

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

SCM/M/18

16 August 1983

Special Distribution

Committee on Subsidies
and Countervailing Measures

MINUTES OF THE MEETING HELD ON 9-10 JUNE 1983

Chairman: Mr. M. Ikeda (Japan)

1. The Committee on Subsidies and Countervailing Measures met on 9-10 June 1983. The following items were on its agenda:

- (1) Report of the Panel on EEC subsidies on export of pasta products (SCM/43)
- (2) Report of the Panel on EEC subsidies on export of wheat flour (SCM/42).

(1) Report of the Panel on EEC subsidies on export of pasta products (SCM/43)

2. The Chairman said that the Panel on EEC subsidies on export of pasta products, established in pursuance of the decision of the Committee taken at its meeting of 7 April 1982, had submitted its report on 19 May 1983 (SCM/43). This report was now before the Committee.

3. The Chairman of the Panel, Mr. D.M. McPhail, introduced the Panel report. He recalled the terms of reference of the Panel and its composition. Originally, there were five panelists who together constituted the Panel. One resigned during the course of the examination. With the agreement of the parties, the Panel concluded its work with four panelists. The Panel held several meetings with the parties and met on a number of other occasions. It gave every opportunity to the parties to present their views. Throughout the process it encouraged the parties to reach a mutually satisfactory solution in terms of Article 18 of the Code. In addition, after the conclusions of the Panel were submitted to the parties to the dispute the Panel allowed a period of 30 days for further reflection as envisaged in Article 18:6. The parties, in the event, did not reach a mutually satisfactory solution and in terms of Article 18:8 the Panel submitted to the Committee its written report (SCM/43 dated 19 May 1983) which sets forth the findings of the Panel as to the questions of fact and the application of the relevant provisions of the General Agreement as interpreted and applied by the Subsidies Code and the reasons and bases therefor. The report reflected the Panel's long and detailed examination of the issues in dispute. The findings and conclusions of the Panel were contained in Part IV of the report. One member of the Panel disassociated himself from some of these conclusions and Part V of the report contains the dissenting opinion of this member.

4. The representative of the United States said that the Panel had produced a well-researched, well-written report and had reached the conclusion, set forth in paragraph 4.14 of the report, that the EEC subsidies on pasta exports were inconsistent with the EEC's obligations under Article 9 of the Code. She believed that the Panel's conclusion was the proper one to draw both from the language and history of Article 9; accordingly she believed that, upon reflection, the Committee had to agree with the Panel's conclusions and adopt the report. She noted that in paragraphs 4.2 and 4.3 of the report the Panel had found that pasta was not a primary product within the meaning of the Code and that the EEC system of granting refunds on exports of pasta constituted a subsidy and had been notified as such. She thought that there had never been any serious questions that pasta was not a primary product. The EEC, however, contended that its export subsidy on pasta was in fact a subsidy on the durum wheat content of pasta and, as such, fell under the provisions of Article 10 relating to primary products rather than under Article 9. The Panel, however, on the basis of the definition of certain primary products in Article 9, footnote 29 concluded in paragraph 4.4 that durum wheat incorporated into pasta could not be considered a separate category of primary product subject to the provisions of Article 10. It further concluded that the refunds paid to pasta exporters could not be considered to be paid on durum wheat, but rather constituted a subsidy on pasta products which operated to increase exports of such products.

5. She further said that if the Committee would consider, for a moment, the application of the EEC interpretation, the absurdity of the EEC position was obvious. The criteria for judging the consistency of a subsidy with Article 10, i.e., "more than an equitable share of world trade" and material price undercutting were measures in relation to trade in the primary product. Thus, if the Committee was to accept the EEC's interpretation in this case, the question of whether pasta export subsidies should be disciplined would be answered by determining whether the durum equivalent of pasta exports had given the EEC more than an equitable share of the world market for durum wheat. Beyond the enormous technical difficulties of computing world and individual country trade in terms of primary product equivalents, it was also true that export subsidies concentrated on non-primary products might have a measurably greater distortive impact on the market for the non-primary product than would be evident on an examination of the primary product market. The United States did not believe that a rule requiring such technical elaboration and fraught with serious questions of equity could be implied contrary to the language and history of the GATT and the Code.

6. The United States delegate noted that the Panel found no record of any discussion or understanding as to the interpretation of Article 9 which would permit the subsidization of exports of processed products to an amount which would have been granted on one or more components exported in their natural form. The Panel therefore concluded that an agricultural product which did not meet the definition of primary product set forth in footnote 29 should be subject to the obligations of Article 9. Further, the Panel, in paragraph 4.8 found no evidence of a generally accepted practice of such subsidization and concluded that even were such a practice to exist, it could not alter the obligations of Article 9. In her view, assertions that some Signatories, upon signing the Code, believed that Article 9 permitted such subsidization, or that a generally accepted practice of such subsidization had developed so as to reverse the earlier accepted interpretation of Article XVI:4, and that

Article 9 should be interpreted in the light of such beliefs or practices, could not withstand the logic of the Panel's conclusion. If the Committee was to allow subsequent assertion or practice to alter the plain meaning of the language of the Code, any country considering accession to the Code would be required to conduct its own survey of each Signatory's beliefs and practices in order to ascertain the obligations it would assume in acceding to the Code.

7. She further noted that in paragraph 4.11 of the report the Panel concluded that if the EEC interpretation became a general rule, it would radically alter the meaning of Article 9 and substantially reduce its scope and impact. She agreed with the Panel's assessment. She also agreed with the EEC contention that the meaning of Article 9 did not emerge suddenly from the Tokyo Round but followed on from the 1960 Declaration. The only time at which the CONTRACTING PARTIES expressed an opinion on the interpretation of Article XVI:4, they had found that it did not permit the subsidization of a primary component of a non-primary product. Logically one had to admit that Article 9 had the same meaning.

