

GENERAL AGREEMENT ON

RESTRICTED

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Special Distribution

TARIFFS AND TRADE

Committee on Subsidies
and Countervailing Measures

MINUTES OF THE MEETING HELD
ON 28 OCTOBER 1992

Chairman: Mr. Gerry Salembier (Canada)

1. The Committee on Subsidies and Countervailing Measures ("the Committee") held a regular meeting on 28 October 1992.
2. The Committee adopted the following agenda:
 - A. Election of Officers
 - B. Examination of countervailing duty laws and/or regulations of signatories of the Agreement¹ (SCM/1 and addenda):
 - (i) Colombia (SCM/1/Add.29 and Suppl.1)
 - (ii) United States (SCM/1/Add.3/Rev.3/Suppl.2)
 - (iii) Australia (SCM/W/281, SCM/1/Add.18/Rev.1/Suppl.5)
 - (iv) Other legislation
 - C. Notification of subsidies under Article XVI:1 of the General Agreement
 - (i) New and full notifications (L/6630 and addenda)
 - (ii) Updating notifications due in 1991 and 1992 (L/6805 and addenda and L/6973 and addenda)
 - D. Semi-annual reports of countervailing duty actions taken within the period 1 January-30 June 1992 (SCM/148 and addenda)

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

- E. Reports on all preliminary or final countervailing duty actions (SCM/W/276 and 278)
- F. United States - Countervailing duty investigations of imports of steel products from the European Community
- G. Brazil - Imposition of definitive countervailing duties on imports of milk powder from the European Economic Community - Request by the European Communities for conciliation under Article 17 of the Agreement (SCM/151)
- H. United States - Countervailing duties on non-rubber footwear from Brazil - Report of the Panel (SCM/94)
- I. German exchange rate scheme for Deutsche Airbus - Report of the Panel (SCM/142)
- J. Other panel reports pending before the Committee:
 - (i) EEC subsidies on export of wheat flour (SCM/42)
 - (ii) EEC subsidies on export of pasta products (SCM/43)
 - (iii) Canada - Imposition of countervailing duties on imports of boneless manufacturing beef from the EEC (SCM/85)
- K. Draft guidelines on the application of the concept of specificity (SCM/W/89)
- L. Other business
 - (i) Removal of agenda item "K" from the Committee's agenda
 - (ii) Initiation of countervailing duty investigation by Australia on exports of frozen pork from Canada
- M. Annual review and Report to the CONTRACTING PARTIES

A. Election of Officers

3. The Committee elected Mr. Andrés Espinosa (Colombia) as Vice-Chairman of the Committee.

The Chairman, on behalf of the Committee, expressed thanks to the outgoing Vice-Chairman, Mr. Rak Yong Uhm, for his service to the Committee.

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

(i) Colombia (SCM/1/Add.29 and Suppl.1)

4. The Chairman recalled that the Committee had examined this legislation at its meetings of 22 October 1991 (SCM/M/54, paragraphs 13-18) and 28 April 1992 (SCM/M/59, paragraphs 22-25). Canada had submitted written questions in November 1991 (SCM/W/250), to which Colombia had supplied written replies (SCM/W/277). Colombia had also submitted a supplement to its notification (SCM/1/Add.29/Suppl.1).

5. The representative of Colombia said that Law 07 of 1991 had established the Ministry of Foreign Trade which was the body responsible for directing, coordinating, implementing and supervising foreign trade policy. Included in the mandate of this Ministry was the formulation and evaluation of policies for the correction and prevention of unfair, restrictive or injurious trade which could affect domestic production. It was also determined that the implementation or administration of legislation on subsidies, countervailing measures and anti-dumping matters would be the responsibility of the Institute for Foreign Trade, known as "INCOMEX". The Ministry of Foreign Trade would be the entity responsible for the imposition of countervailing or anti-dumping duties.

6. The Committee took note of the statement and agreed that it had concluded its examination of the Colombian legislation.

(ii) United States (SCM/1/Add.3/Rev.3/Suppl.2)

7. The Chairman recalled that in October 1991, the Committee had received a notification from the delegation of the United States concerning the text of final regulations of the US International Trade Commission regarding US countervailing duty investigations. No written questions had been received by the Secretariat.

8. The Committee agreed that it had concluded its examination of the US regulations.

(iii) Australia (SCM/W/281 and SCM/1/Add.18/Rev.1/Suppl.5)

9. The representative of Australia said that as indicated in SCM/W/281², the Ministry for Industry, Technology and Commerce had announced on 5 December 1991 some significant changes to Australia's legislation on

²At the time of consideration of this item, the text of the legislation (SCM/1/Add.18/Rev.1/Suppl.5) had been submitted to the secretariat but had not yet been circulated.

anti-dumping and countervailing duty actions and remedies. There were essentially six areas of change in the legislation, which had been proclaimed on 10 July 1992. The first related to the time-frames and information requirements for the initiation of an application. The period during which Customs had to consider whether or not to initiate an investigation had been reduced from 35 to 25 days. In order to ensure that this reduction did not hinder the proper consideration of an application, Customs had been given the power to use information outside of the application during this prima facie stage to ensure a fair and thorough assessment of the claims of the applicant. He noted that a Federal Court decision in 1989 had specified that Customs was required to consider only the information in the application during the initiation stage; this change had given Customs the power to consider other information as a basis upon which an application that did not satisfy GATT or legislative requirements could be rejected, and was consistent with the requirements of Article 5 of the Anti-Dumping Code.

10. The second area of change related to price undertakings. It was a technical change which ensured that where an inquiry was resolved with an undertaking and the undertaking expired, the Minister had no power to re-impose measures other than by a new inquiry and a fresh positive finding. This had corrected an anomaly in the previous legislation which allowed - where an undertaking was accepted - for the consideration of the matter to be deferred indefinitely. The third area of change related to measures against concurrent dumping and subsidisation. Under the previous legislation, there were separate provisions relating to the application of measures against dumping and measures against subsidisation. Thus, a situation could arise in which the Minister might be fully satisfied in a given case that dumping and subsidisation were jointly causing material injury, but might not be able to apply either dumping or countervailing duties because the legislation constrained him to take anti-dumping action only when satisfied that the dumping, of itself, was causing material injury and, similarly, to take countervailing action only when satisfied that subsidisation, of itself, was causing material injury. The amended legislation would now permit the application of dumping or countervailing measures, or both, without the need to separately quantify the injury as the result of one or the other, and was consistent with GATT Article VI:5.

