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GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Subsidies and Countervailing Measures

MINUTES OF THE MEETING HELD ON 28-29 APRIL AND 19 MAY 1983

Chairman: Mr. M. Ikeda (Japan)

1. The Committee on Subsidies and Countervailing Measures met on 28-29 April and on 19 May 1983.

2. The Committee re-elected Mr. M. Ikeda (Japan) as Chairman and elected Mr. D. Greenfield (New Zealand) as Vice-Chairman.

3. The Committee adopted the following agenda:

A. Adherence of further countries to the Agreement

B. Examination of national legislation and implementing regulations (SCM/1 and addenda)

C. Semi-annual reports of countervailing duty actions taken within the period 1 July-31 December 1982 (SCM/39 and addenda)

D. Reports on all preliminary or final countervailing duty actions (SCM/W/37, 40, 43, 44 and 45)

E. Matter referred by India under Article 17:1 (SCM/20, SCM/M/11)

F. Annual review and the report to the CONTRACTING PARTIES

G. Other business

(a) Communication by Brazil concerning certain adjustments in its commitment (SCM/38)

(b) Questions related to handling of panel reports

(c) Investigation of imports of certain specialty steel by the United States

A. Adherence of further countries to the Agreement

4. The Chairman informed the Committee that since its last regular session (27 October 1982) no further country had adhered to the Agreement.

B. Examination of national legislations and implementing regulations (SCM/1 and addenda)

Australia (SCM/1/Add.18)

5. The representative of the EEC said that at the meeting of the Committee on Anti-Dumping Practices he had made a number of comments on the Australian anti-dumping legislation, which applied equally to the Australian countervailing duty legislation. For example, Section 15 of the Customs Tariff Act gives the right to any person engaged in an Australian industry to request the opening of a countervailing duty investigation. This is inconsistent with the Code which clearly stipulates that such a request can be made only by or on behalf of an industry. The Australian law says nothing about what should be contained in a complaint, about the evidence to be presented on subsidization, injury and causality, nor is it clear whether a notice has to be published and what it should contain, in particular whether the evidence presented to the investigating authorities will be included in the published notice. The law also contains no provision relating to the calculation of the amount of a subsidy or its definition. However, Section 10:2(a) contains a proviso defining as a subsidy any kind of financial assistance which may also include governmental assistance measures which are not considered as a subsidy under the General Agreement. There is nothing about the procedures to be followed in the course of an investigation or about the rights of the parties; injury criteria are not specified. Section 14 which contained an express reference to Australian international obligations, had been deleted and the right of appeal to Australian courts in case of violation of GATT rules had thus been eliminated. Also, the law contains practically nothing on provisional duties and therefore Australian authorities impose, in some cases and contrary to the Code, the provisional duties on the date on which an investigation has formally been opened. Section 12 assumes the existence of a subsidy when the cost of transport to Australia is less than the "normal" freight as defined by law; this constituted an extremely arbitrary definition of a freight subsidy, especially as there exist no criteria as to how a "normal rate" should be calculated.

6. The representative of Australia said that in order to give a complete response to the questions raised it would be very helpful to have them in writing. He further said that part of the problem seemed to be that the Australian legal system was different to those of other countries. The complete legal environment in Australia had to be looked at to see how Australia applies its countervailing duty legislation. The Australian legal system contains a number of provisions of general application which are applicable to countervailing duty actions and which fulfill various obligations resulting from the Code. As these provisions are of a general application, there is no need to repeat them in a specific legislation. For example, the Administrative Decisions Judicial Review Act contains provisions applicable to countervailing duty proceedings, the Freedom of Information Act allows access to all documents, and the common law provides natural justice to all persons in Australia. All of these laws are more than enough to satisfy any of the obligations which Australia has under the GATT. The accessibility and accountability of the administration before Australian courts can be clearly demonstrated from actual court cases. The question of transparency should be seen not only as an obligation of the investigating authorities in relation to the parties concerned but also as the willingness of those parties to look for such information. Information was freely available to any person in Australia.

7. Referring to the question of provisional measures he said that Australia would have a further look at the definition of initiation of an investigation and of the date of imposition of provisional measures because it seemed that its present interpretation of these two stages was different from that of some other Signatories. He concluded by saying that a full response would be made on the basis of written questions from interested Signatories.