8. She said that this matter was of extreme importance not only because of the direct trade interests involved, but also because it raised fundamental questions about the scope and applicability of Article 9 with respect to processed agricultural products as well as any exported processed product which contained primary product components. To ensure the integrity and the efficacy of the Code's dispute settlement process, it was imperative that the Committee take expeditious action with respect to this Panel report. It had been customary in GATT to adopt panel reports as the secretariat's description of the negotiating history of Article 18:9 demonstrated; the Panel's reporting was clear and well-reasoned and she saw no justification for not adopting the report. She recognized that the conclusions represented the views of three members of the Panel and that one member chose to disassociate himself from some of the conclusions of the majority. However, the existence of a dissenting opinion did not alter the Committee's responsibilities under Articles 18:9 and 13:4 to consider the Panel report as soon as possible and, where the Committee concluded that an export subsidy was being granted in a manner inconsistent with the Code, to make recommendations to resolve the issue. There was nothing in the language of, or customary practice under, the GATT or Code which suggested that only unanimous panel reports could be acted upon. On the contrary the practice of having an odd number of members to a panel suggested both the expectation that panel views might not be unanimous and a desire to ensure a majority viewpoint. She concluded by stating that the United States proposed that the Committee adopt the report of the Panel and recommend that the EEC stops subsidizing pasta exports.

9. The representative of the EEC began by recording that during an earlier discussion of this matter, the EEC had already argued that a panel would not be the most appropriate way of solving the problem of interpretation which was posed by the United States complaint. The Community had proposed a working party, a proposal that had largely been accepted in April 1982 as being appropriate at a later stage, and that indeed was the stage at which the Committee was now. The question of interpretation was one for all Signatories to decide. The EEC had argued that the Panel would not be able to solve this matter when negotiators had not done so, or had left it in doubt, and the report of the Panel confirmed that point of view. He further said that the fact that the Panel members had different views and reached different and varied conclusions could not provide this Committee with a solid basis for

immediate decisions. It was for the Committee itself to take its responsibility as to what its conclusions should be and what it should recommend to the parties, but it was a matter which required extreme care, in particular since the views which the Panel had put before the Committee were contested by the parties, or even more so where the Panel was divided among itself.

10. He also said that this was a dispute in which there was virtually no real trade interest and certainly no question of any injury. The Community's exports of pasta products to the United States were minimal in terms of market share. The United States had never argued that there was injury or even that there were adverse effects. The Panel, in commenting on this, had quoted Note 26 to the Code, which says that adverse effects may be presumed but that the other party has an opportunity to rebut that presumption. It was the Community's view that any presumption of adverse effects had been amply rebutted. Consequently the Committee had here an issue which was only one of principle and of interpretation and if any major trade interests were involved they were for the Community and for some other Signatories, but not for the United States.

11. The EEC delegate said that as there had been no attempt to resolve this dispute other than by legal means, he wished to recall the EEC arguments on this point, set forth in paragraph 3.12 of the report, to the effect that Article 9 had never been understood by the Community and by some other Signatories as condemning the previous practices which had developed over time and if it had been understood that way it was clear that negotiations would have been different. He also recalled the argument about the significance of paragraph (d) in the Illustrative List. The EEC had argued in paragraph 3.14 of the report that the Community system did no more than make the raw material element in the production of pasta available at the world price rather than the domestic price. This fact had never been really contested, and Note 5 on page 3 of the report contained evidence that the EEC system was certainly not an exaggerated one because in the final calculations of the refund, the Commission systematically reduced, by approximately 10 per cent, the amount obtained by taking the average of durum wheat import levies. This raised a question, because if one followed the views set out in Section 4, Article 9 would apply to this product, and if that was the case then the Illustrative List would also apply because it defined what a prohibitive subsidy was. However, paragraph (d) in that List clearly says that practices such as those in the EEC system are only prohibited if they offer for export production the product at lower than the world market price. He wondered how the Community practice could be inconsistent with Article 9, and therefore illegal and yet its economic effects were such that under paragraph (d) of the List it was admissible and therefore not prohibited. The Panel only said that the whole question was irrelevant. However, it seemed that it was paradoxical to reach a conclusion which was only based on the language and juridical aspects, or on the modalities of how the EEC system works, and took no account whatsoever of the economic effects.

12. Referring to the negotiating history he said that the views expressed in Part IV of the report were somewhat too juridical and did not reflect sufficiently of the historical facts and the situation which evolved prior to the negotiation of the Code. In this context Part V was a clearer assessment of the history of the negotiations. Referring to paragraph 4:5 he said that the conclusion that the terms "primary product" and "agricultural product" are

not synonyms, slightly missed the point. The EEC argument had always been that the subsidization at issue related to the primary element and that was exactly what had been meant in the case of the United States declaration on textiles. The EEC had not considered that it was a matter of classifying the product in relation to Articles 9 and 10 but distinguishing the nature of the subsidy that was at issue and comparing that with what was effectively prohibited by Article 9, or permitted by Article 10. The argument that he had earlier put forward on paragraph (d) was a similar approach, namely that one should consider economic effects and the results of the EEC system in relation to what was permitted by Article 10. Paragraphs 6 and 7 of Part IV contained a view on the status of the United States declarations on the Article XVI:4 which could well be contested but the important point was that many contracting parties acted in the belief that a principle had been set out by the terms of the United States declaration, which was generally accepted or tolerated. Consequently countries had developed similar practices and that situation had subsisted for 20 years and had influenced the thinking of many countries. Therefore it was a highly significant factor when one considered what had happened in the Tokyo Round negotiations. The majority of Panel members had looked for evidence about these past practices but as the state of notifications under Article XVI:1 was far from being satisfactory, they could only get a very incomplete picture. Perhaps the Committee would be better placed than panel members to assess the degree of the existence of such practices and therefore to give greater significance to this aspect in considering what was the meaning of Article 9. On this point the arguments in Part V, especially paragraphs 2 and 3 were correct and more convincing than those that were advanced in Part IV.

13. He further noted that paragraph 4:8 recognized that some Signatories when signing the Code might have believed that they could continue their existing practices. Certainly it was his view that this had been the case, and it certainly had been true for the Community. There had been no major debate during the negotiation about past practices, their continuation or their elimination, and in the absence of a major debate on that aspect, the question was whether the status quo continued or was to be changed. He considered that on this point again paragraphs 3 and 4 of Part V were more convincing than Part IV. A change of the basic rules or a change in the practices of a number of parties would have required an explicit discussion; absence of an express understanding on this point meant that no change in existing practices were required. He also noted that in Part IV the view was put forward that if Signatories had these beliefs, they ought to have been secured by some form of legally effective statement or a reservation, and that because the language of the Code was perfectly clear the beliefs of certain parties could not change its meaning. In this connexion he referred to the fact that the EEC followed this practice since 1967 when it began to organize the Common Market for the product in question! Under these circumstances the Panel's view seemed to be slightly unreasonable. He recalled that in another panel, i.e. the dispute on Vitamin B12, a somewhat analogous situation had existed where it had been said that the Community had not made a reservation in relation to the point of negotiation, and the Community had said it had not made a reservation because it had not understood that negotiations had been completed. In that case the Panel findings had been that in these circumstances it could not reasonably be expected that the EEC would have made a reservation. It seemed to him by analogy that the situation in this case was quite similar and it could not be reasonably expected that the EEC make a reservation in a situation where for fifteen years no such reservation had been made nor had this been considered

necessary. It was true, as stated in paragraph 4.10, that the absence of a legal challenge to a situation did not prove that the practices of certain parties were legal. This did not, however, minimize at all the fact that the situation created strong presumptions in the minds of negotiators as to the legal situation.

