

GENERAL AGREEMENT ON

RESTRICTED

SCM/M/34

24 July 1987

TARIFFS AND TRADE

Special Distribution

Committee on Subsidies and
Countervailing Measures

MINUTES OF THE MEETING HELD ON
3 JUNE 1987

Chairman: Mr. L. Wasescha (Switzerland)

1. The Committee met on 3 June 1987.
2. The Chairman drew the attention of the Committee to the request by the People's Republic of China to be represented in the Committee. This request had been made in a communication from the Permanent Mission of China to the Director-General, dated 27 October 1986, which read as follows:

"China has formally requested for resuming its membership in GATT and is ready to engage in negotiations on this subject. Thereafter China was also invited to participate in the new round of Multilateral Trade Negotiations. As the Codes on Non-Tariff Measures reached during the Tokyo Round will be inevitably touched upon during the negotiations there is a need for China to keep herself better informed of the on-going discussions on these Codes, so as to facilitate her to formulate her position on them in the course of negotiations. Therefore, China wishes to be represented in the meetings of the Committee on Technical Barriers to Trade, the Committee on Import Licensing, the Committee on Subsidies and Countervailing Measures, the Committee on Anti-Dumping Practices, the Committee on Customs Valuation and the Committee on Government Procurement. The Director-General is kindly requested to refer the matter to the Chairmen of the above-mentioned Committees respectively for their consideration and their positive responses in this respect will be highly appreciated."

In view of the fact that the People's Republic of China had formally informed the CONTRACTING PARTIES of its intention to negotiate the terms of its status as a contracting party and that it was also a participant in the Uruguay Round of Multilateral Trade Negotiations, the Chairman proposed that the Committee grant observer status to the People's Republic of China on the same conditions as those applicable to other observers (see SCM/M/2, page 12).

3. The representatives of the EEC and of Brazil said they supported China's request to be represented in the Committee. The Committee took note of these statements and agreed to welcome China as an observer.

4. The Committee elected Mr. L. Wasescha (Switzerland) as Chairman and Mr. I. Navé (Israel) as Vice-Chairman.

5. The new Chairman said that since the last regular meeting of the Committee, the Committee had been carrying on its work in an environment of negotiations in which the substance and perhaps even the structure of the Committee were on the negotiating table. This was, however, not a setting which should prompt the Committee to adopt a "wait and see" attitude. All signatories had accepted obligations which remained fully in force up to the time of a different negotiated decision. The Committee could therefore contribute to the strengthening of the system not only by properly conducting its current business but also by discussing the substantive items on its agenda. This might lead to exchanges of views which would help to clarify positions and make the signatories better prepared for the negotiations.

6. The Committee adopted the following agenda:

- A. Adherence to or acceptance of the Agreement by other countries
- B. Examination of national legislation and implementing regulations (SCM/1 and addenda)
 - (i) Japan (SCM/1/Add.8/Suppl.1)
 - (ii) Brazil (SCM/1/Add.26)
 - (iii) Korea (SCM/1/Add.13/Rev.2 and SCM/W/127)
 - (iv) Philippines (SCM/1/Add.23)
 - (v) Pakistan (SCM/1/Add.24)
 - (vi) India (SCM/1/Add.25 and Corr.1)
 - (vii) Other legislation
- C. Notification of subsidies (L/5947 and addenda, L/6111 and addenda)
- D. Semi-annual reports of countervailing duty actions taken within the period 1 July-31 December 1986 (SCM/80 and addenda)
- E. Reports on all preliminary or final countervailing duty actions (SCM/W/128, 129, 130 and 131)
- F. Report of the Group of Experts on the Calculation of the Amount of a Subsidy (SCM/W/89)
 - (i) Draft Guidelines on the Application of the Concept of Specificity (SCM/W/89)
 - (ii) Report by the Chairman on the status of the Group's work