11. The fourth area of change related to the standing of primary producers and close processed agricultural goods. The previous legislation had vested the power to determine whether or not a processed agricultural good was related closely to the raw agricultural good with the Comptroller of Customs. The change vested this power in the Minister. The fifth area of change was that anti-dumping measures now had a life of five years compared to the previous maximum of 3 years. Before this five-year period expired, the Anti-Dumping Authority was to contact the Australian industry in sufficient time for a review to be made as to whether measures should continue for a further five years. The review process would allow all interested parties to have the opportunity to present their views. These changes brought Australia's legislation generally into line with the sunset provisions proposed in the Uruguay Round.

12. The sixth area related to a proposed change in the method by which anti-dumping and countervailing duties would be imposed. Under current arrangements, the duty payable was the difference between a threshold price, based on the non-injurious price or a price that would have offset any subsidy, and the invoiced export price. Thus, if the importer/exporter increased the invoice price to this threshold price, no duty was paid. This change would mean that all importers of goods subject to dumping or countervailing duties would pay a duty at the margin of dumping or subsidy or at the margin of injury established by the inquiry. Consistent with international obligations, there would be provision for a refund of any excess duty that might be paid over a period of time, and for a review of the duty rate every 12 months.

13. The representative of the EEC said that the technical change in Australia's legislation relating to close processed agricultural goods did not change the Community's position on the inconsistency of this legislation with the Code. This was an issue to which the Community would return at an appropriate time.

14. The Committee took note of the statements and agreed to continue its examination of the amendments to Australia's legislation, which would be circulated in SCM/1/Add.18/Rev.1/Suppl.5.

(iii) Other legislation

15. The Chairman noted that the delegation of Brazil had submitted the text of changes in Brazil's laws and regulations regarding the domestic administration of anti-dumping and countervailing measures. However, as there had not been sufficient time to complete the processing of the text (contained in SCM/1/Add.26/Suppl.3) for its consideration by the Committee at the present meeting, it would be taken up at the Committee's regular meeting in April 1993. The delegation of Korea had submitted supplementary information on its legislation (in SCM/1/Add.13/Rev.1/Suppl.2) which would also be included on the agenda of the meeting in April.

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

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

(i) New and full notifications (L/6630 and addenda)

17. The Chairman recalled that the Committee had held a special meeting on 29 April 1992 (SCM/M/60) to examine notifications of subsidies by signatories under Article XVI:1 of the General Agreement. In light of the questions raised at that meeting, the Committee had agreed to revert to a number of these notifications.

Japan (L/6630/Add.7 + Corr.1, and L/6804/Add.2)

18. The Chairman recalled that at the Committee's meeting on 29 April, the representative of Japan had indicated that his delegation would provide more information regarding the United States' questions on this notification.

19. The representative of Japan noted that Article XVI:1 stipulates that "If any contracting party grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory, it shall notify the CONTRACTING PARTIES" As his delegation had explained at the April meeting, Japan did not feel that the programmes referred to in the United States' questions 1 and 2 fell into this category. Japan believed that these programmes would not have trade distortive effects - that is, they would not increase exports or reduce imports. Regarding question 2, the Japan Electronic Computer Corporation was not a public corporation, as stated in the question. Regarding question 3, he made the following explanation: the Export-Import Bank of Japan had been established on 28 December 1950 under the Export-Import Bank of Japan Law and was supervised by the Minister of Finance as provided for in the law. Its purpose was to supplement and encourage export, import and overseas investment financing; it was wholly financed by the Japanese Government. Borrowing in Japanese yen was done through a trust fund bureau, government post office, life insurance and annuities special accounts and general account budgets. Borrowing in foreign currencies was done on international capital markets through the issuance of foreign currency denominated bonds and notes and other sources. Funds were also generated internally through the Bank's activities. The latter included export and import loans as well as overseas investment and project loans. The Bank also purchased public bonds, carried out equity investment and provided guarantees.

20. Regarding the Japan Key Technologies Centre (JKTC), this entity had been founded on 1 October 1985 by the joint authorization of the Minister of International Trade and Industry and the Minister of Post and Telecommunications. The purpose of the JKTC was to conduct activities to promote comprehensive research on technologies by the private sector. Its activities were as follows: capital investment for fundamental or applied research on key technologies to be conducted at the research companies set up jointly by the private sector; loan service provided mainly for applied research projects; mediation in arranging joint research for private companies wishing to conduct research with the national research institutes; consigned research, inviting experts from the governmental, industrial and academic circles to conduct research to be consigned to JKTC from private companies or other outside sources. JKTC had established a charitable trust, the operating profits of which were used to invite foreign researchers of key technologies to Japan. JKTC also provided an information service regarding key technologies. It also carried out various surveys with a view to contributing to the promotion of research in key technologies. Regarding the Scientific Computer Research Association,

this was organized on 26 November 1981 with the purpose of carrying out research and development on high-speed computing systems for scientific and technological uses based on national research and development programmes - so-called "large-scale" projects - which had been funded by the Agency of Industrial Science and Technology of the Ministry of International Trade and Industry. This Association had been dispersed on 30 November 1990. Its activities had covered a wide range of research and development in the area of advanced science and technologies, such as data processing of satellite images, plasma simulation for nuclear fusion, numerical weather analysis, aerodynamic simulation for aircraft, molecular science, high speed devices, parallel processing and integrated systems.

21. The representative of the United States thanked Japan for the information provided. However, his delegation did not necessarily share Japan's conclusion as to the status of the programmes referred to in the first two questions.

22. The Committee took note of the statements.

EEC (L6630/Add.20)

23. The Chairman recalled that at the Committee's meeting on 29 April the representative of the EEC had said that his delegation would supply its responses at that meeting in writing. This had been done in SCM/W/280. Also at that meeting, the representative of Australia had asked the EEC to provide answers to other questions which had been put to it, in particular regarding agricultural subsidies.

24. The representative of Australia said that there were some outstanding questions from the meeting of 22 October 1991 regarding certain agricultural measures, and asked whether the EEC had any information to provide on this.

25. The representative of the EEC said that he could not add to what he had already said on this item. He would report back that Australia was still interested in receiving responses to these questions.

26. The representative of Brazil said that his delegation regretted that the EEC did not have further information on this topic.

27. The Committee took note of the statements.

Indonesia (L/6630/Add.27)

28. The Chairman recalled that the notification from Indonesia had not been received in time to be circulated and examined by the Committee at its special meeting in April.

29. The representative of Indonesia reiterated his Government's decision that the export credit facility would no longer be granted as of 1 February 1990. This decision was a step toward the elimination of the

export credit facility. Regarding government assistance, subsidies were provided only for fertilizer applicable to the rice production programme. The amount of the subsidies was insignificant and was shown in the table in L/6630/Add.27. He said that as a developing country, Indonesia had the intention of greatly reducing the level of assistance provided by the government.

