

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

SCM/M/4

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Committee on Subsidies and  
Countervailing Measures

DRAFT MINUTES OF THE MEETING HELD ON  
23-24 OCTOBER 1980

Chairman: Mr. P.R. Barthel Rosa

1. The Committee on Subsidies and Countervailing Measures held its fourth meeting on 23-24 October 1980.
2. The Committee adopted the following agenda:
  - A. Adherence of further countries to the Agreement and participation of observers.
  - B. Examination of national legislation and implementing regulations (SCM/1 and addenda).
  - C. Notifications of subsidies (L/4932 and addenda).
  - D. Reports on all preliminary or final actions with respect to countervailing duties (SCM/W/4).
  - E. Semi-annual reports of all countervailing duty actions taken within the preceding six months (SCM/4 and addenda).
  - F. Other actions taken under the Agreement (commitments, dispute settlement procedures, etc.)
  - G. Report to the CONTRACTING PARTIES.
  - H. Other business
    - (a) Panel members
    - (b) Groups of experts
    - (c) Other
3. The Chairman recalled that Mr. Carlo Jagmetti had been transferred to another assignment outside Geneva and thus vacated the post of Vice-Chairman of the Committee. As a result of informal consultations he proposed that Mr. B. Eberhard (Switzerland) be nominated as the Vice-Chairman. It was so decided.

(A) Adherence of further countries to the Agreement and participation of observers

4. The Chairman informed the Committee that since its May 1980 meeting the following countries had signed the Agreement: India, the Republic of Korea and Yugoslavia.

5. The representative of Yugoslavia said that her Government had accepted the Agreement on 16 September 1980, subject to ratification. The ratification procedures were now under way and after their completion the Agreement would have the force of law. She also said that several measures had recently been adopted in Yugoslavia which resulted in a considerable decrease of export subsidies. Systems of subsidization had also been reorganized and several powers of the Government had been transferred to self-governing communities. Further measures were envisaged to decrease further the level of export subsidies. However, being a developing country and facing the necessity of diversifying its exports Yugoslavia was not, for the time being, in a position to eliminate these subsidies completely. It was her Government's opinion that special and differential treatment agreed during the MTN and contained in the Agreement allowed developing countries to continue to grant export subsidies on industrial products and to decide unilaterally at what point of time and to what extent they would be able to decrease or eliminate these subsidies. This was how her Government interpreted Article 14:5 of the Agreement which provided for unilateral and autonomous decisions of developing countries. If this was not the case the special and differential treatment of developing countries would be nullified.

6. The representative of Korea said that his Government signed the Agreement on 10 June 1980 and that the Agreement entered into force for his country as from 10 July 1980. His Government would take all necessary steps for the implementation of the Agreement. He hoped that all countervailing actions which will be taken by the signatories should be in strict conformity with the relevant provisions of the Agreement and the spirit of GATT.

7. The Chairman recalled that a request for observer status from Mexico was pending before the Committee and said that consultations with the Mexican delegation had confirmed that Mexico, which had actively participated in the negotiations of the Subsidies/Countervailing Measures Code, had an interest in this area. In the light of further consultations he proposed that Mexico be invited to follow the proceedings of the Committee in an observer capacity.

8. The Committee agreed to invite Mexico in an observer capacity.

9. The representative of the United States said that he did not object to the invitation of Mexico as an observer, but he would like to reserve his rights to come back to this matter at a later stage if circumstances so required.

10. The Chairman referred to a request from the International Chamber of Commerce to participate in the proceedings of the Committee in an

observer capacity. He had consulted informally with signatories and he had found that there would be certain difficulties in agreeing to extend an invitation to the ICC to attend meetings of the Committee on a regular basis. He would therefore send a letter to this effect to the ICC and he would also point out that, in accordance with the procedures for participation of observers it would always be open to the Committee to invite, as appropriate, the International Chamber of Commerce to follow particular issues of the Committee in an observer capacity. It was so decided.

11. The Chairman drew the Committee's attention to the note by the secretariat (SCM/W/6) setting out all information available on actions taken under the Agreement. This note would serve as a background paper for the annual review of the operation of the Agreement. This annual review would be carried out while examining points B to F of the agenda.