8. The representative of the United States said that her delegation would submit questions in writing. She supported the comments made by the representative of the EEC, in particular the comments concerning transparency, notices, disclosure of reasoning and the reception of evidence. She also wished to know what the legal basis for the application of third country countervailing duties as envisioned by Section 11 of the Act was.

9. The representative of the EEC said that in order to better perceive the Australian legislation, regular contacts would be necessary and he would welcome any occasion to have such contacts, in particular in pursuance of Article 3 of the Code.

10. The representative of Canada shared the concerns expressed by the representatives of the EEC and the United States. He was of the view that the Australian legislation was not fully consistent with various provisions of the General Agreement and the Code. He urged Australia to ensure full conformity in this regard.

11. The representative of Switzerland said that although he recognized Australia's right to have its own "legislation technique", the Australian legislation was extremely difficult to comprehend. He understood the representative of Australia to say that this legislation should be read in conjunction with the Code and that the Code was an integral part of the internal Australian legislation. Nevertheless, even if this was so, some difficulties seemed to exist, for example with respect to the application of provisional measures. The Committee should therefore examine very carefully the Australian legislation in order to specify any inconsistencies with the Code and consider what steps would be necessary to ensure the conformity of the legislation with the provisions of the Code.

12. The representative of Australia said that he would explain all points in his responses to written questions. As to the regular contacts mentioned by the EEC, he expressed the hope that these would not be necessary as anti-subsidy actions against the EEC were unlikely to occur.

13. The representative of the EEC proposed that written questions should be submitted to Australia by mid-May 1983 and responses should be received not later than mid-July. This scenario was necessary in order to enable interested delegations to have a meaningful discussion at the October 1983 meeting. The representative of the United States supported the EEC proposal. The representative of Australia said that he could accept the EEC proposal but could not agree, at this stage, to fix a deadline for Australian replies as this deadline would depend on the complexity of the questions. He would, however, work towards the date of mid-July.

14. The Chairman concluded by saying that all interested delegations should submit, through the secretariat, written questions to the delegation of

Australia not later than mid-May. The secretariat would circulate these questions to all members of the Committee. The delegation of Australia should endeavour to submit its replies by mid-July but some flexibility should be allowed with respect to this deadline. The secretariat would again circulate the replies and the Committee would revert to this matter at its next regular session.

New Zealand (SCM/1/Add.15)

15. The representative of New Zealand said that at the previous meeting a number of points had been raised with respect to the legislation of New Zealand. Although he had not received any written questions he would like to reply to some of them. On the question of consultations under Article 3 of the Code, he stated that the relevant section of the New Zealand legislation did not provide for such consultations but it did not mean that the investigating authority would not follow the provisions of the Code. The Government was bound by the Code and would observe all obligations resulting therefrom. As to price undertakings for which Article 4 of the Code provided the suspension of proceedings if undertakings are accepted: although this was not specifically foreseen in the domestic legislation, undertakings would be accepted in accordance with the Code. On another important point that had been raised, i.e. the possibility for third country action referred to in Article 12 of the Anti-Dumping Code but not in the Subsidies Code, his administration followed the narrower terms of action prescribed by the Code.

16. He further said that a number of questions related to the definition of various important terms under the Code. In this regard he wished to state that although the New Zealand legislation was phrased in broader terms than the Code, the relevant international obligations were respected by his Government. As to the question of judicial review, the domestic legislation did not refer to that possibility but there were other Acts within the New Zealand legislative system which public officials had to follow and which ensured the availability of judicial review of administrative decisions. In this context he pointed out that the Code did not contain any provision which would require such a review or stipulated that review procedures had to be part of the domestic legislation.

17. He said that points made in relation to New Zealand's legislation resulted from a misunderstanding of its constitutional and administrative practices. In order to ensure, as provided for in Article 19:5 of the Code, the conformity of New Zealand's laws, regulations and administrative procedures with the provisions of the Code, it was neither necessary to write the Code into the domestic law nor to enact new legislation. He added that when his authorities had examined the Code prior to its acceptance, they had found that the only domestic regulations which could be conceived as not being in conformity with the Code were those related to export incentives. The possible conflict in this regard had been avoided by New Zealand making a formal reservation. He wished to assure the Committee that the New Zealand law did not restrict the Government in fufilling its international obligations. His Government had no intention of changing the basis of its constitutional and administrative practice in order to comply or follow the practice of another country.