(ii) Up-dating notifications due in 1991 and 1992 (L/6805 and addenda, L/6973 and addenda)

30. The Chairman recalled that updates to the new and full notifications for 1990 had been received from the following delegations: Hong Kong (L/6805/Add.1, L/6973/Add.1), Japan (L/6805/Add.2), Austria (L/6805/Add.4 + Suppl.1 and Corr.1, L/6973/Add.6), Brazil (L/6805/Add.5), Chile (L/6805/Add.6), Australia (L/6805/Add.7), Switzerland (L/6973/Add.2), Indonesia (L/6973/Add.4) and New Zealand (L/6973/Add.5). While some full notifications, which had been due in 1990 and which had been received only recently, covered the latest developments and could be considered as up-dating notifications as well, the fact remained that only a few signatories had made their full and then up-dating notifications strictly in accordance with the decision of the CONTRACTING PARTIES. Regarding up-dating notifications due in 1992 (L/6973), only six such notifications had thus far been received. He said that it was particularly troublesome that among those delegations which had not submitted updating notifications for 1991 and 1992 were some major trading nations such as Canada, the EEC and the United States. He said that he left it to members of the Committee to consider and reflect on this unsatisfactory situation.

31. The representative of Australia said that his delegation had recently submitted questions to the Secretariat concerning responses to earlier questions on the Article XVI:1 notifications of the United States and Korea, and would expect written responses to these questions.

32. The Committee took note of the statements.

D. Semi-annual reports of countervailing duty actions taken within the period 1 January-30 June 1992 (SCM/148 and addenda)

33. The Chairman recalled that an invitation to submit semi-annual reports under Article 2:16 of the Agreement had been circulated in SCM/148. Responses to this request had been issued in addenda to this document. SCM/148/Add.1 listed those signatories which had notified that during the period 1 January-30 June 1992 they had not taken any countervailing duty action. These signatories were Austria, Colombia, Egypt, Finland, Hong Kong, Israel, New Zealand, Norway, Pakistan, Sweden, Switzerland and Turkey. The following signatories had notified countervailing duty actions: Canada (SCM/148/Add.2), Brazil (SCM/148/Add.3), United States (SCM/148/Add.4), Australia (SCM/148/Add.5) and Chile (SCM/148/Add.6). No reports had been received from: the EEC, India, Indonesia, Japan, Korea, Philippines and Uruguay.

34. He recalled that the deadline for responses to this request was 14 September 1992, and that signatories which had not taken any action in the period in question were also invited to inform the Committee accordingly. He said that judging from the list of signatories who had not made any report under Article 2:16 for this period, it appeared that not all signatories took this obligation seriously. He stressed the importance of making these reports within the deadlines prescribed, and urged the aforementioned delegations to submit their reports without further delay.

35. The representative of the EEC said that his delegation understood that this notification had already been made. The Community had taken no countervailing duty action in the period under review and would confirm this shortly in writing.

36. The representatives of India, Indonesia, Japan, Korea, the Philippines and Uruguay said that their respective governments had taken no countervailing duty action in the period under review and that the required notification would be submitted shortly.

37. Regarding the notification by Australia in SCM/148/Add.5, the representative of the EEC noted that the document did not indicate the amount of the subsidy found, and asked Australia to clarify this.

38. The representative of Australia apologised for the incompleteness of the information provided and explained that among the reasons for this were that the relevant database was being updated and that the people who normally handled this had been preoccupied with the Uruguay Round negotiations. He would do all he could to ensure that in future this information was provided. To the extent possible, his authorities would amend the notification, which he was confident could be done prior to the April meeting of the Committee.

39. Regarding the notification by Chile in SCM/148/Add.6, the observer from Mexico asked Chile what entity in Mexico had been informed of the initiation of the subsidy investigation on small trucks and vans, since his delegation had no knowledge of this.

40. The representative of Chile said that the Mexican embassy had been informed of the investigation.

41. The Committee took note of the statements.

E. Reports on all preliminary or final countervailing duty actions
(SCM/W/276 and 278)

42. The Chairman said that reports under these procedures had been received from the United States.

43. No comments were made on these reports.

F. United States - Countervailing duty investigations of imports of steel products from the European Community

44. The Chairman recalled that this item had been added to the agenda of the present meeting by the delegation of the European Community.

45. The representative of the EEC said that the Community had requested the inclusion of this item on the agenda because of its serious concerns over actions taken by the United States in the area of steel - to wit, a total of 84 anti-dumping and/or countervailing duty investigations in respect of steel imports from 21 countries, 38 of which concerned seven member States of the Community, and a volume of trade of about 2 million tons of direct exports from the Community alone. On 11 August, the US International Trade Commission (USITC) had issued preliminary injury determinations concerning certain flat-rolled carbon steel products. On 11 September, the US Department of Commerce (USDOC) had issued preliminary subsidy determinations concerning certain hot-rolled lead and bismuth carbon steel products from France, Germany and the United Kingdom. These decisions had caused concern beyond their intrinsic importance, since they were widely considered to be indicative of the approach the US would follow in the other cases. The Community had availed itself of the opportunity for bilateral consultations under Article 3 of the Code and would continue to do so as and when appropriate. He said that these cases were being perceived in the Community as the exploitation - by the US steel industry - of legitimate trade policy instruments in order to harass foreign competitors and divert world trade flows, blaming imports for what were primarily domestic problems.

46. He said that the nature of these actions and the real objective of the US industry were clearly demonstrated by the fact that the first anti-dumping and anti-subsidy complaints had been lodged against Community exporters only 16 days after the end of ten years of export restraints. He recalled that in 1982 the US had obtained commitments from all major steel producers to limit exports to the US within agreed ceilings. With minor changes, these voluntary restraint arrangements (VRAs) had remained in force until the end of March 1992. Not only had they been fully respected by Community steel exporters, but in recent years, ceilings had been far from being exhausted, with average use of those ceilings at 70 per cent. Furthermore, exports currently were at the same level as they had been in 1991, when VRAs were still in force. In light of these facts, it was clear that the real objective of the US industry was to pressure EC exporters into offering, and the US administration into accepting, renewed trade restraints.

47. He said that so far, the US authorities had not taken account of this very special situation in the conduct of these investigations, and instead, had issued determinations with only summary motivation and with many points left unexplained. Although the findings were preliminary, the Community could not but be concerned about the narrow approach taken in the investigations, and about the apparent disregard for the context in which the complaints had been lodged. Regarding the USDOC's subsidy

determinations, most of the alleged "subsidies" related to governments' investment activities. However, instead of a realistic assessment of such activities against the benchmark of what a private investor would do, the USDOC had artificially reconstructed a "private investor" totally divorced from the normal behaviour of economic operators; and in cases where a real private investor was involved, they had found it necessary to "adjust" its behaviour. Another crucial question in these determinations had been, and would be in other cases, how to allocate subsidies over time, i.e., how far back in time to look for countervailable subsidies. Here the US had again resorted to an arbitrary and unreasonable rule. As to the USITC injury determination, the crucial issue was that the US steel industry was trying to blame imports for problems resulting primarily from increased domestic competition; the USITC had not yet investigated thoroughly this and other factors which were the real cause of any injury.