14. He referred to paragraph 4.11 in which the view was expressed that if the EEC arguments were correct this would lead to a radical alteration in the meaning of the Code, and would substantially reduce the scope of Article 9. He thought that this argument had to be considered also in its corollary version, which was that if Article 9 was to be interpreted along the lines of Part IV of the Panel report a radical alteration of the existing situation and a substantial enlargement of the scope of disciplines in relation to past practices would be the result. In light of the history of the negotiations it was not reasonable to say that such a radical change and alteration could take place without any major discussion. The position of the EEC in the negotiation had been that no change would take place. Consequently the view advanced in Part IV took no account of the legitimate expectations that the EEC had during the negotiations; acceptance of the view would impose on the EEC and other Signatories who might be in the same position new obligations without any effective reciprocal concession from other parties. For these reasons he found the points of view and the arguments expressed in Part IV to be flawed in a serious way while they were convincingly answered in Part V. He did not believe that Part IV was an adequate basis for any Committee findings because it was based largely on a plain language approach, it was too juridical and it did not take account of the realities of what had happened in the negotiations. The Committee in trying to make its own assessment should look at Parts IV and V together in order to obtain a full picture of the situation and a balanced assessment. He also believed that many Signatories would hesitate to reach hasty judgements on the basis of the over-simplified analysis of Part IV which would lead to a brutal change of practices existing for the past 20 years, changes which would be imposed despite the EEC having negotiated in good faith and despite the fact that the EEC system was well known to other Signatories. Any conclusion along those lines would not be acceptable to the EEC because it would force the interpretation of Article 9 to a rather dramatic juncture, the results of which would be somewhat difficult to predict. He concluded by recalling his earlier suggestion that some other approach in which all the Signatories would be able to participate should be adopted; in this connexion he referred to the fact that the Chairman of the Committee had proposed that such an approach should be undertaken when the panel report was available.

15. The representative of Sweden speaking on behalf of the Nordic countries said that the Panel had not been able to agree on common conclusions for reasons which were clear enough for the reader on the basis of the two sets of conclusions contained in the report. Instead of forcing itself to agree on a text, which would have been completely watered down, the Panel had chosen to present alternatives. This might not necessarily facilitate the task of the Committee, but it certainly clarified the situation. It followed from this report and the Wheat Flour report that certain concepts in the Subsidies Code were unclear and warranted an urgent and thorough discussion with a view to finding agreed interpretations in order to make the dispute settlement procedure of this Code workable. The Nordic countries considered the issue at stake to be very important, in substance reaching well beyond the present dispute. In fact the Committee was discussing the possibility of extending

the obligations under the Code to cover a point which the Nordic countries did not consider to be covered. What the majority of the Panel suggested as an interpretation of the Code would amount to an addition to the disciplines negotiated in the Tokyo Round. For these reasons the Nordic countries were not in a position to accept the adoption of the report if this would mean accepting the interpretation of the majority view. At the same time he considered that it would not be sufficient simply to leave the report aside, since the problems of interpretation in question were far too important to be left open. He also recognized the risks potentially related to an uninhibited proliferation of subsidization to new product areas. He said that more explicit rules on export subsidies of processed agricultural products might be useful, if not necessary in the long run, and that follow-up action was thus needed. He proposed that the Chairman of the Committee engage in urgent consultations with the Signatories in order to find a procedure for working out interpretations with regard to concepts highlighted in the reports presently under consideration in the Committee.

16. The representative of Switzerland noted that the conclusions in the report presented two alternatives or two conclusions that were fundamentally divergent as to the substance. To his knowledge, such a situation was unprecedented in GATT history. In that respect, then, one could say that the report was not complete because the Panel had not succeeded in its effort to negotiate a viewpoint, a solution under the relevant provisions in a given case. If that were to become the rule, on the next occasion the Committee could have a panel with five different conclusions. The problem before the Panel was perhaps not negotiable, and, to some extent, the Panel might have found itself in a situation comparable to that concerning wheat flour, but had chosen another way out. Whereas the Panel on wheat flour had experienced the difficulty of being confronted with an imprecise article that it could not apply, the Panel on pasta products had been confronted with a very precise article, the application of which raised a problem that the Panel was unable to resolve having regard to the existence of both Article 9 and Article 10. The Committee must recognize that situation and at the same time assume its responsibility of examining the situation on the basis of those two conclusions, of which one could not accept one or the other. On a purely hypothetical basis, if the first alternative were accepted, the subsidies would not have been eliminated; at most, certain Signatories would have found themselves obliged to change the form of subsidies in order to make them lawful. In that way, one would have lost transparency, control, surveillance and possibilities for complaints. If another solution were adopted, certain Signatories would be obliged to enter reservations. In that way legal insecurity would have been increased and nothing would have been done to strengthen the value and coverage of the Code.

17. It was important to recognize that the Panel had shown that there was quite clearly a gap in the Code, a gap in the intersection of Article 9 and Article 10, and one that could not be filled by any legal artifice. It could not be filled by extensive application of Article 9 which would be detrimental to Article 10, nor by extensive interpretation of Article 10 which could even void part of Article 9 of its meaning. The situation must therefore be examined among the Signatories so as to reach a decision clarifying the issue, and a proposal to that effect had already been made by the Nordic countries. Addressing the United States delegation, the Swiss representative said that in taking that position he would not wish to be misunderstood, misinterpreted as supporting any uncontrolled or uncontrollable possibility of granting

subsidies here or there, in other words of limiting the discipline on that matter. What he was seeking, in the light of the problem which had been better identified because of the United States complaint, was the means to improve the Code's operation, to make it more foreseeable, more equitable and ultimately to give good faith in its full value. He believed that a decision concerning such an effort would in no way involve any denial of justice, on the contrary it would be an appreciable result, all the more so since, as the two parties had recognized, no injury was involved and accordingly the case was well suited to work of that kind which was the Committee's responsibility. In conclusion, the Swiss delegation considered it impossible to accept or adopt the report, still less to adopt one part of the report rather than another.