- G. European Economic Community - Subsidies on export of wheat flour - Report by the Panel (SCM/42)
- H. European Economic Community - Subsidies on export of pasta products - Report by the Panel (SCM/43)
- I. United States - Definition of industry concerning wine and grape products - Report by the Panel (SCM/71)
- J. United States - Initiation of a countervailing duty investigation of softwood lumber products from Canada - Report by the Panel (SCM/83)
- K. Canada - Imposition of countervailing duties on imports of manufacturing beef from the EEC - Terms of reference and composition of the Panel
- L. Canada - Imposition of countervailing duties on imports of grain corn originating in or exported from the United States
- M. Other business
 - (i) Seminar on anti-dumping and countervailing duty procedures held in Brazil
 - (ii) United States - Countervailing duty investigation on imports of fresh cut flowers from various countries
 - (iii) United States - Review and revocation of countervailing measures

A. Adherence to or acceptance of the Agreement by other countries

7. The Chairman informed the Committee that since its last regular meeting, held in October and November 1986, no country had adhered to or accepted the Agreement. The Committee took note of document SCM/81 in which Mexico had announced its intention to accept the Agreement.

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

8. The Chairman introduced this item of the agenda by saying that it was desirable that written replies be given to questions submitted in writing on countervailing duty laws and regulations of signatories.

- (i) Japan (Guidelines for the conduct of countervailing and anti-dumping duty investigations, document SCM/1/Add.8/Suppl.1)

9. The Chairman recalled that at its meeting held in October 1980 the Committee had examined the countervailing duty legislation of Japan (Article 8 of the Customs Tariff Law and the related Cabinet Order,

circulated in document SCM/1/Add.8). In December 1986 the Japanese Government had adopted Guidelines for the conduct of countervailing and anti-dumping duty investigations which had been circulated in document SCM/1/Add.8/Suppl.1.

10. The representative of Japan said the provisions of Article 8 of the Customs Tariff Law and of the related Cabinet Order were not as detailed and precise as the countervailing duty laws and regulations of other signatories. The recently adopted Guidelines supplemented those provisions and were intended to provide more transparency and clarity with respect to the application of countervailing duties. In establishing the Guidelines the Japanese Government had not only taken into consideration the provisions of the Agreement but also the countervailing duty laws and regulations of other signatories and he therefore believed that the Guidelines were fully consistent with Japan's international obligations.

11. The representative of the United States said that paragraph 1(2) of the Guidelines appeared to permit "any person who has an interest in an industry in Japan" to file a petition for countervailing duty relief although Article 2:1 of the Agreement required that such a petition be filed "by or on behalf" of the industry affected. She asked how the Japanese Government proposed to adhere to the requirement of the Agreement in this area (see document SCM/W/137).

12. The representative of the EEC asked how the Japanese Government would reconcile the requirement of Article 2:1 of the Agreement that a petition be filed "by or on behalf of" the industry affected with paragraph 1(2)(c) of the Guidelines which permitted labour unions to file a countervailing duty petition. In addition, he asked for a clarification of the meaning of the word "usually" in the first sentence of paragraph 1(2); this word seemed to suggest that persons or entities other than those defined in paragraph 1(2) could also file countervailing duty petitions (see document SCM/W/136 for additional questions put by the EEC on the Guidelines).

13. The representative of Chile requested an explanation of the manner in which the Agreement had been implemented under Japan's domestic law. In particular, he wished to know how the Japanese domestic law would resolve a situation in which there was a conflict between the provisions of the Agreement and the provisions of the Japanese countervailing duty law and regulations.

14. The representative of Canada said that while the Guidelines provided that a complainant was "not required to submit evidence which is not reasonably available to him" (paragraph 1(4)(b)), no guidance was given as to the information which should be provided by the complainant. Regarding the time-limits mentioned in the Guidelines for the decision whether or not to initiate an investigation (paragraph 2(1)) and for the decision whether or not to apply a provisional measure (paragraph 6(1)), he noted that these time limits were approximative which might cause some uncertainty for traders. With respect to paragraph 6(2) he said it was not clear whether this paragraph provided for the possibility to extend the duration of the

provisional measures or for the possibility to extend the duration of the preliminary stage of a countervailing duty investigation. In this connection he also asked how long provisional measures could remain in force, what was the time limit for a final determination and what was the maximum period of time for the conduct of an investigation.