48. The Community considered that the USITC preliminary determinations were unconvincing. During ten years of VRAs the US industry had never complained about the effects of these exports; thus it was hard to imagine that EC products had caused material injury over the same period in which the VRAs had been in force. The Community rejected the allegation that its products had suddenly caused material injury to the US steel industry. Regarding the volume of imports, he said that in all steel cases there were, overall, declining imports both in volume and value. Additionally, these imports - for many Community member States - constituted negligible market shares. He asked how, for example, Belgian steel exports whose market share had oscillated over two years between 0.1 percent and 0.2 percent of hot rolled steel, could have caused any discernible injury. Regarding the effect of the imports on prices, he said that there was no clear or persistent pattern of underselling by EC exporters. On the contrary, an examination of EC export prices for two flat steel products showed a consistent pattern of higher prices than their US competitors, and in the other two cases, over- and underselling prices had occurred at the same time. The Community expected that a fuller examination of the question of a causal link between subsidization and injury would take place in the next stage of the investigations.

49. In concluding, he said that the Community recognized that these determinations by the USDOC and the USITC were preliminary ones. However, this did not diminish the danger posed by their flaws and inconsistencies. The Community firmly counted on the application of much more rigorous standards, in full compliance with the United States' international obligations, in the subsequent phases of these investigations. The Community also reserved its right to raise this matter again in a manner and at a time it considered appropriate, including the possibility of recourse, if necessary, to the provisions of Article 17 of the Subsidies Code.

50. The representative of Austria said that while the pace of Austria's exports of cold-rolled steel had not yet led to preliminary or final action by the United States, the mere initiation of procedures as rigorous, cumbersome and costly as the US procedures constituted an unjustifiable

impediment to international trade. The initiation of so many cases on such an unprecedented scale in itself discouraged exports to the United States. There was no reasonable relationship between the efforts and costs incurred by a country under these procedures and the amounts of steel exports or the alleged subsidization margin. In Austria's view, the de minimis provisions of the US legislation should apply in the early stages of the initiation decision. Regarding the cumbersomeness and costliness of the procedures, he mentioned the short deadlines, the lengthy and complicated questionnaires, the requirement to repeat all questions before stating responses, translation costs, and adaptation of the cost accounting system to the US system. Furthermore, the US countervailing duty procedures required that the inquiry go back 15 years, which seemed a particularly unrealistic period given the pace of developments in the economy in general and of the restructuring in the global steel industry. He said that going back beyond 1985 posed particular problems for Austria: restructuring since 1985 had led to the departure of all top decision-makers and half of middle management in Austrian steel enterprises, and Austrian law required enterprises to keep records for only seven years. These were just a few examples of how difficult the requirements were and of the disproportionate effort and cost his country had to incur in defending its very small share of the US market.

51. The representative of Japan said that his delegation shared the concern expressed by many countries in both the Subsidies and the Anti-dumping Committees regarding the massive US countervailing duty and anti-dumping investigations on steel products. The USITC had made preliminary determinations of injury in August 1992 on three steel products imported from Japan. His country was particularly concerned about the turmoil in world steel trade that would be brought about by the US investigations, which could only discourage countries from participating in the negotiations for a multilateral steel arrangement. Thus, Japan urged the United States to take appropriate steps to meet these concerns.

52. The representative of Sweden, speaking also on behalf of Finland and Norway, said that these countries fully associated themselves with previous speakers. He noted that Sweden was also affected by the ongoing US investigation which had already had trade-chilling effects.

53. The representative of Brazil said that Brazil shared the concerns expressed by other suppliers to the US market over this sudden plethora of countervailing actions on steel products, which had disastrous effects on certain sectors in exporting countries including Brazil. Two elements were of particular concern to Brazil: the "chilling effect" of the investigations and the allocation of subsidies over time. There had also been contradictory determinations within short periods of time. This was a matter of serious concern to Brazil, especially considering the fact that all possible efforts had been employed by governments to reach satisfactory solutions through both bilateral and plurilateral consultations with the United States.

54. The observer from Mexico fully supported the views expressed by other delegations. Mexico was also affected by the US action, with problems similar to those outlined by Austria. Several long-standing subsidies - which had not been applied for some five or ten years - had been sought out and used as a basis for complaints. Mexico agreed with the EEC that the objective of this wave of investigations was to resume the VRAs or some other type of restriction aimed at providing protection to the US industry. Thus, Mexico asked that the United States scrupulously respect its international obligations.

55. The representative of the United States said that his country recognized the seriousness of the statements by delegations on the filing of complaints, the initiation of investigations and the conduct of these investigations thus far. His authorities agreed that there were very serious matters in question. In light of that, the United States had correctly not attempted to divine the motivations of the petitioners in these cases. Instead, consistent with the US authorities' statutory obligations - which reflected the provisions of the Subsidies and Anti-dumping Codes - the complaints had been judged on the basis of the evidence provided, and the maximum flexibility available had been afforded to allow for extensions of time and to accommodate verification schedules of the companies subject to investigation. Regarding the preliminary determinations that had been reached in certain cases, many issues had been flagged on the public record, where the investigating authorities believed there was a need for further information. Further argument had been invited from all of the parties involved so as to reach a thorough and well-founded conclusion on all of the issues at hand. Regarding the lack of uniformity in the results of the preliminary determinations, he stressed that these determinations were only preliminary and that each investigation necessarily presented its own set of facts. The US authorities were closely and objectively examining the information presented, in order to make the accurate determinations required of them. Regarding what were VRAs and the question of whether the levels pertaining under those arrangements somehow eliminated any injury to the domestic industry, he said that this might or might not have been the case, but that in any event this had not been an integral element of what were, in actuality, negotiated agreements; that is, there was nothing in the VRAs which said that if these levels were respected or if the level of imports fell short of the negotiated level, there was any presumption or conclusion of no injury.