18. The representative of Austria said that his authorities had had no time to examine the Panel's report in detail. His preliminary reaction was that the fact that the Panel was unable to reach unanimous conclusions demonstrated the seriousness of the problem. The matter needed to be carefully examined by an appropriate body and therefore he wished to support the suggestion made by the Nordic countries.

19. The representative of Japan said that the Panel had had an extremely delicate and difficult task. The discussion in the Committee was not only important but might be decisive for the dispute settlement procedure in general. The Japanese Government had examined the various aspects of the report and possible consequences of the Committee's decisions. It had reached the conclusion that the Committee should adopt the report. In reaching this conclusion the Japanese Government took into account the need of assuring the efficiency of the dispute settlement procedure. It also recognized the established practice according to which reports should be adopted and only in exceptional circumstances merely taken note of. As to the question of substance, his Government shared the view of the majority of the Panel. It also noted that the proliferation of subsidies on exports of agricultural products had harmful effects for other countries and therefore their use should be restricted. He could support a solution based on the view of the majority of the Panel.

20. The representative of Canada said that the report was sound and notable for its clarity and conciseness. He concurred with the majority view and proposed that in the absence of any practical solution the Committee should also make appropriate recommendations. The appropriate action would be to recommend to the EEC to eliminate practices which the Panel had found to be inconsistent with Article 9.

21. The representative of New Zealand said that his authorities shared the concern expressed by the Japanese delegate on the efficiency of the dispute settlement procedure. However, in his opinion the report of the Panel was well argued and notable for its clarity. It was a good report and it should be adopted by the Committee. The majority conclusions were well reasoned and a clear report was better for developing disciplines in the subsidy area than a report which was inconclusive.

22. The representative of Chile said that the majority of the Panel should be praised not only for the clarity and conciseness of its report but also for the logic of its reasoning and the manner in which it arrived at its conclusion. All other panels should take this report as an example. He

further said that the conclusion of the majority were well founded and correct and faithfully reflected his Government's understanding of the obligations under the Code. Any other interpretation of these obligations would mean a serious modification of rights and obligations which Chile had accepted when signing the Code. He agreed with those speakers who considered that the majority conclusions should be adopted by the Committee and an appropriate recommendation based on those conclusions should be addressed to the EEC, namely to cease the subsidy practice in question or to bring it into conformity with Article 9 of the Code. Referring to the dissenting opinion he said that neither was it substantiated by a legal reasoning nor was it founded on legal arguments. It was based merely on the existence of certain practices in certain countries and this could not serve as a basis for the legal interpretation of the obligations under the Code. In the absence of legal arguments the Committee should not take this opinion into account.

23. Referring to the arguments advanced by the representative of the EEC he said that the Panel's opinion that paragraph (d) of the Illustrative List was not applicable to this case was correct and even the dissenting member was in agreement with the Panel. Consequently even the panel member expressing the dissenting opinion did not concur with the Community view on this point. The EEC had also criticized the Panel because, in its conclusions, it had not considered the economic effects of the EEC practice. He, however, considered that it was inappropriate to criticize the Panel for the simple reason that it had never been requested to examine this matter. The terms of reference of the Panel were clear, i.e. to examine the EEC practice in the light of its obligations under the Code. There had never been any question of examining the economic effects nor had there been any reasons to expect that such an examination would be made.

24. He expressed his concern that some speakers had said that they could not accept or adopt the interpretation given by the Panel. Such an approach would seriously affect the credibility of the dispute settlement system and would have serious practical consequences. Assuming that the dissenting opinion prevailed or that the status quo would be accepted, Signatories would find themselves in a situation where there would be a group of products which would be subsidized but which would not be subjected to any multilateral discipline. This situation would result, as the Panel had stated in paragraph 4.11, in a radical and unacceptable disequilibrium of rights and obligations under the Code. Secondly, the situation where Signatories would be allowed to subsidize exports of any product only because this product contains a primary component (other than minerals) would certainly be contrary to the objectives, provisions and disciplines of the Code. It would also be unfair to those Signatories who were important exporters of minerals. The Committee was again facing an important divergence of views between Signatories on the interpretation of the Code. Without prejudice to the resolution of this particular dispute the question should be examined in a general context as well. In this relation he took note of the Nordic countries' proposal and requested the Chairman to urgently enter into consultations in order to agree on appropriate procedures which would allow the Committee to resolve this critical situation.

25. The representative of Australia supported the representative of Chile in his refutation of the argumentation put forward by the EEC and expressed his concern that the rules as proposed by the Community would not apply to mineral products; therefore a country like Chile for whom mineral exports were

significant would again be disadvantaged. However, if Chile wished to benefit from the rules adopted by the EEC in respect of a processed primary product, it might well do this by foregoing its membership of the Code and retaining its rights under Article XVI of the General Agreement where minerals were not excluded from the rules in respect of primary products. Chile would therefore be able to apply the rules that the EEC was now defending in respect of processing of mineral products. Having said that, he observed that the extension of these rules to minerals would raise serious concerns for all Signatories.

26. He also expressed concern about recent developments under the Subsidies Code. The Committee had heard over the last six weeks that the rules of the Code were beyond agreed interpretation, that they were unenforceable, and now the Committee had before it a dissenting opinion about what were effectively unknown and unenforceable rules. The Committee was told again at this meeting that the EEC had its own interpretation about the legalization of illegal GATT practices. In this context he wished to remind the Committee of the conclusion of the debate which had taken place when Australia sought accession to the Code. At that time the Chairman had summarized the discussion by stating that unilateral interpretations by Signatories of the provisions of the Agreement could not be authoritative nor could they bind other Signatories.

27. Turning to the report itself he commended the Panel on its thorough consideration of the facts and its clear findings and conclusions. He considered that the Panel's key conclusion in paragraph 4.14 of its report - that the subsidies were given on a non-primary product and were granted in a manner inconsistent with Article 9 of the Code - had been arrived at on the basis of an objective analysis of the facts of the case and it was up to the EEC to rebut the prima facie presumption that the breach of Code obligations by the EEC did not have an adverse effect on other contracting parties. He also noted that one member of the Panel had broken with tradition and reported a dissenting opinion. While not disputing the right of a panelist to express a dissenting view he did not think that the dissenting opinion had been explained on the basis of an objective analysis of the facts, and relied too much on opinions, personal recollection and hearsay. He appreciated that this report had important implications for the subsidy practices of a number of Code Signatories and, more generally, for the application of the Code and the effective operation of the Code's dispute settlement procedures. For all these reasons he believed that it was essential that the Committee acted definitively on the report. He supported its adoption on the basis that the Committee accepts the Panel's majority findings and conclusions and, in the absence of any rebuttal of the presumption of adverse effects by the EEC, requests the EEC to take steps to terminate the operation of its export subsidies on pasta.