15. The representative of Canada further asked why paragraph 7(1) of the Guidelines provided that reviews of undertakings and definitive measures would only be initiated after more than one year had elapsed since the date of completion or termination of the investigation. He wondered whether this was fair to exporters in situations where market conditions had changed before one year had elapsed since the completion or termination of an investigation. Finally, he noted that the Guidelines did not provide for consultations with foreign governments prior to the initiation of an investigation as was required by the Agreement (the questions put by Canada on the Guidelines have been reproduced in document SCM/W/135).

16. In response to the question put by the United States with respect to the admissibility of complaints, the representative of Japan said that the relevant provisions of the Customs Tariff Law, the related Cabinet Order and the Guidelines were consistent with the international obligations of Japan. In this respect he pointed to Article 1 of the Cabinet Order relating to the application of countervailing duties (SCM/1/Add.8, page 6) which defined the term "industry in Japan" as used in Article 8:1 of the Customs Tariff Law as "producers in Japan whose production of the like products constitutes more than a major proportion of the total production of those products." In addition, paragraph 1(2) of the Guidelines required that petitions be filed "by or on behalf of an industry in Japan" On the question put by the EEC on the meaning of the word "usually" in paragraph 1(2), he explained that the Japanese Government did not want to exclude the possibility that persons other than those listed in that paragraph could qualify as persons entitled to file a petition. In this connection he reiterated that petitions had to be filed by or on behalf of an industry in Japan.

17. In response to the question put by the representative of Canada on the evidence which a petitioner was required to submit, the representative of Japan said that a petitioner should submit the information specified in the samples attached to the Guidelines. Paragraph 1(4) of the Guidelines was intended to implement the requirement of the Agreement that an investigation be only initiated when sufficient evidence was available of subsidization and consequent injury. With respect to the remarks made by the representative of Canada on the approximative nature of the time-limits established by the Guidelines for the decision whether or not to initiate an investigation and for the decision whether or not to apply provisional measures, the representative of Japan said that the Agreement did not provide for specific time-limits for these decisions and that this was a matter left to the discretion of individual signatories. Paragraph 1(2) and 6(1) of the Guidelines mentioned approximative time-limits but the actual period of time necessary would depend on the circumstances of each case. Regarding the duration of provisional measures he referred to

Article 10:3 of the Agreement on Implementation of Article VI of the General Agreement which stipulated that the imposition of provisional measures should be limited to as short a period as possible, not exceeding four months or, on the decision of the authorities concerned, upon request by exporters representing a significant percentage of the trade involved, to a period not exceeding six months. Within this framework the Guidelines laid down some procedural rules for the extension of the duration of provisional measures. On the question of the maximum duration of a countervailing duty investigation he said that Article 8:6 of the Customs Tariff Law required that an investigation be concluded within one year after the date of initiation; this period might, however, be extended in special circumstances. This provision was fully consistent with Article 2:14 of the Agreement. Regarding the procedures for a review of undertakings and definitive measures (paragraph 7 of the Guidelines), he said that the limitation of reviews to cases where measures had been in force for more than one year was a matter of administrative efficiency; other signatories had a similar provision in their countervailing duty laws and regulations. Finally, he affirmed that the Japanese Government was ready to afford other signatories an opportunity to consult prior to the initiation of a countervailing duty investigation.

18. Regarding the question put by the representative of Chile with respect to the status of the Agreement under Japanese domestic law, the representative of Japan said that the provisions of international agreements bound the Japanese Government directly even when the agreements had not been incorporated into Japanese domestic law.

19. In response to the remarks made by the representative of Japan on the provisions in the Japanese countervailing duty law concerning the extension of the duration of provisional measures, the representative of Canada pointed out that, unlike the Agreement on Implementation of Article VI of the General Agreement, the Agreement on Subsidies and Countervailing Measures did not permit an extension of the duration of provisional measures beyond a period of four months.

20. The representative of Chile said that, given that the Agreement had not been incorporated into the domestic law of Japan, it was important to know what legal remedies were available to private parties in case of a conflict between the provisions of the Agreement and the provisions of the Japanese countervailing duty legislation.