(B) Examination of national legislation and implementing regulations

12. The Chairman recalled that an invitation to submit notifications of national legislation and implementing regulations had been contained in document L/4946, paragraph 4. At its May 1980 meeting the Committee had agreed that signatories should submit their notifications by 30 June 1980. On the basis of notifications received by that date the Committee would, at this session, initiate a systematic examination of national legislations (SCM/M/3, paragraph 26). As of the day of the meeting the secretariat had received notifications from the following signatories: European Communities (SCM/1/Add.1), Sweden (Add.2), United States (Add.3), Norway (Add.4), Finland (Add.5), Switzerland (Add.7), Japan (Add.8) and Austria (Add.10). The Chairman invited signatories who had not submitted their notifications to inform the Committee when this would be done.

13. The representative of Uruguay said that his authorities had been considering measures and taking steps to implement their obligations under the Agreement. In this respect, a law had been passed recently, adopting the text of the Agreement, thus formally incorporating it in the national legislation of Uruguay. Additionally, his authorities were discussing measures to implement the substantive elements included in the Declaration by Uruguay (L/4924). In particular, they were engaging in discussions with the United States authorities, among others, regarding the interpretation of these elements and the way to best reflect them in their implementation. He expressed his hope to be in a position to present these measures to the Committee in the near future.

14. The Chairman invited signatories which had not submitted their notifications to endeavour to submit them as soon as possible, preferably by 31 December 1980.

15. The representative of the United Kingdom speaking on behalf of Hong Kong said that Hong Kong had accepted the Agreement and therefore all the obligations contained in the Agreement. Hong Kong's present policy was not to subsidize its exports nor to take any countervailing actions. Should Hong Kong at any time contemplate any action relevant to this Agreement such action would be in accordance with the provisions

of the Agreement and the necessary changes to its laws and regulations would be notified to the Committee in accordance with Article 19:5. The representative of Korea said that his Government did not see any necessity to amend existing provisions concerning countervailing measures. Therefore the GATT secretariat would be notified by the end of October of the relevant part of the existing customs law and the enforcement decree.

16. The representative of Chile informed the Committee about the steps taken in the process of ratification of the Agreement. At present the Legal Commission of the Chilean Government was preparing its final report to be submitted to the Government for the final decision. This decision would be taken in the course of the next few weeks. He also reiterated the declaration made at the May meeting (SCM/M/3, paragraph 15) with respect to the application of the Agreement by Chile.

17. In view of the fact that not all the signatories had submitted their notifications the Chairman enquired whether the Committee wished to proceed with the systematic examination of the notifications received at this meeting. As the Committee so wished the notifications were taken one by one.

#### European Communities

18. The representative of the United States referred to the national legislation of the European Communities (SCM/1/Add.1). He was interested in the initiation process and the time allowed to the parties subject to an investigation to respond to the questionnaires. The representative of the European Communities said that the regulation did not provide for a fixed time limit, but he fully agreed that sufficient time should be given to the respondents. He recalled that the Agreement contained very detailed procedures on consultation with governments of the exporting countries even before the initiation of an investigation. The EEC had always applied these rules very extensively. Although the procedures in the case of a countervailing investigation differed from those in the case of an anti-dumping investigation, it was absolutely clear that not only the foreign governments but also all parties concerned should have enough time to respond to questionnaires and to prepare their defence.

#### Sweden

19. The representative of the United States referred to the notification from Sweden (SCM/1/Add.2) and said that it did not contain any reference to material injury. The representative of Sweden said that in the Swedish legislation the concept of injury was based on the concept of the Agreement itself and had any action been taken it would have strictly followed the provisions of the Agreement including those on injury.

#### United States

20. The representative of the European Communities referred to the legislation of the United States (SCM/1/Add.3). He said that there was a fundamental change in this legislation since the adoption of the

Agreement. He welcomed this fact and recognized the progress made. He said that several problems raised by him at the meeting of the Committee on Anti-Dumping Practices were also relevant to the countervailing area. He was not very happy with the formulation of the question of causality. There was a difference between the relevant United States' provision and the text of the Agreement. The latter required that there should be injury by reason of subsidization while the Trade Agreement Act spoke about reasons of subsidized imports. He also remarked that there was no precise guidance on the definition of the term subsidy and on calculation of the amount of a subsidy. He expected that appropriate guidelines in this respect would emerge from the work of the group of experts established by the Committee. The representative of the United States said that the formulation of causality in the United States legislation had the same meaning as that in the Agreement. He also said that the authorities of his country were engaged in the process of reviewing their regulations on countervailing duties. A draft proposal would be submitted to the Committee for comments.

