been informed by the Chairman of the Panel that this case was terminated. The Panel's Chairman would send a communication to that effect which would be circulated to the Committee.

193. The Committee took note of the Chairman's statement.

S. Annual Review and Report of the Contracting Parties

194. The Committee adopted its Annual Report to the Contracting Parties (L/7315 and Corr.1).

T. Date of the Next Meeting

195. The next regular meeting of the Committee will take place in the last week of April 1994.