21. The representative of the United States said she appreciated the statement by the representative of Japan that petitions had to be filed by or on behalf of a domestic industry. However, this requirement was not clearly laid down in the Guidelines. The relevant expression used in the Guidelines was "any person who has an interest in an industry in Japan". She believed that if the Japanese Government really intended to restrict the petitioners to those comprising the domestic industry the Guidelines needed to be better worded.

22. The representative of the EEC reiterated his concerns about paragraph 1(2) of the Guidelines. The Agreement required that petitions be filed by or on behalf of the industry affected, i.e. the domestic producers of the like product. He requested the Japanese representative to further explain which other interested parties might have the right to file a petition.

23. The representative of Japan said that at this stage he was not in a position to answer all the questions which had been raised. With respect to the point made by the representative of Canada on the maximum duration of provisional measures under the Agreement, he said that paragraph 6(2) of the Guidelines, which dealt with the procedure for the extension of provisional measures, was only applicable to anti-dumping duty investigations. Furthermore, he pointed to Article 8:9 of the Japanese Customs Tariff Law which limited the duration of provisional measures in a countervailing duty investigation to a period not exceeding four months.

24. The Chairman concluded by saying that the Committee would revert to the Guidelines at its next regular meeting; he invited signatories to submit questions in writing by 3 July and requested the delegation of Japan to provide written replies to those questions by 1 October 1987.

(ii) Brazil (Decree No. 93.962 of 22 January 1987, document SCM/1/Add.26)

25. The representative of Brazil said that by virtue of Decree No. 93.962 the Agreement had been incorporated into the Brazilian domestic law. Under Article 3 of this Decree the Customs Policy Commission was entitled to issue complementary rules for the application of the Agreement. On 14 May 1987 the Commission had adopted the complementary rules which had been published in the Diário Oficial on 2 June. These complementary rules would be submitted to the Committee as soon as possible.

26. No comments were made or questions raised; the Chairman said the Committee would revert to the countervailing duty legislation of Brazil when it had received the text of the complementary rules.

(iii) Korea (Article 13 of the Customs Act and Article 4-13 of the Presidential Decree of the Customs Act, document SCM/i/Add.13/Rev.2)

27. The Chairman recalled that at its meeting in October 1986 the Committee had begun to examine the countervailing duty legislation of Korea. At that meeting the representatives of the EEC and the United States had asked a number of questions on this legislation (SCM/M/32, paragraphs 6 and 7). Further questions in writing had been submitted by the EEC and Australia (SCM/W/127 and SCM/W/133, respectively). Replies by Korea to the questions submitted by the EEC had been circulated in document SCM/W/134.

28. The representative of Korea said document SCM/W/134 contained the replies by his Government to the questions put by the EEC in SCM/W/127.

Regarding the questions submitted by Australia in SCM/W/133 he said that those questions also appeared in ADP/W/137 which contained questions by Australia on the Korean anti-dumping legislation. Answers to those questions had been provided by his Government in document ADP/W/146.

29. The representative of Australia thanked the delegation of Korea for the replies to Australia's questions on the Korean anti-dumping legislation; those replies might also be adequate replies to the questions put by Australia on the Korean countervailing duty legislation. He wished to have more time to reflect on the answers given by Korea and reserved his delegation's right to revert to the Korean legislation at a future meeting of the Committee.

30. The representative of the EEC expressed his appreciation for the replies by Korea to the questions which had been put by the EEC. Regarding item 5 of document SCM/W/127, relating to a provision in the Korean legislation that wholesalers and labour unions have the right to file a petition, he reiterated the view expressed by his delegation during the discussion of the Japanese Guidelines that such a provision was not consistent with the Agreement. He had noted that the Korean Government had indicated that it was prepared to further discuss this matter and he said he would be interested if the Korean Governments had further comments to make on this issue.

31. The representative of the United States recalled that at the meeting of the Committee in October 1986 her delegation had asked some questions on the countervailing duty legislation of Korea (SCM/M/32, paragraph 7); her delegation would submit those questions in writing and she requested the Korean delegation to answer those questions in writing (see document SCM/W/134).