28. The representative of Uruguay said that his Government considered the report as very good and providing all the elements necessary to come to a decision. The Committee should assume its full responsibility and take appropriate action, otherwise the dispute settlement process would be seriously jeopardized. He agreed with the Panel's majority opinion, in particular with paragraph 4.14. He considered that the dissenting opinion was not founded on legal grounds but on certain perception of practices adopted by some Signatories. The fact that such practices had existed could not affect the legal obligations under the Code. On the contrary, the legal obligations

should determine what practices could be used. The interpretation proposed by the EEC would considerably modify the impact and scope of Article 9 of the Code and therefore was not acceptable.

29. The representative of Yugoslavia said that his authorities were studying the report but his preliminary reaction was that it was very interesting and useful. It raised a number of points which required a general discussion in the Committee. There was also a legal question of the validity of the dissenting opinion and how it affected the validity of the report itself. The Panel should facilitate the task of the Committee by giving very clear answers to the questions raised in its terms of reference. For this reason the conclusion should be unanimous. As this was not the case the Panel did not make the task of the Committee easier. He wondered whether the existence of the dissenting opinion gave rise to divergent interpretations of the Code and whether there were any precedents in GATT which could help to clarify these legal issues.

30. The representative of the United Kingdom speaking on behalf of Hong Kong recognized the great importance of the issue, particularly for small contracting parties which depended heavily on exports and could defend their interests only through the GATT. One of the pillars of the GATT was the dispute settlement mechanism and its integrity should be preserved. When the findings and conclusions of a report were legally sound such a report should be adopted without delay. In the present case the findings and conclusions contained in Part IV were totally correct and entirely convincing. The report with its Part IV conclusions should therefore be adopted by the Committee.

31. The representative of Spain said that his country had always held the opinion that reports should be adopted. However, in the present case the report was inconclusive because it contained two sets of conclusions totally different. Taking this into account he thought that the Nordic countries' proposal provided for the best procedure, namely to use the appropriate GATT mechanism in order to arrive at a common interpretation of the Code.

32. The representative of Brazil said that his authorities were studying with great care all the implications of the report. For the moment he wished to make an observation with respect to paragraph 4.2 which dealt with the question of whether or not pasta was a primary product. He thought that the Panel should have elaborated more on the issue and should not merely have accepted the opinions of the two parties which seemed to converge on this point. He considered that it would be very useful to know all the arguments which led to the conclusion that pasta was a non-primary product. He also said that he would like to hear views of other Committee members on what would happen if the EEC decided to replace the present system of subsidies by a governmental agency which would directly deliver the durum wheat to pasta producers at world market prices.

33. The representative of the United States expressed her firm view that the existence of the dissenting opinion neither altered the responsibility of the Committee nor invalidated the report. The dissenting opinion contended that beliefs were sufficient to change the law. However, it was evident that rules should change the practices and not practice the rules. In addition there was little evidence in GATT that such practices existed and those which existed had never been approved. The best evidence that new rules should change the existing practice was the fact that the United States had made a

major and a very difficult change in its law in order to be in conformity with the Code. The United States had therefore all the more reason to think that in exchange it would get increased disciplines in the use of subsidies. However, now they were being told that these expectations were based on wrong assumptions. Referring to the argument that economic effects should have been taken into account in the consideration of the legal aspects, she recalled that in the DISC case the EEC delegation had strongly opposed such an approach. She also reiterated her previous position that paragraph (d) of the Illustrative List was not applicable to this case because it provided for a very special form in which products for use in the production of exported goods were to be delivered by governments.

34. The representative of the EEC said that divergent opinions in the Panel were now mirrored in the Committee. The recognition of this fact should be the starting point for any further action by the Committee. He did not share the concern expressed by some speakers about possible adverse effects of the situation on the dispute settlement procedure because this situation had been predictable even before the Panel had been established; the EEC had always been of the opinion that the most appropriate way to deal with the matter was through a working group and not through a panel. As there were divergent opinions among the members of the Committee the EEC could support the proposal that the Chairman hold consultations with a view to finding an appropriate solution. He noted that some delegations had already advanced certain ideas on how the matter could be resolved. He further said that he had argued about the importance of past practices, not in order to prove that they were legal but that they had strongly influenced the negotiators. It was common knowledge that the intent expressed during the legislative process was relevant to the interpretation of legal provisions and could be invoked in the courts. He agreed that the United States had made a major change in its law to make it consistent with the GATT but other partners had left no doubt that such a change was a prerequisite for their adoption of the Code. On the other hand the United States had not made any request concerning the subsidization of primary product components. In the light of these facts the reasoning in Part V was much more convincing than that in Part IV. Furthermore, the GATT had never been considered as a legal tribunal and a purely legalistic approach would certainly not help the GATT credibility. He concluded by saying that the matter should be dealt with in an expeditious manner and should be resolved before the summer recess. The Chairman's guidance on how to resolve the issue would be highly appreciated.

35. The representative of Canada did not oppose the idea that the Chairman engage in consultations but registered his concern in this matter. The Panel had produced a clear and well-argued report. The fact that there was a dissenting opinion did not invalidate the conclusions of the Panel. If the Committee could not adopt the report, valid arguments should be given why this could not be done. So far no such arguments had been advanced. If the fact that certain practices existed prevented the adoption of the report, the consequences for the interpretation of Article 9 was unclear. The language of Article 9 was clear and left no doubt that it covered non-primary products. There was also no doubt that pasta was a non-primary product. The only problem was that some Signatories who had certain practices believed that these practices were not covered by Article 9. In other words the problem resulted from rather sloppy negotiations and not from any lack of precision in the language of the Code. This language was clear and did not necessitate any interpretation. There were other ways to regularize the practices than to

ignore the obligations of the Code. Given the clear language of the Code and the clear report by the Panel there was no reason to put this report aside and try to interpret Article 9.