56. Regarding points raised by the EEC on the countervailing duty preliminary determinations and the analysis of the private investor benchmark, his authorities would be happy to consider whatever additional information and arguments the parties involved wished to present. He said that the usefulness of the private investor benchmark had to be considered within the context of whether there was a reliable benchmark to use in the first place. Should there be no reliable benchmark due to the pervasiveness of state intervention in this particular sector, it was reasonable and appropriate to make whatever adjustments were necessary in order to arrive at a reasonable benchmark. Regarding the allocating of

subsidies over time, he said that it was important to note that given the nature of particular industries and the longevity of capital equipment, it was only reasonable that there should be some significant allocation over time of any benefit derived from the purchase of assets and the like. While there might be some disagreement as to the correctness of the time period chosen, the principle of allocating over time should not be subject to question. Regarding Austria's statement on the complexity of the questionnaires and the timing of the deadlines, he reiterated that the United States had respected all guidelines applicable to it in these matters, and that the USDOC had made a special effort in past years to reduce the complexity and length of the questionnaires. The detailed reporting requirements were there to ensure clarity in the responses and thus to ensure that determinations were based on accurate information. As to Japan's concern regarding the turmoil in steel trade, he said that his authorities hoped to be able to count on Japan's continued support in the appropriate fora to urge the elimination of subsidies in this critical sector, and remained willing and prepared to see negotiations to this end reach a fruitful conclusion.

57. The representative of the EEC reiterated that the Community recognized that these investigations were preliminary ones, and that it firmly counted on the application of much more rigorous standards in the subsequent phase.

58. The Committee took note of the statements.

G. Brazil - Imposition of definitive countervailing duties on imports of milk powder from the European Economic Community

- Request by the European Communities for conciliation under Article 17 of the Agreement (SCM/151)

59. The Chairman recalled that on 21 July 1992, the Committee had conducted a conciliation meeting on the matter of Brazil's imposition of provisional countervailing duties on imports of milk powder from the European Community (SCM/M/61, paragraphs 7-17). The Committee now had before it a request by the EEC (SCM/151) for conciliation under Article 17 of the Agreement concerning Brazil's imposition of definitive countervailing duties on these imports.

60. The representative of the EEC said that this request for conciliation concerned the obligation of signatories to follow proper procedures in countervailing duty proceedings and not to take countervailing measures without being able to demonstrate that all the requisite criteria had been fulfilled. In the Community's view, it was not acceptable that measures appeared from nowhere without any warning or disclosure to the party involved. It appeared that in the case at hand, Brazil had chosen to ignore those parts of the Subsidies Code which did not suit it.

61. He recalled that the Community had first requested conciliation on this matter at a special meeting of the Committee in July 1992 over the

premature imposition of provisional duties by Brazil in violation of Article 5:1 of the Code. While the Community maintained its objections regarding the provisional measures, this subject had been overtaken by Brazil's imposition on 11 August 1992 of a definitive countervailing duty of 20.7 per cent on imports from the EC, without any warning and without any pre-disclosure of the facts and considerations upon which the findings had been based. In fact, the Community had not been officially informed of the duty by Brazil until mid-September. The Community had concluded, on the basis of the information available in the decision on the definitive measures, that Brazil had violated Article 6 of the Code by failing to demonstrate that the domestic industry had suffered material injury. On 31 August 1992 the Community had requested consultations, to be held by 25 September 1992, with Brazil on this matter and had asked for further information - particularly with regard to injury - under Article 3:2 of the Code. In the absence of a reply by this date the Community had requested further conciliation in the Subsidies Committee. Subsequent to this request, Brazil had replied in writing in some detail to some of the Community's objections in writing and had offered consultations on 5 October in which it had made available data which should have been provided at the time of the final determination. Nevertheless, these consultations had not led to a mutually agreed solution.

62. He said that the Community's request for conciliation was motivated by Brazil's failure to prove injury in this case, in violation of Article 6 of the Code and Article VI of the GATT. Article 6:1 of the Code stated that a determination of injury shall involve an objective examination of (a) the volume of imports and their effect on prices in the domestic market, and (b) the consequent impact of these imports on domestic producers. These two criteria were elaborated on in Articles 6:2 and 6:3; Article 6:4 required that factors other than subsidized imports be considered. Article 6:2 required the investigating authority to consider whether there had been a significant increase in the import volume, either in absolute terms or relative to domestic production or consumption. The Community's trade data showed that exports of milk powder to Brazil had fallen from 63,000 tons in 1989 to 36,000 tons in 1991. Regarding skimmed milk powder, on which Brazil had based most of its allegations, exports had fallen from 30,000 tons to 13,000 tons, a decline of 57 per cent. This data had been supplied in the EEC's reply to Brazil's questionnaire. However, even on the basis of Brazil's own data, imports of milk powder from the EC - as a percentage of domestic production - had fallen from 22.6 per cent in 1989 to 20.4 per cent in 1991. Therefore, it was clear that on the basis of any data there had been a significant decrease, rather than increase, in imports of milk powder.

63. Regarding the impact on the domestic industry, this subject had not even been addressed in Brazil's decision. Except for a vague reference to production, there was no mention of any decline in the indicators listed in Article 6:3 - output, sales, market share, profits, capacity utilization. The reason that these factors had not been mentioned could be found in Brazil's written reply to the consultation request, which stated as follows:

"The Brazilian Authorities consider that the level of subsidized imports in relation to domestic production and the price differential between the subsidized imported product and the domestic price are sufficient proof of injury to the domestic industry."

Thus, it was clear that Brazil believed that it was necessary to look at import volumes and prices, and not at their consequent impact on the domestic industry; this explained the total absence of such an analysis from their determination, and was a blatant violation of Article 6:1. He said that one of the problems of Brazil's failure to assess the state of its domestic industry was that the Community had no means of checking such information. The Community had made great efforts to obtain at least production data, but the data received seemed contradictory: in July 1992 data received from the Ministry of Economics in Brazil indicated that milk powder production had increased by 50 per cent between 1989 and 1991, and that the output of skimmed milk powder had tripled. The definitive decision of August 1992 stated that domestic production had "stagnated". However, by September 1992 Brazil had informed the EEC in writing that the production of skimmed milk powder had fallen by 20 per cent. In the face of such statistical flexibility, the data on relative import volumes were suspect, particularly as Brazil had never provided data on the imports and production in tons used in the investigation. Furthermore, Brazil had made no effort to look at other factors which might have caused injury to its domestic industry, as required by Article 6:4. Another cause for concern was the fact that while the Community had always understood that this case involved only milk powder, Brazil's 15 September notification of definitive measures had referred also to duties on certain types of milk, and this had been confirmed in Brazil's semi-annual report of 8 October. The Community had never been informed or asked to provide any information on products other than milk powder.

64. He said that despite repeated requests, the Community still did not know how the figure of 27 per cent for the countervailing duty had been arrived at, and therefore had no way of knowing whether Brazil had complied with Article 4 of the Code. In order to protect its rights, the Community insisted that Brazil make available the full details of its calculation. Similarly, the Community still did not know how the provisional duty of up to 52 per cent had been calculated, and none of the facts emerging from Brazil's final determination explained the large difference between the provisional and definitive duty rates. The Community maintained its contention that the provisional duty had been imposed prematurely; the amount by which it exceeded the definitive duty had led the Community to conclude that it had been imposed purely as a device to exclude EC exports from the market during the season of greatest demand.