32. The representative of Korea affirmed his Government's willingness to discuss with the EEC the issue of the status of wholesalers and labour unions as petitioners. With respect to the questions raised by the United States he said his delegation would provide replies when it had received those questions in writing.

33. The Chairman said the Committee would revert to the countervailing duty legislation of Korea at its next regular meeting; he invited signatories to submit their questions in writing by 3 July 1987 and requested the delegation of Korea to reply by 1 October 1987.

(iv) The Philippines (Section 302 of Presidential Decree No. 1464 and Department of Finance Order No. 300, document SCM/1/Add.23)

34. The Chairman said the Committee had considered the countervailing duty legislation of the Philippines at its meetings held in April and October 1986. At the October meeting the representative of the Philippines had provided replies to questions which had been submitted in writing by the United States (SCM/W/109), the EEC (SCM/W/114) and Australia (SCM/W/117). Those replies had been circulated in document SCM/W/123.

Further questions had been asked at the October meeting by the representatives of Australia, Canada, the EEC and the United States (SCM/M/32, paragraphs 12-15). The Chairman invited the representative of the Philippines to comment on the points made at the October meeting.

35. The representative of the Philippines said he was not in a position to provide further replies in addition to those contained in SCM/W/123. However, with respect to the questions raised by a number of delegations on Section 4 of the Department Order, whereby, by way of provisional measure, the release of articles subject to a countervailing duty investigation was conditioned on the filing of a bond at double the dutiable value of the articles, he said he had been informed unofficially that his authorities had decided to amend this provision; henceforth, the level of the bond required would be determined by the amount of subsidization established during the preliminary phase of the investigation. He hoped he could confirm this information in due course.

36. The representative of the EEC expressed his concern regarding the replies given by the Philippines in SCM/W/123 to questions 2 and 3 of SCM/W/114; his delegation was of the view that those replies indicated that the aspects of the countervailing duty legislation of the Philippines referred to in those questions were not fully consistent with the Agreement.

37. The representative of the United States said her delegation wished to have more time to study the replies given by the delegation of the Philippines in SCM/W/123 and she therefore requested that this item remain on the agenda of the Committee.

38. The representative of Australia expressed his appreciation for the statement by the representative of the Philippines regarding his authorities' intention to amend Section 4 of the Department Order No. 300; he hoped that an official confirmation of this information could be provided shortly.

39. The Chairman concluded by saying that the Committee would revert to the countervailing duty legislation of the Philippines at its next regular meeting; he invited the signatories to submit written questions by 3 July 1987 and requested the delegation of the Philippines to reply in writing by 1 October 1987.

(v) Pakistan (Ordinance No. III of 1983, SCM/1/Add.24)

40. The Chairman recalled that the Committee had discussed the countervailing duty legislation of Pakistan at its meetings in April and October 1986. At the meeting held in October the representative of Pakistan had replied to some of the questions which had been submitted in writing by the United States (SCM/W/106), the EEC (SCM/W/113) and Australia (SCM/W/111) and he had indicated that he would revert to the remaining questions at a later stage. At the same meeting the representatives of Canada, the United States and the EEC had made further comments on the legislation of Pakistan (SCM/M/32, paragraphs 27-28 and 30). The Chairman invited the representative of Pakistan to reply to the questions raised.

41. The representative of Pakistan said his delegation was not in a position to provide additional replies at this meeting and he therefore requested that the Committee revert to his country's countervailing duty investigation at the next meeting of the Committee. He further informed the Committee that his Government had not yet adopted rules to implement the Ordinance and that so far Pakistan had never taken any action under its countervailing duty action.

42. The Chairman said the Committee would revert to the legislation of Pakistan at its next regular meeting; he invited the signatories to submit written questions by 3 July 1987 and requested the delegation of Pakistan to respond in writing by 1 October 1987.

(vi) India (Customs Tariff (Second Amendment) Act of 1982 and the related Customs Tariff Rules of 1985, document SCM/1/Add.25 and Corr.1)

43. The Chairman said the Committee had examined the countervailing duty legislation of India at its meetings held in April and October 1986. At the October meeting the representatives of the United States, the EEC and Australia had requested more time to reflect on the answers given by the representative of India, in particular regarding the question of the definition of industry and the provision in the Indian legislation for the application of countervailing measures in situations of "cross-border input subsidization" (SCM/M/32, paragraphs 38-39 and 41-42).