21. The representative of Sweden referred to conditions under which an investigation could be terminated or suspended and questioned whether the Agreement provided for quantitative limitations as opposed to price undertakings. He had serious doubts whether the United States legislation was, in this respect, in conformity with the Agreement. The representative of the United States said that Article 4:5 was drafted in such a way that price undertakings constituted one possibility but it also referred to other measures and these other measures covered an undertaking that involved some sort of quantitative elements. The representative of Sweden said that this was a matter the Committee should discuss in some detail. His position was that quantitative undertakings were not possible under the Agreement. He noted that there was a difference between relevant provisions of this Agreement and of the Anti-Dumping Code. The representative of the United States said that they were conscious of the differences between the two Agreements. The Agreement on Subsidies/Countervailing Measures referred to other measures while the Anti-Dumping Code did not. The United States legislation was carefully drafted to be consistent with this Agreement.

22. The Chairman said that proposals had been made that the Committee revert to the precise meaning of the provisions on undertakings in Article 4:5 of the Agreement. This matter would be examined at an appropriate moment. It was so agreed.

23. No comments have been made on communications from Norway (SCM/1/Add.4), Finland (SCM/1/Add.5) and Switzerland (SCM/1/Add.7).

#### Japan

24. The representative of the European Communities referred to the legislation of Japan (SCM/1/Add.8). He recalled his comments made on the anti-dumping legislation and said that the same comments applied to the countervailing area. He insisted that the legislation under consideration should provide for disclosure conferences, just as Japan

had always insisted on such conferences with the EEC. The representative of Japan said that the legislation of Japan was in conformity with the Agreement. In particular Article 6 of the Cabinet Order provided for interested parties to be able to see any evidence used in the investigation. The representative of the European Communities said that there was a fundamental difference between showing evidence on file and a disclosure conference. Evidence was all material received from parties to an investigation while a disclosure conference referred to the intentions of the Government, to the conclusions drawn by the Government on the basis of that evidence. The representative of Japan said that although he considered that their legislation was in conformity with the Agreement he would nevertheless convey these comments to his Government.

25. The representative of Sweden quoted provisions of Article 8:1 of the Japanese Customs Law and wanted a confirmation that the facts referred to therein would be based on the results of an investigation conducted in conformity with the Agreement. He also said that the definition in Article 8:4 of the Customs Law which used the wording "any person" seemed to be broader than that resulting from the Code. As to Article 10 of the Cabinet Order he pointed out that it was very important that consultations with the countries subject to countervailing actions be provided for, even before the initiation of any investigation and then throughout the investigation. The representative of Japan said that they had had no experience regarding countervailing actions but should they initiate such an action it would be in full conformity with the Agreement.

26. The representative of the European Communities said that Article 11 of the Cabinet Order referred to a Customs Tariff Council. He wanted to know what the composition of this Council was. The representative of Japan said that the Council was a consultative body composed of scholars and men of experience in different fields, including industries. The representative of the United States said that a system which allowed industry to have a major impact on the outcome of countervailing investigations caused very great concern to his delegation. He said that the Japanese delegation should convey this concern to their authorities in Tokyo. The representative of the European Communities shared the concern expressed by the previous speaker and urged urgent reconsideration of this provision. The representative of Japan said that all these remarks would be conveyed to his Government.

#### Austria

27. The representative of Austria said that although the Agreement had force of law in his country, his authorities were preparing a legislation which would be submitted to the Committee, the purpose of which was to adapt the present legislation to the wording of the Agreement.

#### Canada

28. The delegation of Canada submitted its draft legislation for discussion in the Committee. The representative of the United States said that a number of comments made on the anti-dumping part of this