65. The Community objected to the secretive nature of the procedure followed by Brazil in this case; its unwillingness to inform the Community of its actions or to disclose the facts and considerations on which its findings had been based had deprived the Community of its rights of defence and had contributed to its decision to refer the matter to the Committee. The Community did not seek conflict in this case and was willing to

continue a dialogue with Brazil; it in no way questioned Brazil's right to take countervailing measures in the appropriate circumstances. However, the Community now requested conciliation under Article 17 of the Code and asked the Committee to review the facts involved and to seek, through its good offices, the development of a mutually acceptable solution. In the Community's view, the definitive countervailing duty should be withdrawn as soon as possible; however, in a spirit of conciliation, it was prepared to consider any proposal from Brazil on this matter.

66. The representative of Brazil said that his authorities had at all times been willing to consult with the Community on this matter. Written requests for information had all been replied to in substance, and further consultations had been held on 5 October 1992. He said that if the present request for conciliation was based solely on the failure to respond to the Community's request for bilateral consultations - as was suggested in paragraph 6 of SCM/151, it should now be considered moot. However, Brazil would not oppose the Community's request for conciliation.

67. He said that detailed and sufficient information had been transmitted bilaterally to the Community; thus, he would inform the Committee only of those points necessary for a clear understanding of the general situation, without prejudice to the presentation of additional information bilaterally, should this be found to be useful. He confirmed that on 11 August 1992 Brazil had imposed a definitive countervailing duty on imports of milk powder from the EC amounting to 20.7 per cent ad valorem across the board for the eight tariff lines involved, down from the range of 31 to 52 per cent which had been applied provisionally in April 1992. The duty had been applied by means of a decision published in the official gazette and with total transparency. The investigation had covered the period of twelve months immediately prior to the date of the initiation from April 1991 to March 1992. Regarding the amount of the subsidy, Brazilian authorities had considered export "restitution" values contained in monthly EC Commission regulations for the relevant period. He understood that had the total values been considered, the amount of the countervailing duty should have been 33.5 per cent. Brazilian authorities had taken into account Article 4:1 of the Code when they fixed the ceiling of the duty at 20.7 per cent, considering this lesser duty adequate to remove the injury. He did not know whether there had been any discussion - in consultations on the imposition of the definitive duty - of the possibility of the Community's withdrawing, eliminating, or limiting the subsidies in question. Regarding the volume of imports, it was true that there might have been misunderstandings as to the specific data mentioned in paragraph "E" of the decision published on 11 August. A rectification had been published on 20 August, of which the Community had already been informed. However, imports of milk powder from the Community by Brazil were neither negligible nor de minimis, as suggested in SCM/151. The Community had been offered detailed comparative information on imports by Brazil from the Community and from other sources. He then cited some data that indicated how Brazil saw this situation: from 1989 to 1992 only eleven exporters, apart from the Community, had supplied all or some of the eight tariff lines of milk powder to Brazil; these were Argentina,

Austria, Canada, Chile, New Zealand, Peru, Poland, Switzerland, Czechoslovakia, United States and Uruguay. The Community was by far the largest supplier with over 38,000 tons in 1989, over 17,000 tons in 1990 - a year of severe economic depression in Brazil - and, in spite of the continuing depression, over 38,000 tons in 1991. Taking the year 1991, and even if the quantities of all eight lines in question were added up, four of the twelve suppliers were de minimis suppliers, exporting less than one thousand tons a year; these were Austria, Chile, United States and Peru. Five countries exported between one thousand and 10,000 tons; these were Argentina, Canada, New Zealand, Czechoslovakia and Uruguay. The only two other significant suppliers apart from the Community were Switzerland and Poland. The latter was not a traditional supplier; after no exports to Brazil in 1989, it had had a remarkable 4,000 tons in 1990, rising spectacularly to 19,000 tons in 1991.

68. Switzerland, the only traditional rival to the Community, was down from 31,000 tons in 1989 to 16,000 in 1991. Besides the fact that the EEC had the largest participation in the market, two considerations had been important regarding the application of the duty to the Community and not to other suppliers: first, prices of skimmed milk from the Community had dropped more than 36 per cent from 1989 to 1991, and prices of whole milk more than 25 per cent; second, because Brazil did not cumulate, the investigation had not involved the other suppliers.

69. Regarding the determination of injury, he said that the provisions of Articles 6:1, 6:2 and 6:3 had been strictly followed and all relevant factors had been taken into consideration, as explained to the Community in bilateral consultations. Brazilian producers did not receive subsidies and could not compete with highly subsidized imports from the EEC. This unfair competition contributed decisively to the unfortunate stagnation of production in Brazil which had comparative advantages in this field and acute social problems. He noted that the EEC had not questioned the "standing" of the complainants in this case, or the "likeness" of the product subject to duty to the product suffering unfair competition.

70. In Brazil's view, the elements of the EEC's communication in SCM/151 had no basis or consistency, for reasons thoroughly explained to the Community in repeated bilateral consultations and exchanges of documents in Brasilia and Brussels, and which his delegation had tried to summarize. Specifically, Brazil rejected as groundless the following allegations in SCM/151: (1) that Brazil had imposed a provisional duty without a preliminary investigation and that it had therefore breached Articles 1 and 5:1 of the Code (paragraph 2); (2) that Brazil had infringed several provisions of the Code and had shown unwillingness to accept requests for consultations (paragraph 3); (3) that Brazil had failed to comply with Articles 3:4 and 4 (paragraph 4(b)); (4) that Brazil had previously violated Article 5:1 of the Code, had been unwilling to disclose information, had deprived the Community of its rights of defence, and had adopted "unacceptable behaviour" as a signatory of the Subsidies Code (paragraph 5); (5) that Brazil had failed to respond to any request by the Community for bilateral consultations on this matter (paragraph 6).

71. The representative of the EEC said that the Community had never alleged a violation by Brazil of Article 3. The Community's request for conciliation had followed its request in late August for consultations, after having waited a considerable amount of time for Brazil to agree to hold these consultations. In this type of proceeding when duties had been imposed one could not wait forever, as exports and trade were being affected. The Community was grateful for the information supplied by Brazil subsequent to the request for conciliation and was willing to continue bilateral discussion. However, the central point in this case was injury, and nothing Brazil had said had convinced the Community that Brazil had made a serious effort to look at the impact of these imports on the domestic industry. Brazil had not denied the approach it had taken regarding the analysis of injury. The Community appreciated the information Brazil had provided regarding the calculation of the amount of the duty and would be grateful for more information on this matter. However, this information should have been provided at the time of imposition of the definitive duty and not at a conciliation meeting two and a half months after that date. Regarding the questions of "standing" and "like product", the Community reserved its position. The Community was willing to continue discussions with Brazil on this matter, but wanted to be sure that Brazil had made a serious effort to examine the injury aspect of this case; as the Community was not yet convinced of the latter, it would have to consider what further steps it might take.