36. The representative of Switzerland recalled that his delegation had always been among the staunchest supporters of an effective, rapid but also objective mechanism for dispute settlement. His delegation had always held doubts as to excesses of legalism. Some speakers seemed to him to have ventured onto that area. For example, someone had said that the opinion expressed in Section V was based primarily on personal memories, and was therefore not valid. He would take the contrary view, because those were in fact the memories of one participant in negotiations while representatives of the majority did not have memories of the same kind. Moreover, even the participants in that negotiation had not perceived all its implications. The negotiations were too complex for any individual to be able to grasp and interpret everything. For example, the United States had entered a reservation regarding Article XVI:4. At the same time, in the discussions on the new Code, primary products had been redefined and minerals had been deleted. In the third place, the United States had not re-entered its reservation. Was that by chance because in the new circumstances the reservation was unnecessary since it was understood that a processed primary product could be subsidized within the meaning of the old reservation, subject of course to the limits set by Article 9? He would be more at ease if the Panel, instead of presenting a majority opinion and a minority opinion, had admitted objectively that, having been unable to reach agreement, it was presenting two opinions and asking the Committee to examine the situation in that light. The proposal made by the Nordic countries could be very useful, and after the Chairman's consultations, one could solve the problem within the Committee by the most appropriate and effective means. In saying that, he was not defending any permissive solution. His intention was in no way that the discussions should yield either nothing at all or a permissive solution that would void the Code of its meaning. On the contrary, he would wish the Code to be strengthened and made clearer, more foreseeable and more effective. Secondly, that proposal did not imply adopting any political attitude. On the contrary, it was a matter of establishing a firmer legal basis through better definition of the intersection of Articles 9 and 10, so that in future cases such as the one under reference could be settled in a simpler, easier and more objective manner.

37. The representative of Australia said that the principal reason for his second intervention was to comment on the interpretative process proposed by the Nordic countries to examine the rules regarding the subsidization of the primary component of a processed agricultural product. He would like particularly to draw the attention of the Signatories to the implication for a wider participation in the Code of substantial changes to GATT rights and obligations if this Committee proposed negotiating rules to cover the subsidization of the primary component of a processed agricultural product. He believed that the EEC's interpretation of its obligations in this regard would be of some surprise to non-signatories of the Code. He therefore suggested that there was a need to consider conducting these discussions in a wider forum which would include the total GATT membership.

38. The Chairman said that there were divergent opinions in the Committee but this was quite normal, given the very important and very wide implications of the matter. The Committee had received the Panel report and had heard the

views of the parties to the dispute and other Signatories. A number of speakers had stressed the importance they attached to the effective operation of the dispute settlement mechanism and considered that the matter should be quickly settled. Some others, while recognizing the importance of the dispute settlement process, had advocated a cautious approach, given the importance and implications of the matter. Starting with these two premises, comments had been made on how to deal with the report. Some delegations had strongly supported the majority view and considered that the report should be adopted and that the Committee should make appropriate recommendations. Some other Signatories had not shared that view and considered that the Committee should arrive at its own assessment of the situation. In this connexion a proposal had been made to find a procedure for working out an interpretation with regard to the concepts highlighted in the report. All these observations, questions and proposals deserved very careful examination and reflection. The Chairman's impression was that the Committee recognized its responsibilities under Articles 13:4 and 18:9 of the Code to work on the report in an expeditious manner. He wished, therefore, to suggest that the Committee revert to the matter at its next meeting and that in the meantime the Chairman would hold, as a matter of urgency, informal consultations with all interested Signatories. The date of the next meeting would be established in the light of the result of these consultations, it being understood that the meeting should be held before the summer recess.

(2) Report of the Panel on EEC Subsidies on Export of Wheat Flour (SCM/43)

39. The Chairman recalled that the Panel had submitted its report to the Committee on 22 March 1983. The Committee had examined this report at its meetings of 22 April and 19 May 1983. At the meeting of 19 May the United States delegation had submitted a draft text containing the proposed conclusions (SCM/W/54).

40. The representative of the United States said that she appreciated the recognition by the representative of the EEC earlier during the meeting that the Committee needed to act expeditiously - perhaps, as he had suggested, before the summer break - if it was to resolve this dispute and the dispute concerning export subsidies on pasta products. She also noted that many delegations agreed with one delegate's suggestion at the last meeting of 19 May that Article 18:9 required the Committee to take a definitive decision in a dispute settlement case, and that it was ultimately up to the full Committee itself to do so. With that in mind, the United States had proposed on 19 May that the Committee answer the questions left unanswered by the Wheat Flour Panel. That proposal had been distributed to the Committee as document SCM/W/54. She requested other Signatories to respond to the US proposal by adopting it. The Signatories could not but recognize that there was ample support in the panel report for finding that the EEC had taken more than an equitable share of the market. The Committee could not fail to adopt the US proposal since the Panel had found a causal link between the EEC subsidies and its increased exports, had recognized that the US had lost sales opportunities as a result, and had concluded that the EEC would generally not be in a position to export substantial quantities of wheat flour without the application of export subsidies. If the Committee did not find that the EEC took more than an equitable share of the world wheat flour market, it was unclear which other elements - even in the abstract - would be necessary for such a finding.

41. She further said that the United States had carefully reflected upon all proposals made by other delegations with the view to resolving the dispute. The fact remained, however, that any course of action pursued with respect to this panel report - other than for the Committee to answer the specific questions left unanswered by the Panel - would leave the wheat flour dispute unresolved, would make Article 10 inoperative, would create a situation where no disciplines on export subsidies for agricultural products existed. She reiterated that the United States, as most other delegations, had agreed with the Panel conclusions, found in paragraph 5.9 of the report, that Article 10 of the Code should be made "more operational, stringent and effective in application". However, there was no agreement on how that task could be accomplished, and irrespective of that the Committee should remember that it still had not met its obligation to resolve the wheat flour dispute. Any course of action to be pursued should include a method for answering the questions left unanswered by the Panel in terms of the world wheat flour market as well as in general terms. Everybody would like to strengthen and improve the provisions of Article 10 - but the Committee could not allow the dispute settlement process to completely fail while it embarked upon a discussion outside the context of this dispute.