18. The representative of the EEC said that the argument of direct applicability of the Code in the domestic legislation and, resulting therefrom, the argument that no specific provisions needed to be introduced, were not convincing. He wondered whether under these circumstances the provisions of the Code could not simply be transposed into domestic legislation. Whatever the constitutional and administrative practices of New Zealand were, such a transposition would help other Signatories to better understand the procedures followed by New Zealand's investigating authorities and the rights and obligations in this area. He further said that despite the explanations given there were a number of points on which a clear contradiction between the Code and the New Zealand legislation existed; therefore, the argument that the Code applied did not seem valid. For example, the rules on retroactivity and on duration of provisional measures were inconsistent with the Code. He suggested that the Committee adopt, with respect to the New Zealand legislation, the same procedure as with respect to the Australian legislation, namely the submission of written questions through the secretariat to the New Zealand delegation and then a discussion on the basis of written replies.

19. The representative of New Zealand repeated that the procedure his Government applied were those of the Code. As to the alleged contradictions he would appreciate it if these questions were put in writing. He could already clarify at least one of them, namely the one relating to retroactivity: document SCM/1/Add.15 in its introductory part stated that "if in the future a decision is taken to apply countervailing duties retrospectively, the provisions of the Code would apply". This indicated the general approach of his authorities to always follow the Code. He would agree to the procedure suggested by the representative of the EEC but wished to say that the deadline for replies would have to be flexible.

20. The representative of the United States asked whether the Code had the force of law in New Zealand. The representative of New Zealand replied that in the absence of specific provisions in the domestic legislation, those of the Code were the ones his Government had to comply with.

21. The representative of the EEC recalled that in 1982 New Zealand and Australia had concluded an agreement which stipulated that all performance based export incentives were to be eliminated only by 1987. He wondered how this provision conformed to the New Zealand obligation under Article 19:5 of the Code.

22. The representative of New Zealand said that when accepting the GATT Subsidies Code in September 1981, New Zealand undertook only to take all necessary steps to bring the scheme into conformity with the Code "within a reasonable period of time...". Since accepting the Code, New Zealand had taken major steps towards fulfilling its undertakings to bring its export incentive schemes into conformity within a reasonable period of time. At this stage, the review of export support measures had not reached a definitive stage and any statements as to the likely outcome would be speculative. A general principle to be followed in the review was that the level of assistance for exporting and efficient import substitution should be reduced at no greater rate than the level of protection afforded production for the domestic market. At the same time, New Zealand - through the industries studies, general licensing moves, licence tendering and on the basis of the

Australia/New Zealand Closer Economic Relations - Trade Agreement itself - had initiated a programme of trade liberalization which would over time decrease the need for export assistance. New Zealand had also taken steps to bring individual export incentive schemes into conformity with the Code. The New Markets Increased Export Taxation Incentive had already been abolished while the Export Investment Allowance, the Increased Exports Taxation Incentive and the New Market Development Grant terminated on 31 March of this year. The legislation governing all other schemes not in conformity with the Code was due to terminate on 31 March 1985 and the Government intended to make a statement concerning the future of these schemes in this year's budget. The current review of export assistance measures was also taking place in view of the distinction made in the Code between proscribed incentives and other (permitted) forms of support. Finally, New Zealand had always accepted that a full review of the progress New Zealand had made in bringing its export incentive schemes into conformity with the Code was likely to be undertaken when the schemes terminate under current legislation.

23. The Chairman said that the members of the Committee should follow the same procedure of submitting written questions and replies through the secretariat as in the case of the Australian legislation. The Committee would revert to the New Zealand legislation at its next regular session.

24. The representative of the EEC said that as far as the question of the elimination by New Zealand of export subsidies inconsistent with the Code was concerned, he did not see any valid reason why it should take much time. New Zealand had some restructurization problems but practically all other Signatories had similar problems. The Code clearly stipulated that the conformity of domestic laws and procedures with its provisions should be ensured on the day of its acceptance and every Signatory was bound by this provision.