legislation were also relevant in its countervailing area. He had however some more questions. It was not clear, for example, how offsets would be treated in the calculation of the amount of a subsidy under section 2. Would they be deducted from the amount of the subsidy? Another point concerned material injury in the case of agricultural products (section 2:1) where he noted a serious deviation from the Agreement. The Canadian draft said that material injury meant "in respect only of the subsidizing of an agricultural product, an increase in the financial burden on a federal or provincial government agricultural support programme." The Agreement, however, only provided that such an increase should be taken into account in determining the injury, but it did not mean that it was, ipso facto, material injury. Definition of "subsidized goods" in section 2:1 went well beyond the scope of Article VI of the General Agreement. Definition of a subsidy in the same section was also inconsistent with the Agreement as it also covered benefits that "will accrue". The representative of the European Communities said that he wanted to raise the same points as the previous speaker. He added that the definition of "subsidized goods" included downstream subsidies, i.e. subsidies on products incorporated in another product. The representative of Canada said that the question of offsets would be covered in a regulation and that allowances would be provided for them. As to the injury in the case of an agricultural product he thought that Article 6 of the Agreement was discretionary. Furthermore, in such a case the definition in the Canadian draft should be read in its entirety - sub-paragraphs (a) and (b) together and it would then be only one aspect to be taken into account. As to the definition of subsidized goods, he did not think it was too broad because it contained only manufacturing functions. In the definition of a subsidy the words "will accrue" were meant to deal with payments not effectively made at the time when an agreement was entered into (for example a loan guarantee), but which were taken into consideration in fixing the prices. The representative of the United States said that the meaning of words and terms agreed during the negotiations of the Agreement should be observed and the domestic legislation should not go beyond this meaning. For example subsidies to be paid in future were not considered as subsidies by the Agreement. Article 6:3 of the Agreement listed factors which were to be taken into account to determine whether there was injury. It was quite different from saying than any increase on a government support programme was, ipso facto, material injury. Inconsistencies with the negotiated text in the Canadian draft raised problems of compliance with the Agreement. The representative of Canada said that the Canadian authorities could not take the words of the Agreement and make them Canadian legislation; however, they were trying to be as open as possible in terms of the domestic legislation.

29. The representative of the European Communities referred to section 3 and said that the Canadian draft provided for the full compensation for the amount of a subsidy by means of a countervailing duty while the Agreement provided that it was desirable that the duty be less if such lesser duty would be adequate to remove the injury to the domestic industry. He regretted that the Canadian legislation did not follow the Agreement although he recognized that the Agreement was not mandatory in this request.

30. The representative of the European Communities said that he had raised the problem of massive imports under section 6 while discussing the anti-dumping legislation. These comments were also relevant here and he urged that the delegation of Canada reconsider this provision. He also referred to section 9 and said that any preliminary determination should be based on sufficient proof of subsidization and injury and that such determination should be published and duly motivated. Referring to section 9 he said that he urged delegations to provide for greater transparency and better motivation of decisions taken. As to section 23 he recalled the point made while discussing the anti-dumping legislation that importers and producers should have the same rights to go to the Canadian Tribunal.

31. The representative of Canada thanked the Committee for comments made and said that they would be taken into account in the final drafting of the legislation. The Chairman said that he would like to express, on behalf of the Committee, appreciation of the Canadian delegation's willingness to bring before the Committee the draft proposal.

32. The representative of the European Communities said he hoped the Committee would have an occasion to come back to all national legislations some time next year. He was interested in the final legislation of Canada, he would also like to see whether Finland and Japan would notify the composition of committees which participated in anti-dumping and countervailing proceedings.

33. The Chairman said that the item of examination of national legislation would remain on the agenda, not only to deal with new notifications which certain signatories were expected to submit but also to provide an opportunity to come back to any questions raised during any of the previous examinations. The Committee so agreed.

(C) Notifications of subsidies

34. The Chairman recalled that all contracting parties to the GATT were obliged, by virtue of Article XVI:1 to notify their subsidy practices according to the Decision of the CONTRACTING PARTIES at their twentieth session (BISD, 11th Supplement, page 58). This obligation had been reaffirmed by Article 7:1 of the Agreement, thus the signatories should feel specially obliged to fulfill this obligation. However only four signatories had submitted their notifications. The unsatisfactory situation with respect to notifications due in 1980 could be partially explained by the fact that these notifications were only supposed to update full notifications made in 1978. However, he wanted to draw the signatories attention to the fact that in January 1981 they would be requested to submit new and full responses to the questionnaire on subsidies (BISD, 9th Supplement, page 193-194) and urged them to comply fully. He proposed that this questionnaire be maintained as the basis for notifications on the understanding that in the future the Committee might wish to examine whether the questionnaire was adequate.

(D) Reports on all preliminary or final actions with respect to countervailing duties

35. The Chairman said that since the May meeting the secretariat had received such reports from the European Communities and the United States. A checklist of these reports had been circulated in SCM/W/4.