72. The representative of Brazil said that the information he had tried to summarize for the Committee had been sent to the Community. Thus, he was surprised to hear that only now the Community had understood certain criteria. He rejected the Community's contention that his authorities had taken the approach to the injury finding outlined by the Community. His authorities had explained to the Community in detail the criteria used to find the level of injury and why it had used the lesser duty principle. He said that in the renewed consultations, Brazil would be perfectly willing to continue discussing these matters with the Community; this would be the appropriate opportunity for the exchange of this information.

73. The representative of the EEC said that it was difficult, on the basis of what the Community had been told and the information received thus far, to see that much more progress was possible. Under these circumstances, the Community had to consider what further steps it might take within the framework of the Code. He asked Brazil whether it was prepared to provide the information on the state of the domestic industry specified in Article 6:3, and whether this information was available in a short period of time. Measures were already in force, and the Community could not wait forever to have information or consultations. To date, no information on this subject had been provided.

74. The representative of the United States said that it was very important to have this type of information during the investigation.

75. The representative of Brazil suggested that a further exchange of information relevant to both parties could take place bilaterally under the

conciliation process. He noted that the EEC had mentioned the importance of reading the Subsidies Code in its totality, and said that there were concepts in the Code that related to differences between signatories - for example, special and differential treatment for developing countries.

76. The Chairman said that the Committee had heard the views of the parties on this matter, and encouraged the delegations of the EEC and of Brazil to make further efforts to reach a mutually satisfactory solution consistent with the Code, as provided for in Article 17:2.

77. The Committee took note of the statements.

H. United States - Countervailing duties on non-rubber footwear from Brazil - Report of the Panel (SCM/94 and 96)

78. The Chairman recalled that the Committee had examined this report at its meetings of 26 October 1989 (SCM/M/44, paragraphs 86-95), 24 April 1990 (SCM/M/46, paragraphs 41-55), 25 October 1990 (SCM/M/48, paragraphs 52-62), 1 May 1991 (SCM/M/51, paragraphs 64-75), 22 October 1991 (SCM/M/54, paragraphs 40-44) and 28 April 1992 (SCM/M/59, paragraphs 70-75). The Committee had agreed in April to revert to this report at a later meeting.

79. The representative of the United States said that as the Chairman had noted, this report had been before the Committee for some time. Earlier in 1992 the United States had agreed to the adoption of another panel report on a related issue, and therefore requested the Committee to promptly adopt the report at hand.

80. The representative of Brazil recalled that in June 1992 the GATT Council had adopted a Panel report (DS18/R) which found that the United States was violating the most-favoured-nation requirement of Article I:1 of the GATT in matters relevant to the case at hand. Efforts were being made to resolve this problem, and Brazil was hopeful that they would succeed. However, in Brazil's view it would be inappropriate to adopt this Panel report at the present time, as this would not contribute to a resolution of the concrete dispute and might also lead to a misunderstanding of the underlying issues.

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

I. German exchange rate scheme for Deutsche Airbus - Report of the Panel (SCM/142)

82. The Chairman recalled that the Committee had considered this report at its meetings of 28 April 1992 (SCM/M/59, paragraphs 51-69) and 21 July 1992 (SCM/M/61, paragraphs 38-40).

83. The representative of the United States noted that this report had been before the Committee at several meetings. This Panel report offered an evaluation of an aspect of Article 9 of the Subsidies Code and the

Illustrative List of Export Subsidies that was of central importance not only to the question of subsidisation but also to the question of the free and full flow of international trade across borders. This was the issue of the fundamental rôle of exchange rates in equilibrating the flow of goods and services across borders, an issue directly implicated by the exchange rate guarantee scheme being provided under the measure in question. The United States felt that this was a particularly important point to have come before the Committee, and that it was therefore important that the Committee adopt the report. His delegation had noted in requesting the Panel and in the Panel proceedings that its concern was not merely the case at issue but the importance of the principle that the exchange rate mechanism functioned as intended and that exchange rate guarantees be provided in accordance with the provisions of the Code. In that regard, the United States had information that other exchange rate guarantee programmes - possibly inconsistent with the provisions of the Code - were being maintained by other member States of the EEC, and the United States had some concerns and questions about this. These would be conveyed in detail to the EEC delegation at the present meeting, with the hope of receiving information from the EEC at the Committee's next meeting. He said that the fact that other exchange rate guarantee programmes were extant in the Community and perhaps elsewhere around the world only underscored the importance of the Committee's adoption of this Panel report. His delegation hoped that the Community would be able to accede to that at the present meeting.

84. The representative of the EEC said that he would not repeat any of the Community's arguments against this report made at the April meeting. He stressed again that the Community considered this report to be seriously flawed, especially with regard to some of the legal reasoning followed by the Panel in arriving at its conclusions. As to the question raised by the United States of exchange rate guarantees in general, the Community looked forward to receiving any questions that delegation might have on any other such schemes which might exist in the Community, and would discuss the matter bilaterally in time. Regarding the US request for the establishment of the Panel on the German exchange rate scheme, he said that the Community had for a long time been of the view that dispute settlement procedures were about trade disputes, not about principles. The United States claimed to have a real trade problem concerning the exchange rate guarantee scheme for Deutsche Airbus; it had requested a panel, a panel had been set up and had delivered its report. Subsequently, the German Government had unilaterally suspended and then abolished the scheme. By so doing, the German Government had unilaterally removed any cause for concern the United States might have had concerning trade in civil aircraft and the German scheme. Thus, in the Community's view, the report should simply be removed from the Committee's agenda, rather than adopted.

85. The delegation of Japan shared the US view that the German scheme was prohibited under the Subsidies Code and firmly supported the adoption of the report. This was the second time this report had been discussed in the Committee and Japan strongly urged the EEC to agree to its adoption at the present meeting.

86. The representative of the United States said that his Government was consulting with the German Government on its action regarding the scheme, but had not been provided - nor had the Committee been provided - a full description of the action taken, which involved not only action regarding the exchange rate guarantee but also subsidiary supports provided to the company receiving the benefits of the scheme. His delegation raised this point as a concern and looked forward to receiving fuller information. Nonetheless, the United States disagreed strongly with the EEC concerning the issue involving Item (j) of the Illustrative List and asked that if the EEC could not agree to adopt the report at the present meeting, the Committee revert to it at its next meeting.

87. The representative of the EEC said that while the United States might be interested in other aspects of the relations between the German Government and its aerospace industry, the exchange rate scheme which was the precise subject of this Panel report had been abolished and as much information as possible had been provided on this action. Other related aspects of this matter would be taken up, if and when appropriate, in the appropriate manner.