44. Regarding the treatment of cross-border input subsidies under the Indian countervailing duty law, the representative of India said the position of his Government on this issue was reflected in paragraph 40 of SCM/M/32; the decision whether or not to apply countervailing measures against such subsidies would depend upon the circumstances of each case.

45. The representative of the United States said that, while she had no additional questions to ask about the Indian countervailing duty legislation, her delegation remained concerned about this legislation, in particular about the possible treatment of cross-border input subsidies, the definition of industry and the provision for a non-discriminatory application of countervailing duties. She therefore reserved all the rights of her delegation with respect to the Indian countervailing duty legislation.

46. The representative of India said the concerns expressed by various delegations at the last regular meeting of the Committee had been conveyed to his authorities. He assured the signatories that the provisions of the Indian countervailing duty law were in no way intended to deviate from the rules of the Agreement.

47. The representative of the EEC said he appreciated the assurance given by the representative of India regarding the intention of his Government not to deviate from the provisions of the Agreement. However, he wondered whether this also applied to the rules implementing the countervailing duty

law. In this regard he asked whether, in case an exporter was of the view that a measure implementing the law was not consistent with the Agreement, such an exporter could bring this matter before a court of law in India and point to a statement by the Government of India to the effect that in drafting the countervailing duty legislation it had been the intention of the Indian authorities that this legislation should be applied in full conformity with the Agreement.

48. The representative of India said he was not in a position to indicate what would happen in an Indian court of law in a situation such as the one described by the representative of the EEC. However, in case exporters or signatories were of the view that there was a conflict between elements of the Indian countervailing duty legislation and the provisions of the Agreement, his authorities would certainly be prepared to consult on the matter in order to arrive at a satisfactory solution.

49. The Chairman concluded by saying that the Committee had taken note of the points raised and answers provided with respect to the Indian countervailing duty legislation and that, at this stage, it had concluded its examination of this legislation.

(vii) Other legislation

50. The representative of Canada expressed the concern of his authorities with respect to possible amendments to the countervailing duty law of the United States which were being considered in the United States Congress. He referred in particular to HR 3, passed by the House of Representatives at the end of April. Some of those proposed amendments might have significant implications for the implementation of the Agreement and, if enacted, could also have a negative impact on the multilateral trade negotiations in the area of subsidies and countervailing measures and more generally. Regarding the proposed new definition in HR 3 of domestic subsidies, he said this new definition constituted a significant departure from generally accepted international norms in this area. One aspect of this proposal was the unilateral definition of the specificity test which went well beyond the guidelines on the application of the specificity principle generally accepted by the signatories of the Agreement. Another element in the proposal was the use of a commercial standard for the determination and measurement of countervailable subsidies. The mandatory use of commercial benchmarks (and especially of external pricing benchmarks) in measuring alleged subsidies would fail to take account of legitimate policy objectives relating to the provision of goods and services by governments. This provision, if enacted, could undermine the trade negotiations in the area of subsidies and countervailing measures and could prompt other nations to adopt a similar approach which in turn could expose a wide range of federal and state programmes in the United States to countervailing measures.

51. The representative of Canada further said that his authorities were also concerned with the proposed provisions regarding mandatory "cross-cumulation", as such cumulation was not necessarily always appropriate.

The result of mandatory "cross-cumulation" could be the application of inappropriate remedies in instances where both anti-dumping and countervailing duties would be applied while only one such duty would be justified. Finally, he drew the attention of the Committee to proposals in the United States Congress to extend the period for duty drawback on sugar exports from the United States to 31 October 1977. In this respect he pointed out that item (i) of the Illustrative List of Export Subsidies annexed to the Agreement permitted the substitution of imports by domestic goods provided "the import and corresponding export operations both occur within a reasonable time period, normally not to exceed two years." The proposal made in the United States Congress would go well beyond the relevant provision of the Agreement and, coupled with fluctuating levels of duties and import fees in the United States, would cause important variations in duties available for drawback. This could have further export incentive effects, thus creating additional and serious difficulties for the Canadian sugar refining industry. The proposed time-frame could not be considered reasonable as provided for in item (i) of the Illustrative List and consequently would not be in conformity with the relevant provision of the Agreement.