(E) Semi-annual reports of all countervailing duty actions taken within the preceding six months

36. The Chairman said that semi-annual reports had been submitted by the following signatories (SCM/4 and addenda):

Austria	- SCM/4 - no action taken
Canada	- SCM/4/Add.3
European Communities	- SCM/4
Finland	- SCM/4 - no action taken
Norway	- SCM/4/Add.2 - no action taken
Sweden	- SCM/4/Add.2 - no action taken
Switzerland	- SCM/4/Add.2 - no action taken
United States	- SCM/4/Add.1

37. The representatives of Brazil and Chile informed the Committee that no countervailing actions had been taken during the period 1 January 1980-30 June 1980.

38. The representative of the European Communities answering a question by the representative of Canada said that the report submitted by them contained only actions vis-a-vis signatories to the Agreement.

39. The representative of Canada referred to the report by the United States and said that there were a few cases which were caught up in the transition period from the old to the new legislation. He felt that in these cases the United States was collecting countervailing duties completely outside the scope of the Agreement. He thought that the least the United States could have done was to have waived these duties, or at least deferred them until such time as to be able to apply in cases concerned an injury test.

40. The representative of Brazil said that his authorities were examining calculations and criteria used for the imposition of countervailing duties by the United States on pig iron imported from Brazil. He reserved his right to revert, if necessary, to this question at the next meeting of the Committee.

41. The representative of the European Communities referred to "transitional cases" which the United States authorities were trying to up-date. There were some cases where for many years there had been no

exports to the United States and he wondered whether it was really appropriate to send questionnaires and gather information from the EEC enterprises. The representative of the United States, referring to comments made by representatives of Canada and the European Communities said that any provisional duties collected where there was no injury would be reimbursed but he admitted that this procedure was not sufficient and he would see what could be done to expedite consideration of outstanding cases.

(F) Other actions taken under the Agreement

42. The Chairman drew the attention of the Committee to the fact that the Government of Korea, while signing the Agreement, had entered into a commitment under Article 14:5. In accordance with the procedures adopted earlier by the Committee this commitment had been circulated in SCM/3 on 21 July 1980 and was before the Committee. The Committee took note of the commitment.

43. The representative of Sweden said that signatories had difficulties in assessing commitments without information on the particular subsidy systems operated in the country entering into a commitment and the effects of the commitment on such systems. He thought that it would be useful to have information that would facilitate the appreciation of a commitment. The fact that a country entered into a commitment established a certain balance of rights and obligations under the Agreement on a higher level. This was another reason why it was necessary to have more transparency on the background of a commitment. As to the Korean commitment he said that his authorities had been trying to get information from Korea, but they had not been successful. Therefore the fact that he did not object to the commitment would not prevent him from coming back to some questions which, at present were unknown because of insufficient information. He also expected that the Korean delegation would help in getting all the necessary information. The representative of the European Communities said that he shared the views expressed by the representative of Sweden. He took note of the Korean commitments but he reserved his rights to raise certain points in the future if it deemed necessary and he hoped that in such a case the delegation of Korea would be willing to co-operate.

44. The representative of Chile said that his delegation had requested consultations with the delegation of the European Communities under Article 12 of the Agreement. He was pleased to inform the Committee about the satisfactory outcome of these consultations and wanted to thank the delegation of the European Communities for their co-operation.

45. The representative of the United States raised the point of the status of a country which had signed the Agreement but had not ratified it.

(G) Report to the Contracting Parties

46. The Chairman recalled that in accordance with Article 19, paragraph 6 of the Agreement the Committee should inform the CONTRACTING PARTIES to the GATT of developments during the period covered by the

annual review. He suggested that the secretariat prepare a draft report which would be submitted to the Committee for examination and adoption.

(H) Other business

(a) Panel members

47. The Chairman informed the Committee that the following signatories had indicated to him persons available for serving on panels: Austria, Brazil, Canada, Chile, European Communities, Finland, Japan, Norway, Sweden and the United States (SCM/W/6). Other signatories were invited to do so without delay.