Korea (SCM/1/Add.13/Rev.1)

25. The representative of Korea recalled that at a previous meeting some questions had been raised by the EEC. The first question concerned procedures for the denunciation of an undertaking; his reply was that in all cases the denunciation of an undertaking was decided by the Minister of Finance. The second question was whether a public notice would include reasons and motivations for any decisions taken; he wished to confirm that this would be the case.

26. The representative of the EEC said that there was a misunderstanding on the first question. What he had asked was not so much the problem of competence but whether an exporter who had given an undertaking was free to withdraw from it without the consent of the Korean Government. He had the impression that paragraphs 9 and 10 of the Korean legislation stipulated that an undertaking could be withdrawn by the exporter only if the Korean Government agreed to this. The representative of Korea said that he would report this question back to his authorities and would reply at the next meeting.

Other legislations

27. The Chairman said that four Signatories, namely Brazil, India, Pakistan and Uruguay, had not yet formally notified the Committee of their actions

under Article 19:5 of the Agreement. These Signatories were requested to do so without further delay and, pending such notification, they should inform the Committee of the present situation in this respect.

28. The representative of India said that the law amending his country's countervailing duty legislation had not yet come into effect. India had so far not taken any countervailing duty action; if any action was taken, it would be in accordance with India's obligations under GATT and the provisions of the Code. The representative of Brazil said that his authorities had not applied any countervailing measures and for the time being did not intend to introduce any countervailing duty legislation. If they decided to enact such a legislation the Committee would be immediately informed and the Brazilian authorities would seek comments from the Signatories on this matter. The representative of Uruguay said that although his authorities had not submitted any legislation, no countervailing duty action had been taken so far. His authorities were reviewing various aspects of Uruguay's compliance with the Code and as soon as this work is completed he should be able to provide further information.

29. The representative of the United States raised a question about the status of the Canadian legislation. The representative of Canada said that the proposed changes to the Canadian countervailing duty legislation were being considered by the Ministers in the course of this week.

C. Semi-annual reports of countervailing duty actions taken within the period 1 July 1982-31 December 1982 (SCM/39 and addenda)

30. The Chairman recalled that an invitation to submit semi-annual reports under Article 2:16 of the Agreement had been circulated in SCM/39 of 7 February 1983. Responses to this request had been issued in addenda to this document. The following Signatories had notified the Committee that they had not taken any countervailing duty action during the period 1 July-31 December 1982: Austria, Brazil, Egypt, Finland, Hong Kong, India, Japan, Korea, New Zealand, Norway, Pakistan, Spain, Sweden, Switzerland and Yugoslavia (SCM/39/Add.1). Countervailing duty actions have been notified by the EEC (SCM/39/Add.2), Canada (SCM/39/Add.3), the United States (SCM/39/Add.4) and Australia (SCM/39/Add.5). No reports had been received from Chile and Uruguay. These Signatories were requested to submit their reports without further delay. The lack of a notification from Chile might cause some concern because this country is quite active in the countervailing duty field.

31. The representative of Chile said that he acknowledged the concern expressed by the Chairman and would transmit it to his authorities. At this stage he could only inform the Committee that although a number of countervailing duty investigations had been initiated during the reporting period, most of them were terminated without the imposition of any countervailing duty. The representative of the EEC said that although in many cases no countervailing duties were imposed it was mainly due to the fact that other measures were taken. Furthermore, the fact that so many investigations had been initiated constituted in itself a harassment of importers and exporters concerned and therefore more care should be given in the future to requests for initiation of an investigation. The representative of Chile agreed that the opening of an investigation could constitute in itself a

harassment. Nevertheless, he assured the Committee that in the case of his country, investigations were not opened without good reason and they were completed within much shorter periods than those envisaged in the Code, so that he could note with legitimate satisfaction the responsible manner in which the authorities of his country had acted. Furthermore, the fact that no countervailing measures had been imposed should be reassuring for other countries.