52. The representative of the EEC expressed his support for the views expressed by the Canadian representative on the proposed amendments to the countervailing duty law of the United States. Those proposed amendments, if enacted, would constitute a departure from fundamental rules and disciplines of the Agreement. He hoped that the delegation of the United States could convey to its Congress the message that unravelling what had been agreed at the end of the Tokyo Round would entail the risk of the adoption of mirror legislation by other signatories. This would not only adversely affect American interests but would also have an escalating effect to the detriment of the international trading system as a whole.

53. The representative of Australia said his authorities were closely following the developments in the United States Congress and were concerned about the countervailing duty provisions in the proposed legislation. He hoped the United States Government would continue to oppose the protectionist elements in the various proposals which were being considered by Congress. Further, Congress should be reminded that a new round of trade negotiations had recently been launched which provided the possibility to define new disciplines for the application of countervailing measures if this was deemed necessary by all participants in the round.

54. The representative of India thanked the Canadian representative for raising the question of the proposed amendments to the United States countervailing duty law. The United States Government should convey to its Congress the serious concerns expressed in the Committee regarding those proposals which, if enacted, would not only constitute a threat to the existing balance of rights and obligations of signatories under the Agreement but would also undermine the negotiating process in the Uruguay Round Negotiating Group on Subsidies and Countervailing Measures.

55. The representative of the United States said he had listened carefully to the statements made by the representatives of Canada, the EEC, Australia and India; he would report the views expressed by those delegations to his authorities but he noted that at this stage, it was premature to discuss in the Committee the trade bills pending in the United States Congress. When and if changes to the countervailing duty law would be enacted and implemented the United States would notify the Committee of any changes relevant to the Agreement.

56. The Committee took note of the concerns expressed by a number of delegations regarding possible changes to the countervailing duty law of the United States.

57. The Chairman said the Committee would maintain on its agenda the item 'legislation of other signatories' in order to afford the signatories the opportunity to revert to particular aspects of national countervailing duty laws and regulations of other signatories.

58. The Chairman brought to the attention of the Committee a compendium of anti-dumping and countervailing duty laws and regulations which had just been published by the secretariat (see document L/6174).

C. Notification of subsidies

59. The Chairman made a number of general remarks on the procedures for notifications of subsidies under Article XVI:1 of the General Agreement. Firstly, he recalled that although the Committee paid special attention to the issue of notifications of subsidies, the obligation to submit such notifications derived from the General Agreement itself; accordingly, those notifications should be submitted to the CONTRACTING PARTIES and not to the Committee. Secondly, he reminded the signatories that in accordance with the agreed procedures for notifications under Article XVI:1 of the General Agreement, contracting parties were required to submit every third year a new and complete notification of their subsidy programmes. In this respect he noted that some notifications which had been received covered only particular sectors; in addition, some contracting parties had not provided a full new notification but had only notified the secretariat that no, or only minor, changes had occurred since the date of their last (up-dating) notification. He urged the signatories to submit in 1987 new and full notifications (see also document L/6111/Suppl.1). In this respect he further noted that in autumn 1987 the Committee would hold a special meeting to examine the new complete notifications submitted by the signatories. In order to facilitate the preparation of this special meeting he requested the signatories to submit their notifications by mid-September 1987.

60. The Chairman recalled that at its regular meeting held in October 1986 the Committee had taken note of the fact that certain signatories had not yet submitted up-dating notifications for 1986. While certain of these signatories had in the meantime submitted these notifications, no up-dating notifications had been received from Chile, Korea, India, Pakistan and the Philippines.

61. The representative of Switzerland said his delegation would in due course submit a full notification of subsidy programmes.