(b) Group of Experts

48. The Chairman recalled that at its May 1980 meeting the Committee had decided to set up, in conjunction with the Committee on Anti-Dumping Practices, a group of experts with the task of identifying, at technical level, problems involved in the definition of the word "related". This group had met for the first time during the session of the Anti-Dumping Committee. It had elected as its Chairman M. M. Lemmel (Sweden) and had had a discussion on the organization of its work. It had been decided that the experts would meet at the end of January 1981 and they had been invited to submit, prior to that meeting, their preliminary comments on the substance of their work. The group would report at the next meeting of this Committee. At the May 1980 meeting the Committee had also decided to set up a group of experts with the task of identifying, at the technical level, problems involved in the calculation of the amount of a subsidy. The following signatories had so far nominated their experts to serve on this group: Brazil, Canada, Chile, European Communities, Finland, Japan, Pakistan, Sweden, Switzerland, United States and Uruguay. The group had met during this session of the Committee. It had decided that the Chairman of the Committee should also chair this group. The group had agreed on how to proceed with its work. The next meeting would be held around the end of January to discuss substantive aspects of the question and the group would report to the Committee.

(c) Other

49. The representative of India referred to the invocation by the United States of the non-application clause under Article 19:9 of the Agreement with respect to India. He recalled that India became a Party to the Agreement on 11 July 1980 and the Agreement came into force for India on 10 August 1980. On 27 August 1980 the Director-General circulated to the contracting parties a communication from the United States invoking Article 19:9 against India. The United States' action was a source of deep concern for India because the United States imposition of countervailing duties in respect of certain Indian exports without proof of injury to its domestic industry had resulted in an adverse impact on India's trade and the creation of an uncertain trading environment prejudicial to India's legitimate exports interests of dutiable products to the United States. He also considered that the invocation of Article 19:9 of the Agreement by the United States constituted, on several grounds, a contravention of United States

obligations as a signatory to the Agreement on Subsidies and Countervailing Measures. It resulted clearly from the Agreement on Subsidies and Countervailing Measures that the decision for undertaking commitments under Article 14:5 would be autonomous, voluntary and purely as a result of sovereign decisions to be taken by individual developing countries. Even the United States authorities did not contest the right of any developing country to accede to the Agreement without making such commitments if it so decided as it was clear from their statement made in the Committee on 8 May. Although the formal United States communication to the Director-General of GATT did not contain a reason for invoking Article 19:9 the United States position of linking this action with commitments envisaged under Article 14:5 had already been clearly established in the General Policy Statement made by the United States delegation in the meeting of the Committee held on 8 May 1980 to the effect that they could extend the benefits of the injury test accruing from their new Countervailing Duty Law only to those developing countries that had undertaken commitments with regard to their export subsidy practices. The United States interpretation might be construed as constituting a conditional acceptance of or a reservation to the Agreement itself which the United States authorities had unilaterally chosen to make even after the conclusion of the negotiations and after the obligations accepted by them in terms of the Agreement had entered into force. It was also his contention that whereas Article 19:9 might be invoked by any Party to the Agreement, he would question the validity of an invocation of this Article by a Party with the objective of obtaining concessions from another Party to the Agreement which were not envisaged in the provisions and went beyond the balance of rights and obligations contained in the Agreement. In this context he recalled the report of the Working Party on the review of the operation of Article XXXV of the General Agreement with respect to Japan which had been adopted by the CONTRACTING PARTIES on 7 December 1961 and was contained in document L/1545. Paragraph 20 of the Working Party's report stated, inter alia, that "the CONTRACTING PARTIES might, however, wish to take the steps to dispel the idea that the invocation of Article XXXV was a part of the normal practice of accession or that the invocation of Article XXXV could legitimately be used as a bargaining lever for gaining privileges or advantages over and above those provided for in the General Agreement." He also referred to technical procedures followed by the United States authorities invoking Article 19:9 which he considered inappropriate and rendering the non-application ineffective. He believed that these matters were of interest not only to the members of this Committee but to potential signatories of the Agreement, and more generally to the CONTRACTING PARTIES themselves. Additionally, the points of concern raised by him would undoubtedly have a bearing on the future interpretation and implementation of the Agreement which was of crucial interest and concern to developing countries. He therefore invited the Committee to debate on these points as early as possible. He suggested that the Committee might meet in a special session to pursue these discussions and come to such findings and conclusions as may be appropriate.<sup>1/</sup>

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<sup>1/</sup>The statement by the representative of India is fully reproduced in SCM/W/7.

50. The representative of Colombia speaking on behalf of developing countries said that the questions raised by India were followed by these countries with great interest. She supported the position of the representative of India and urged the Committee to meet in order to deliberate and reach conclusions on these issues. This discussion would be of great importance, not only in relation to the application of the Agreement but also to the application and interpretation of the General Agreement. She said that her Government had been studying the possibility to accede to the Agreement and the conclusions reached in the Committee would be of great importance for its final decision.