32. The representative of Canada referred to the semi-annual report submitted by the United States (SCM/39/Add.4) and wished to register the concern of his delegation regarding the use of the so-called "option-value approach" in a recent countervailing duty case by the United States against Canada. This case had been terminated before the matter of the final injury determination was addressed by the USITC but he was nevertheless concerned that the use of an option value by the US Department of Commerce would lead to a disturbing situation where a countervailing duty could be imposed even though the subsidy measure in question had been withdrawn or eliminated. This would clearly be inconsistent with the US obligations under the Code. The representative of the United States said that the proceedings were terminated because the petition had been withdrawn and therefore the issue had become hypothetical. At any rate, the concern expressed by the representative of Canada that a countervailing duty would be imposed even if the subsidy had been withdrawn was not substantiated because in such a case there would be a determination of no injury and the proceedings would be terminated.

33. The representative of the United States proposed that in future semi-annual reports should contain a column indicating the estimated amount of the subsidy. The representative of Chile wished to reflect on this proposal. The representatives of Australia and India considered that this proposal would improve the transparency of semi-annual reports. The Chairman concluded that the Committee would revert to this proposal at its next meeting.

D. Reports on all preliminary or final countervailing duty actions (SCM/W/37, 40, 43, 44 and 45)

34. The representative of the EEC referred to a countervailing proceeding carried out by Canada against the export of canned tomatoes from Italy. In this proceeding a preliminary determination of subsidization had been reached on 15 March 1983. The basis of this determination was a production aid system established in the EEC for the processing of fresh tomatoes. The EEC processors of fresh tomatoes receive a production aid which compensates for the minimum prices which they have to pay to the growers of tomatoes. The system of minimum prices had been designed in such a way that it imposed a special burden on the processing industry and therefore this industry had to be compensated. The measure in question was not a subsidy but a compensation for artificially increased prices. The Canadian authorities should not have considered it as a subsidy because it did not bestow any benefit on the processors of the tomatoes. An additional argument was that Italian producers had completely free access to imported tomatoes and therefore the production aid did not give them any economic benefits.

35. The representative of Canada said that following a detailed examination of the case during which the existence of both subsidy and injury had been established, a preliminary determination of subsidization had been made and a

provisional duty had been imposed. At the same time the matter had been referred to the Anti-Dumping Tribunal for consideration of the injury aspect. The Tribunal would shortly commence its enquiries and would submit its decision in the latter part of June. His authorities were fully aware of the EEC views and would be ready to consider any further representations on this matter.

E. Matter referred by India to the Committee under Article 17:1 of the Agreement (certain domestic procedures of the United States)

36. The Chairman recalled that this matter had been discussed at the meetings of 29 April 1982 and 15 July 1982. The parties concerned had been invited to continue their best efforts to find an equitable solution. The Committee had agreed to revert to this matter at this meeting. The Chairman had been informed by the parties concerned that, although some progress had been made, bilateral consultations were still going on and therefore it seemed advisable to postpone the consideration of this item until the next meeting. As there were no objections it was so decided.

F. Annual review and the report to the CONTRACTING PARTIES

37. The Chairman referred to a decision taken by the GATT Council at its meeting of 20 April 1983 (C/M/167, page 8) inviting the MTN Committees "to take account of the Ministerial decision in their annual reports and to transmit these reports to the Council, so that the Council can assist the CONTRACTING PARTIES in their review called for in that decision, in the light of these reports and of observations by delegations". He further said that the Committee should submit its report not later than 10 October 1983. As the regular autumn session of the Committee traditionally takes place in the last week of October, the report requested by the Council had to be prepared at this meeting.

38. The Committee discussed this matter on the basis of a draft report prepared by the secretariat (SCM/W/46 and Rev.1 and 2). Some Signatories considered that the report should be more than just a factual one and that it should reflect their views on the absence in the Code of adequate disciplines on the subsidization of agricultural exports and on the imbalance in the manner in which some Signatories interpret and fulfill their obligations under the Code. They underlined the need for a thorough review of the Code disciplines in order to limit the prejudicial effects of subsidies on the trade or interests of the contracting parties. Some other Signatories did not share these views. They perceived the existing problems as related rather to controversial or new interpretations given by some Signatories to some key provisions of the Code and the non-conformity of the national legislation, regulations and administrative procedures of some Signatories with the provisions of the Code. As regards the issue of GATT disciplines in the field of agricultural subsidies they noted that the Code and Article XVI of the General Agreement clearly made a distinction between disciplines for industrial and agricultural products.