42. The representative of the EEC said that there were some points of agreement between his delegation and the US delegation. The first point was that both delegations recognized the importance of the dispute settlement procedures for the operation of the GATT and of the Code. Secondly they agreed that, in accordance with Article 18:9, the Committee should take action on the Panel report with a view to resolving the dispute. The differences appeared in the analysis of the existing situation. The EEC could not agree with the view that agricultural subsidies were not subjected to any discipline. There were certain obligations and, despite certain differences as to their interpretation, the EEC was fully respecting them. Also he could not agree with attempts to discredit what the Panel had done. The conclusions of the sort that the EEC granted subsidies on export of wheat flour in a manner which resulted in the EEC having more than an equitable share or that the EEC subsidies had nullified or impaired certain advantages were certainly not those of the Panel. The proposal that the Committee should draw conclusions quite different than those of the Panel amounted to the repudiation of the Panel's conclusions and, moreover, was inappropriate also because discussions in the Committee did not show that there was a clear majority in favour of it.

43. He further said that since the Panel was established the Community policy with respect to subsidies had been very reasonable, a fact which could be substantiated by a number of documents and statistics. Nevertheless, and for the first time in the history of GATT, the complainant, suspecting that the Panel's conclusions would not be favourable to him, decided to take the justice into his own hands and had completely displaced the EEC from the Egyptian market. Indeed not only the Community had been displaced but other exporters such as Argentina or Australia had also been affected. This action had been taken despite the fact that the EEC had respected the Panel's wish that it should make greater efforts to limit the use of its subsidies. As a result of these efforts EEC exports which, at the time when the Panel had been established amounted to 4,143,000 tons, would only be 2,640,000 tons in the crop year 1982/83. This reduction of about 1,500,000 tons was an essential element that should be duly taken into account. The Panel had reached sound conclusions, although the conclusion that certain provisions were unclear was

not new as many, including the authors of the Ministerial Declaration, had said it earlier than the Panel. The GATT rules should certainly be reviewed but it did not mean that they should be renegotiated. The conclusion that relevant GATT rules should be reviewed and better formulated was a sound conclusion. The second one was that the EEC should be more cautious in its subsidy policy; the Community had recognized this message and acted accordingly. However, while the EEC had reduced its exports of wheat flour, the United States had taken from the EEC its traditional Egyptian market. The Committee should take account of these facts and of the Panel's conclusions, renounce theoretical discussions and reflect what could be done.

44. The representative of Australia said that he supported the US proposal circulated in SCM/W/54. The Panel report provided a sufficient factual basis to reach the conclusions outlined in the US proposal, in particular the conclusion that the EEC had obtained more than an equitable share. The report contained all elements required by Article 10:2 to reach such a conclusion. It showed that the EEC was granting export subsidies, that there was market displacement, at least in such markets as Jamaica, Nigeria and Trinidad and Tobago (Annex C), and that there was a link between subsidies and the displacement. In paragraph 4.13 the Panel found that there had been a significant increase in the EEC share of the world market. In paragraph 4.29 the Panel found that the application of EEC export subsidies had resulted in reduced sales opportunities for the United States. In paragraph 5.2 it again confirmed that the EEC share of world exports of wheat flour had increased considerably when the application of EEC export subsidies was the general practice. In paragraph 5.8 it stated that without the application of export subsidies the EEC would not be in a position to export substantial quantities of wheat flour and therefore, because of these subsidies, it had increased its share of the world market to become by far the largest exporter. Finally, in paragraph 5.6 the Panel considered that the application of EEC export subsidies had caused undue disturbance to the normal commercial interests of the United States. All these findings constituted a sufficient basis for the conclusions proposed in SCM/W/54 which he supported.

45. The representative of the EEC said that the statement of the representative of Australia contained a number of factual errors. The most important related to possible market displacement. The Panel had examined seventeen markets, all of which were chosen by the United States, and it had clearly concluded in paragraph 5.4 that the market displacement in the sense of Article 10.2 was not evident in these markets. Another important error in the Australian statement concerned the distinction between an increase in exports and the concept of more than an equitable share. The text of the General Agreement was, however, clear. An increase in exports did not automatically mean that this increase in the market was equivalent to more than an equitable share.

46. The representative of Chile agreed with the Australian representative that there was enough evidence in the report for the Committee to reach conclusions which the Panel had been unable to reach. The Panel did not go to the logical end of its reasoning and if the Committee was to complete this work, it would have come to the same conclusions as in SCM/W/54. Another possibility would be to adopt the report but at the same time to formally recognize that the Committee did not reach any conclusion on the question of more than an equitable share obtained by the EEC. The adoption of the report would also have other consequences. One of these would be that the Committee

would recommend to the EEC to make greater efforts to limit the use of its subsidies on exports of wheat flour. As the EEC representative had said that such efforts had already been made and that the present EEC policy was very cautious, a recommendation along these lines would not present any major difficulty. Within a few weeks the EEC should be able to inform the Committee what concrete measures had been taken. Another consequence of the adoption of the report would be a recognition that certain provisions of the Code were not clear and that they should be examined by the Committee. Among these provisions were those dealing with more than an equitable share, Article 8:4, the definition of a primary product and the problem of concessional sales or sales outside the normal trade channels. The Committee would not necessarily have to deal with all these questions. The first step would be for the Committee to decide what it should do and what could be done by other GATT bodies such as the Committee on Agriculture.

47. The representative of Switzerland said that he detected a certain agreement among those who had spoken of the conclusions of paragraph 5.9 of the report, to the effect that certain concepts of Article 10 were too vague to be applicable in some cases and that the Committee should try to clarify them. Referring to the US proposal he said that although it contended that the EEC had obtained more than an equitable share, it did not answer the question of what exactly constituted such a share. The Committee could not arrive at the conclusion proposed by the United States without answering that question. There were many unclear concepts in Article 10. For example nobody denied that the increase of exports and thus of the market share did not necessarily result in more than an equitable share. This concept was therefore relative. However, Article 10:2 provided that this concept would always apply if there was a market displacement. Should it be a relative or absolute displacement? What was the link between the general notion of more than an equitable share and the market displacement? One could add other examples but the conclusion was that the Committee had work to do and that pending its outcome one should not try to take advantage of the situation.

48. In addressing a comment made by the EEC, the representative of Australia said that his previous statement went beyond merely contradicting paragraph 5.4 of the report. What he had been saying was that despite the Panel's conclusion in paragraph 5.4, data contained in Annex C and elsewhere in the report allowed a different conclusion. The Committee could for example, on the basis of information submitted by the Panel, draw the conclusion that the EEC had obtained more than an equitable share of world trade in wheat flour.