51. The representative of the United States wanted guidance from the chair as to how to deal with a case involving a signatory of the Agreement to whom the United States was not applying the Agreement.

52. The Chairman said that although the delegation of India had raised an issue which related to the signatory which did not apply the Agreement to India it was up to the Committee to decide on the relevance of the issue raised. He invited other delegations to express their views on this matter.

53. The representative of the United Kingdom speaking on behalf of Hong Kong said that he shared the concern expressed by the delegation of India. The Committee had a right and an obligation to discuss this matter. He believed it was important that all Agreements negotiated in the MTN be administered and interpreted in an equitable and reasonable manner. There were indications that the United States saw a relationship between commitments under Article 14:5 and the non-application under Article 19:9. This contention had to be examined in detail as there was nothing in the Agreement itself which supported this contention. The United States' attitude was difficult to accept if the wish was that developing countries should participate to the full in the Agreement. He supported India's request for a special meeting to discuss these very important points for developing countries.

54. The representatives of the European Communities said that the declaration by India would be very carefully studied and that his delegation was ready to discuss this matter at any GATT forum considered to be appropriate. The position of his delegation on the substance was well known. He understood the concern of the Indian delegation but on the other hand he recognized the rights provided for under Article 19:9 of the Agreement. The representative of Canada said that it was not entirely clear what role the Committee should play with respect to questions raised by India. He thought that the case of Article 19:9 was a right which might be hard to question. At the same time he could see that there might be a relationship between this Article and other Articles of the Agreement which would justify that the Committee addressed questions of interest to the signatories. As to the question of Article 14, his delegation had indicated its views in the past and they remained the same. He was open as to the proposal to have a special meeting, however, he was not sure what scope there was for the Committee to deal with.

55. The representative of the United States said that he was still confused as to the nature of his participation in this discussion. He noted that there was a question about the invocation of Article 19:9 and he wanted to stress that the United States had abided by the provisions of this Article to the fullest extent. As to the meeting of the Committee he believed that it was appropriate for the Committee to examine any issues that signatories felt relevant to the course and conduct of its business. He would, however, object if it was the intent of anyone to have such a meeting to deal with substantive questions without the question of the relationship between the United States and a country which had signed the Agreement but to whom the United States did not apply this Agreement having been clarified.

56. The Chairman said that he believed the Committee had to guide itself by the provisions of Article 16:1 of the Agreement which read that the Committee would meet at the request of any signatory and that it would afford signatories the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives. Important issues had been raised and should be examined although the matter on how the Committee might address these issues was something which had to be looked into. He considered that the Committee could not at this point of time prejudge how this question should be dealt with by the Committee. The signatories would have to look into this matter. On the other hand the Committee was mandated to afford signatories the opportunity of consulting on any matters related to the operation of the Agreement and it was also possible to convene a meeting of this Committee at the request of a signatory. He proposed that at this stage the Committee should take note of the statements made and in the light of the request by the representative of India and in the light of Article 16 the Committee agree that it would meet at a date to be determined in consultation between the Chairman and interested parties so as to afford signatories an opportunity of consulting on this matter. It was therefore understood that by agreeing to meet to discuss this matter the Committee was not prejudging the manner in which it would be dealt with.

57. The representative of the United States said that without prejudging his Government's position on this question he wanted to re-emphasize his general position regarding meetings to discuss any issue that the signatories might think appropriate. He considered it necessary that the focus of such a meeting should be carefully defined so that everyone would appreciate precisely what the nature of the request for the meeting was. There were some general issues which were appropriate to be raised by the Committee but this should not create an opportunity for raising issues inappropriate for the Committee to discuss at the same time. In this regard he wanted to re-emphasize that the matter relating to India's signature of the Agreement was one where the United States had been acting fully within the meaning of Article 19:9.

58. The Chairman said that there was no intention to prejudge the manner in which this matter might be dealt with by the Committee. In the light of this conclusion he proposed that in consultation with

interested parties a meeting be set for the Committee in order to afford signatories an opportunity to consult on this matter.