39. Following the discussion the Chairman made the following statement: "The report the Committee may wish to adopt is basically a factual one. However, in pursuance to paragraph 26 of this report I shall invite, in a note circulated to all contracting parties, those contracting parties which have not, as yet, adhered to the Code to discuss with the Committee any obstacles

that might exist to their adhering to the Code. I shall also consult interested signatories to explore the possibility of continuing discussion on the adequacy and effectiveness of the Code. If between now and the final deadline for submission of reports to the Council, i.e. 10 October 1983 there are developments which should be brought to the Council's attention I shall submit, in consultation with the members of the Committee, a supplement to the present report". The Committee agreed with this statement.

40. The Committee adopted the report, the full text of which has been circulated in document L/5496.

41. The following statement for the record were made with respect to certain paragraphs of the report:

(a) with respect to paragraph 5, the representative of Australia stated that his delegation had, at no time, accepted that the Australian countervailing duty legislation was inconsistent with the Code. He therefore considered that the views expressed in the second sentence of this paragraph were without prejudice to the rights of those Signatories to which they were directed;

(b) with respect to paragraph 16, the representative of the United States stated that his authorities considered the request made by Canada for conciliation regarding the United States countervail cases on certain softwood lumber products to be premature.

42. The observer for Argentina said that his Government was particularly interested in the work of this Committee because the Subsidies Code was one of those MTN codes which interpreted certain provisions of the General Agreement; therefore the activities of this Committee might have an important bearing on the rights and obligations of other contracting parties. In this connexion he attached great importance to the decision of the Council, taken pursuant to the Ministerial Declaration, which stipulated that the review of MTN Agreements should focus on the adequacy and effectiveness of these Agreements and the obstacles to the acceptance of these Agreements by interested parties. He considered that in the operation of the Subsidies Code a number of problems had emerged which deserved very careful examination by the CONTRACTING PARTIES. He asked that the report, despite its factual nature, give rise to a broader exchange of views when it would be discussed by the Council. He recalled that at the July 1982 meeting, when the Committee discussed its contribution to the Ministerial Meeting, his delegation had made a number of observations which in his view should have been reflected in the report. One of these related to the practice of the Committee to hold certain meetings without observers at which important questions of interpretation had been discussed. Another point for inclusion in the report related to the relatively large number of disputes before the Committee, and the reasons for this; most of these disputes concerned agricultural subsidies. Further consideration of these issues would be very important.

43. The observer for Indonesia said that the participation of his delegation in the work of the Committee reflected the interest of his Government in issues and matters discussed by the Committee. The seriousness showed by the Committee and its Chairman in handling important matters, especially under the dispute settlement procedure was very much encouraging for his delegation in the context of considerations by his country to become a Signatory of the Code in the near future.

G. Other business

(a) Communication by Brazil concerning certain adjustments to its commitment (SCM/38)

44. The Chairman said that on 16 December 1982 the delegation of Brazil had informed the Committee of certain adjustments in the phasing out of the IPI and ICM credit rates. While deciding these adjustments the Brazilian Government had maintained its commitment to eliminate this form of subsidy, which had been undertaken according to provisions of Article 14:5 of the Code.

45. Having heard representatives of Korea and the United Kingdom speaking on behalf of Hong Kong who considered that the adjustments proposed by the Brazilian Government were unavoidable in the light of the development and financial problems many developing countries were currently facing, the Committee took note of the communication from Brazil (SCM/38).

(b) Questions related to handling of panel reports

46. The representative of the United States referring to a discussion at the 22 April meeting of the Committee (SCM/M/14) said that although Article 18:9 of the Code did not specifically stipulate whether the Committee may adopt a panel report, it has always been a general GATT practise that reports by panels and working parties had eventually been adopted by the Council or by the CONTRACTING PARTIES. She considered that the dispute settlement procedure under the Code did not differ in this respect from that under the General Agreement. Although the Committee was not obliged to adopt a report, there was nothing that would prevent it from doing so if it so wished. She proposed that the secretariat prepare a note on how panels reports had been handled in the GATT.

47. The representative of the EEC said that Article 18:9 of the Code did not say anything about the adoption of a report. It stipulated that the Committee should consider the report and that it may make recommendations. As to the GATT practice he recalled that there were several cases when the Council had not adopted a report but simply taken note of it or adopted it with certain qualifications or reservations. It was up to the Committee to decide whether it wished to adopt a particular report or take some other action.