88. The representative of the United States asked the EEC representative to confirm that he had said that dispute settlement procedures were about trade disputes and not principles, concerning the specific dispute at issue.

89. The representative of the EEC said that he could confirm that statement, which did not mean that the Community would agree with any gloss that the United States or any other delegation might put on that statement.

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

J. Other panel reports pending before the Committee

91. The Chairman recalled that at the Committee's meeting on 22 October 1991, the Chairman had made a detailed report on the consultations concerning the non-adoption of the four panel reports that had been pending before the Committee for periods ranging from five to eight years (SCM/M/54, paragraph 45). At the Committee's meeting on 28 April 1992 this problem had again been considered (SCM/M/59, paragraphs 76-91), and the Committee had been able to agree to the adoption of one of these reports: United States - Definition of Industry Concerning Wine and Grape Products (SCM/71). However, the other three reports had remained outstanding, and the Committee had agreed that he, as Chairman, would undertake further consultations with the parties involved in order to try once again to resolve this problem. The three reports in question were as follows:

- (i) EEC subsidies on export of wheat flour (SCM/42);
- (ii) EEC subsidies on export of pasta products (SCM/43);

- (iii) Canada - Imposition of countervailing duties on imports of boneless manufacturing beef from the EEC (SCM/85).

92. He reported that he had carried out these consultations with the three parties - namely, Canada, the EEC and the United States - in which a scenario that would allow for the adoption of these reports had been discussed. That scenario was based on the removal of all adverse trade effects of the measures in question by all three parties. The EEC and the United States had earlier accepted this scenario in principle and had already taken steps to this effect with regard to the panel reports on the export of wheat flour and on the export of pasta products. These two parties had now confirmed their willingness to try the approach proposed in the consultations. However, there had been no movement with regard to the panel report on manufacturing beef. Although it seemed there was still some prospect of useful discussions between the parties with the Chairman, there had been no progress at all to date on the removal of the trade effects of the Canadian measure.

93. He said that it was not acceptable that the dispute settlement system under the Subsidies Code remained blocked. It was therefore his intention to continue consultations on each of these reports separately. The reason for this was that with the adoption in April 1992 of the Panel report on "Definition of Industry concerning Wine and Grape Products" (SCM/71) there was, in his view, no further justification for treating these reports together or as some kind of package. Henceforth they would be treated individually and on their respective merits, and would be carried individually on future agenda of the Committee. He said that each party had to face its obligations and responsibilities with regard to these reports, and should not be allowed to hide behind an artificial linkage between them.

94. The representative of the EEC said that the Community was ready and willing to participate in any consultations the Chairman might want to hold on this subject in whatever form was thought appropriate. However, the adoption of the "Definition of Industry concerning Wine and Grape Products" Panel report had not made the Community change its mind about this situation which it had not created and in which it was the only party involved that was suffering trade effects. If a solution could be found based on the essential premise of removal of all trade effects in all of these disputes, the Community would certainly be willing to cooperate.

95. The representative of Canada said that his delegation welcomed the Chairman's proposal and his willingness to continue to work with the parties concerned in the resolution of this matter.

96. The representative of the United States said that his delegation also welcomed the Chairman's efforts to continue the process begun by his predecessors to end the situation that until recently had plagued this Committee. His delegation urged the EEC and Canada, as the two delegations still principally involved, to reassess their positions and to do whatever was necessary to find a mutually satisfactory resolution of this issue so that the Committee could soon eliminate all of these items from its agenda.

97. The Committee took note of the statements.

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

98. The Chairman recalled that the Committee had agreed at its April 1992 meeting to revert to the question of adoption of these Draft Guidelines at its October 1992 meeting.

99. The representative of the United States said that for the same reasons he had outlined at the Committee's meeting in April 1992 (SCM/M/59, paragraph 93) concerning what the United States considered to be somewhat outdated approaches and in light of work done on this issue in the Uruguay Round negotiations, his authorities considered it not to be appropriate to accept adoption of this particular paper.

100. The Chairman said that if no other delegation wished to speak on this item the Committee would proceed with the suggestion by the United States to remove the item from the agenda. He then proposed that the item be removed from the Committee's agenda.

101. The Committee so decided and took note of the statements.

L. Other business

(i) Removal of Item "K" from the Committee's agenda

102. The representative of Canada, referring to Item "K" ("Draft guidelines on the concept of specificity"), said that he understood that this item had been removed from the Committee's agenda at the request of the United States in the context of the proposed treatment of specificity in the Uruguay Round. Canada reserved the right to return to this subject should the Uruguay Round not deal with this matter satisfactorily.

103. The representative of the United States, referring to the fact that Canada had not indicated at the outset of the present meeting its wish to raise any matters under "Other Business", expressed the hope that this Committee would not get into the practice of adding items to its agenda under "Other Business" at the very end of the meeting. He said that while the rules were clear - and while his delegation would be within its rights in making a point of order on this matter - it would not do so at the present time.

104. The Chairman said that he could assure the delegation of the United States that this would not become a regular procedure in the Committee.

(ii) Initiation of countervailing duty investigation by Australia on exports of frozen pork from Canada

105. The representative of Canada drew the Committee's attention to concerns of his Government with the initiation of a countervailing duty

investigation by Australia on exports of frozen pork from Canada. He said that the programmes that had been listed in the application to the Australian Customs Service were not paid on frozen pork exported from Canada to Australia. Canada had had consultations with Australia under Article 3:2 of the Code on this matter, but continued to believe that there was no basis for the initiation of this investigation or for its continuation.

106. The representative of Australia said that all of the points he had made in the meeting of the Committee on Anti-dumping Practices on this issue (ADP/M/39) applied in the context of the countervailing duty investigation. Canada had said that the subsidies in question were not paid on frozen pork; by implication, he meant that the subsidies were paid to producers of pigs and to other products that might be involved in the upstream aspect of the production of frozen pork. Australia welcomed the extent to which Canada implicitly acknowledged that subsidies were paid, and had taken due note of the Panel findings on "United States - Countervailing duties on fresh, chilled and frozen pork from Canada" (DS7/R); any action taken by Australia would not cause offense in that respect.

107. The representative of Canada said that his statement should not be interpreted as acknowledging that Canada paid subsidies on any form of pork product.

108. The Committee took note of the statements.

M. Annual review and Report to the CONTRACTING PARTIES

109. The Committee adopted its Report (1992) to the CONTRACTING PARTIES (L/7113).

Date of the next regular meeting

According to the decision taken by the Committee at its April 1981 meeting (SCM/M/6, paragraph 36), the next regular meeting of the Committee will take place in the week of 26 April 1993.