59. The representative of the United States said that if the matter to be discussed was a general one, he had no difficulty in agreeing to the meeting of the Committee. It was however still unclear to him what the specific nature would be of this meeting, but if the nature was indeed to address the procedures whereby the invocation of Article 19:9 had been made, conducted he thought that it was a very appropriate issue for the Committee to address. He hoped that in the near future there would be guidance from the Committee, or from the chair, as to what his position was in responding to questions raised by a signatory to whom the United States was not applying the Agreement.

60. The representative of India said that the matter of concern to him and the focus for consideration which he had proposed to the Committee were contained in his statement. Following the procedures of the Committee he trusted that his statement would be circulated to the members of the Committee.

61. The Chairman said that the Committee could not, at that point of time, prejudge any of the issues relating to the reservations expressed regarding the further discussion of the matter. However, it seemed appropriate that the meeting be held to discuss the matter further and to reach conclusions as to the issue itself, or as to any role that the Committee would have to play. The Committee accepted this conclusion and agreed to meet in the near future. The Chairman would consult with interested parties on the date of such a meeting.

62. The Chairman recalled that footnote 40 to Article 19:6 of the Agreement stated that at the first annual review the Committee should, "in addition to its general review of the operation of the Agreement, offer all interested signatories an opportunity to raise questions and discuss issues concerning specific subsidy practices and the impact on trade, if any, of certain direct tax practices." He asked whether any delegation wished to address these problems at this meeting of the Committee or whether the signatories would prefer to come back to them during the second annual review in October 1981.

63. The representative of Canada said that he had a comment on certain practices by the United States in relation to footnote 2 of the Annex to the Agreement. This footnote required signatories "to examine methods of bringing these measures into conformity [with the Agreement] within a reasonable period of time." The United States had had a programme in place for many years, namely the Domestic International Sales Corporation, which had caused a lot of problems. He wanted to ask what measures the United States had taken to meet the commitment in the footnote and whether they intended to notify this practice under Article XVI:1 of the General Agreement. The representative of the United States said that he suggested that the question raised in footnote 40 be discussed at the next annual review. As to the question raised by Canada, the United States were in full conformity with their obligation under the Agreement and as this question had been dealt with under the GATT under former procedures he would make this issue known to

the Committee. The representative of Sweden drew the attention of the delegation of Canada to Article 7:1 of the Agreement which could be used in this case.

64. The Chairman noted that the Committee agreed to revert to the question contained in footnote 40 at its annual review in 1981.

65. The delegation of Chile asked whether the delegation of the European Communities, while presenting its semi-annual report under Article 2:16, could also give information on actions taken vis-a-vis non-signatories. The representative of the European Communities said that he did not think it would be appropriate to discuss in the Committee questions concerning countries which had not found it appropriate to sign the Agreement and to accept certain discipline resulting from it. The representative of Chile said that he had not suggested that actions concerning non-signatories should be discussed in the Committee, he only wanted them to be reported for the sake of transparency. The representative of Canada supported the representative of Chile. The representative of Uruguay also supported the representative of Chile and pointed out that some other signatories had reported all actions and it had not provoked any distortions in the work of the Committee. The representative of the European Communities said that he did not have any firm position on this question but he continued to wonder what would be the practical effects of reporting actions against non-signatories. The representative of Sweden said that he saw advantages in having as full transparency as possible, but admitted that there might be a question of principle. Therefore he suggested that signatories should reflect further and possibly come back to this question at the next meeting.

66. The Chairman said that Article 2:16 was not clear as to the scope of reports and different interpretations were possible. Signatories might wish to reflect further and come back to the question, if necessary, at a subsequent meeting.

67. The Committee examined a draft report to the CONTRACTING PARTIES prepared by the secretariat. The Committee adopted the report as set out in L/5055.

Date and agenda for the next meeting of the Committee

68. The Committee agreed that the date of its next regular meeting will be established by the Chairman in consultation with delegations. This meeting would take place in April or beginning of May 1981 following the meeting of the Committee on Anti-Dumping Practices. The Committee noted that the agenda for its next regular meeting would be circulated, after consultation with signatories, in advance of the meeting. It would include, inter alia, traditional items such as:

- (a) adherence of further countries to the Agreement
- (b) examination of national legislation and implementing regulations
- (c) notifications of subsidies

- (d) reports on all preliminary or final actions taken with respect to countervailing duties
- (e) semi-annual reports of all countervailing duty actions taken within the period 1 July 1980-31 December 1980
- (f) other actions taken under the Agreement.