49. The representative of the EEC reiterated his previous remark that increasing exports and market shares did not mean, in GATT terms, obtaining more than an equitable share. There were considerations other than statistical data which had to be taken into account. There were for example political considerations as in the case of Jamaica or previously in the case of Egypt, which played an important rôle in determining more than an equitable share. This determination was a much more complex exercise than just looking at the statistical data and therefore it was not right to say that there was a contradiction between paragraph 5.4 and the statistical data in Annex C. The Panel had spent months and months analyzing this data in the light of special factors and its conclusion was well elaborated. Referring to the statement of the Swiss representative he said that the link between more than an equitable share and displacement in an individual market was quite easy to understand.

This provision that had been proposed by the United States meant that if a country was well-established as an exporter in a market but later displaced by another one, the latter country was obtaining more than an equitable share. The situation might be quite different if a country slowly and over a long period tried to establish its share in a market, but a violent displacement from a market undoubtedly resulted in more than an equitable share. The most obvious case of such a displacement in terms of Article 10:2 was the US action on the Egyptian market.

50. He further said that the two panels established by this Committee had arrived at similar conclusions, namely that GATT rules concerning subsidies on agricultural products were not sufficiently clear. This was a good reason to have a close look at these rules if only to make them less permissive and to clarify the rules of the game. The review might go beyond the specific questions raised by the panels but the starting point should be to take into account the findings contained in the two reports, as provided for in Article 18:9, and then review Articles 9 and 10 of the Code. He thought that all members of the Committee would be prepared to undertake such an exercise and that there was a consensus in the Committee to make the rules less permissive. Delegations should therefore present the situation to their respective governments and obtain their agreement on this exercise which would be started at the next meeting of the Committee. In the meantime the Chairman could already begin, in consultation with major delegations, to prepare work for the review of Articles 9 and 10.

51. The representative of Canada said that it was clear from the discussion that the Committee as a whole would not come to any conclusion which would be different from those of the Panel. The Panel had flagged problems which the negotiators in the MTN had tried to deal with but had been unable to fully resolve. The key issue was whether Article 10 could be interpreted meaningfully and whether the EEC would be ready to reach an understanding on this Article. The report should be adopted or taken note of and then the Committee should take an action along the lines of paragraph 5.9 of the report. He also wished to ascertain that the discussion in the Committee was under item (2) of its agenda and related to the particular set of issues raised by the Panel on EEC subsidies on exports of wheat flour. Issues discussed under item (1) of the agenda were quite different and required a different approach.

52. The representative of the United States said that her delegation was not ignoring the Panel findings; on the contrary, it wished to use these factual findings to support legal conclusions on the EEC having obtained more than equitable share. Similarly the United States delegation was not rejecting the conclusions of the Panel. The Panel simply had not made conclusions as required by Article 18:8, i.e. set forth findings as to the questions of fact and the application of relevant provisions. The United States would be ready to review certain provisions and concepts of the Code but this did not mean that the present dispute could be left hanging while this review took place. The general discussion could take place but the concrete dispute settlement procedure should be finished.

53. The representative of Australia said that he fully agreed that the Committee had an obligation to complete the dispute settlement procedure irrespective of other examinations or reviews to be undertaken. The proposal

that instead of completing the Panel's work the Committee should only examine the issues was not acceptable as this course of action would impair the GATT dispute settlement mechanism.

54. The representative of the EEC said that he was concerned to see some members of the Committee transforming GATT into an forum for procedures. The United States was now insisting on the application of rules which the Panel, after a very detailed examination, had found complicated, badly drafted and inapplicable in this complex case. The EEC, on the other hand, had adopted a more reasonable policy with respect to subsidies. Not only had it reduced its exports of wheat flour but for the last five weeks, following an agreement with the United States on market management, the refunds were nil. Furthermore the EEC was practically the only exporter who, since the publication of the Panel report, had systematically notified to the IWC every week, the exported quantities of wheat flour and its prices. These were the factors which the Committee should take into account as well as the fact that the EEC was ready to review the rules which some delegations wished to make more restrictive. He could also agree that the Committee make a recommendation which should be to undertake the review of Articles 9 and 10.

55. The representative of Switzerland said that he was surprised to hear a reference to a bilateral market management agreement. He wished to ascertain that the functioning of the Code would be multilateral and that the solutions would be multilateral. As to the review of Articles 9 and 10, he considered that it should not be limited to a verbal exercise but that the results of the discussion would be, when appropriate, embraced in a text. He further said that he had the impression that the United States had agreed that certain provisions of the Code were deficient. If it was so one could hardly insist on the application of those deficient provisions.

56. The representative of Chile said that the recommendation that the EEC should make greater efforts to limit the use of subsidies should be even more acceptable to the EEC if such efforts had already been made. He did not suggest that the EEC should do even more but he considered that the Committee should be informed, at a later stage, what exactly the EEC had done and what its intentions were for the future. He further said that the representative of the EEC had argued that all statistical data should be read in the light of special factors. However, the Panel itself had concluded that it was impossible to assess the relative importance of these factors. It was therefore illogical to argue that whatever happened on the wheat flour market could be attributed to, and better explained by, these factors.

57. The representative of the United States said that the question of determining more than an equitable share was not so complicated as some contended. The first thing was to see whether the country in question had export subsidies and whether these subsidies were significant, to be followed by an assessment whether and how much the world market share of this country had increased when the subsidies were in use and whether the shares of other suppliers had increased. Then it was to be determined whether there had been any special factors and if so whether their importance was such that they were instrumental in, and fully explained away any causal link between the subsidy and the increased share. Having answered these questions one could draw the conclusion whether the country in question had obtained more than an equitable share. This method should then be applied to the concrete case and a conclusion would be easily reached.

58. The representative of Australia said that although a number of comments had been made on the concept of more than an equitable share, not all views had been expressed and therefore the discussion of this matter had not been concluded.

59. The Chairman said that all those who had spoken recognized, explicitly or implicitly, the importance of the efficient functioning of the dispute settlement procedure. They had also recognized that the Committee had certain responsibilities under the Code and that it should assume them to make the dispute settlement mechanism work. There were, however, some divergencies as to what specific procedures should be followed, including the question of how to deal with the Panel report. Nevertheless, the discussion in the Committee had further contributed to the identification of problems the Committee would have to tackle. Under these circumstances the matter should be deferred to the next meeting which should take place before the summer recess. In the meantime the Chairman would make a further effort to find appropriate solutions. To this aim the Chairman would undertake, as a matter of urgency, informal consultations with all interested delegations.