48. The representative of Canada said that he was concerned about the possible implications for the dispute settlement procedures of an interpretation which would prevent the Committee from adopting panel reports. The representative of Australia agreed that such an interpretation would constitute a dangerous precedent and would be inconsistent with the fact that the Code also dealt with the interpretation and application of Article XXIII of the General Agreement. In his view there was no doubt that the general practice under Article XXIII had been to adopt panel reports if the Council so wished.

49. The representative of India said that it was his delegation's understanding that the absence of the word "adoption" in Article 18:9 did not prevent the Committee from adopting the report. Article XXIII also did not contain this word whilst the Council had adopted a number of reports. He noted that there was not much difference between the United States views and

the views expressed by the representative of the EEC at this meeting. The representative of Chile said that the Code interpreted Article XXIII and that under this Article there was an established practise, sufficiently clear to give a decisive guidance in this respect. If a delegation wished to change this practise, it should propose it to the Committee and the Committee might consider it. However, as long as the Committee did not agree on a new interpretation it should proceed in accordance with established practice.

50. The representative of Sweden, speaking on behalf of the Nordic countries, said that as the legal situation was not very clear the Committee should, on the basis of the note to be prepared by the secretariat, examine the matter and decide whether there were reasons to proceed in this Committee in a different way than in other GATT. The representative of New Zealand said that he would not agree that the legal situation was unclear. He could not, however, object that the Committee revert to the matter on the basis of a secretariat note.

51. The representative of the United Kingdom speaking on behalf of Hong Kong said that the handling of panel reports was an important issue which should be examined with special care. The note by the secretariat might be helpful in this respect. He thought that the relevant GATT procedures had been well established and should be followed in the future.

52. The Chairman concluded by saying that the secretariat would prepare a factual note which would contain a description of the negotiating history of Article 18:9 of the Code, to the extent that any records exist, and of the treatment of reports of working parties and panels, established under the GATT dispute settlement procedures, by the CONTRACTING PARTIES.

(c) Investigation of imports of certain specialty steel by the United States

53. The representative of Sweden recalled that at the previous meeting his delegation had made some comments regarding the United States investigation under Article 8 and 11 of the Code regarding certain specialty steel. At that time his delegation had concluded the first round of bilateral consultations under Article 12:3 of the Code and had expected a decision by the United States President on this matter. His delegation considered that the Presidential decision at such an early stage might prejudice the further proceedings in the GATT. His delegation was also concerned that no evidence had been presented on the alleged injury. The Presidential decision, made a few weeks after the October meeting of the Committee, stated that the subsidies granted by Sweden on certain specialty steel were inconsistent with the Code. The President had requested that the GATT consultation continue and a new investigation had been initiated by the USITC, this time according to Section 201 of the Trade Act which relates to Article XIX of the General Agreement. The following round of consultations in January 1983 had not produced any results and no evidence of injury had been presented. It seemed that at the present stage the United States investigation was more oriented towards Article XIX than the Subsidy Code but the latter was still pending and it was unclear what would constitute the basis for further proceedings of the United States authorities were. He stressed that this case had been prejudiced by the United States domestic proceedings and that important questions of principle were involved. He considered that as no evidence of injury to the United States industry was forthcoming the case should be

dropped. Finally he wanted to know whether the statement made by the United States representative at the previous meeting, alleging that the Swedish subsidies were inconsistent with Article 9 of the Code, was still valid as this particular allegation had never been made in the context of bilateral consultations.

54. The representative of the United States said that the reference to Article 9 of the Code at the previous meeting was not correct and that the relevant provisions were those of Article 11. With respect to the Presidential announcement she wished to indicate that it was dictated by domestic time-limits and no consequences to Swedish trade had resulted from that decision. The reference in the announcement to subsidies inconsistent with the Code related to allegations made by the petitioner. She also noted that consultations with Sweden under Article 12 of the Code were held after the Presidential announcement had been made.

Date of the next regular session of the Committee

55. The Chairman recalled that, according to the decision taken by the Committee at its April 1981 meeting, SCM/M/6, paragraph 36, the next regular session of the Committee will take place in the week of 24 October 1983.