62. The representative of the United States announced that a full notification of subsidies would be submitted by his delegation well before the special meeting of the Committee. In addition, he reiterated the request expressed by his delegation at previous meetings of the Committee that all support programmes in the civil aircraft sector be notified. It was clear that governments provided significant assistance to this sector and that this had an impact on trade; those practices should therefore be notified under Article XVI:1 of the General Agreement.

63. The representative of Canada said his delegation had recently submitted a new and complete notification of subsidies (see document L/6111/Add.5).

64. The representative of the EEC said his delegation would make every effort to meet the deadline mentioned by the Chairman. Regarding the request expressed by the United States for the notification of subsidies in the civil aircraft sector he stated that the question of civil aircraft supports was presently being examined in another forum. After this examination had been completed his delegation would consider if it would be appropriate to notify such programmes. In this context he added that some other signatories had also submitted notifications which were not complete.

65. The representatives of Turkey, Korea and Chile said their delegations would shortly submit full notifications.

66. The Committee took note of the statements made.

D. Semi-annual reports of countervailing duty actions taken within the period 1 July-31 December 1986 (SCM/80 and addenda)

67. The Chairman said that SCM/80/Add.1 listed those signatories which had notified the secretariat that they had not taken any countervailing duty action within the period 1 July-31 December 1986: Austria, Brazil, Chile, the EEC, Egypt, Finland, Hong Kong, India, Israel, Japan, Korea, New Zealand, Norway, Pakistan, Switzerland, Turkey, Uruguay and Yugoslavia. Countervailing duty actions had been notified by Australia (Add.2), the United States (Add.3) and Canada (Add.4). No semi-annual reports for the period 1 July-31 December 1986 had been received from Indonesia, the Philippines and Sweden.

68. The representative of Sweden said his country had taken no countervailing duty action during the period under consideration.

69. The Committee examined the reports in the order in which they had been circulated:

Australia (SCM/80/Add.2)

70. No comments were made on this report.

United States (SCM/80/Add.3)

71. The representative of India asked why in many of the cases listed in SCM/80/Add.3 no information had been provided on the volume of trade and the percentage of domestic consumption accounted for by the subsidized imports in question.

72. The representative of the United States explained that most of the cases referred to by the Indian representative involved administrative reviews of outstanding countervailing measures. Such reviews were made upon request and did therefore not always cover all imports subject to a countervailing measure. In many cases information on the percentage of imports subject to a review was not available. In addition, she noted that in some cases the information requested by the Indian representative could not be provided because it was confidential.

73. The representative of India said that while he recognized that it might be difficult to obtain information on trade volume and on subsidized imports as percentage of domestic consumption, it was in the interest of full transparency that this information be provided. He also noted that a number of actions taken by the United States involved cases where imports accounted for very small percentages of domestic consumption.

74. The representative of Israel also noted that the semi-annual report of the United States contained some cases where countervailing duty actions had been taken on imports which accounted for only a minor percentage of domestic consumption; in this connection he referred to two cases involving imports from Israel in which the imports investigated accounted for only 0.9 per cent and 0.7 per cent of domestic consumption (SCM/80/Add.3, page 6). With respect to a countervailing duty order which had entered into force on 4 September 1980 on imports of roses from Israel (SCM/80/Add.3, page 13), he asked if and how the fact that Israel had accepted the Agreement in 1985 had been taken into consideration by the United States authorities in the review of this order carried out in 1986; in particular he wished to know whether this review provided for an injury determination.

75. The Chairman said the Committee would revert to the question raised by the representative of Israel at its next regular meeting; he also urged the signatories to use the revised standard form (SCM/79) for the submission of their semi-annual reports.

Canada (SCM/80/Add.4)

76. The representative of the EEC raised a number of issues relating to the recently concluded countervailing duty investigation conducted by Canada in respect of imports of boneless manufacturing beef from the EEC.

One aspect of this investigation was the subject of a dispute settlement procedure under Article 18 of the Agreement (see SCM/M/32, paragraphs 177-185). The fact that the EEC had limited its request for dispute settlement proceedings to one particular aspect of this investigation should not be interpreted to mean that other aspects were acceptable. In this respect he brought to the attention of the Committee the determination of material injury which had been made by the Canadian Import Tribunal (CIT). The CIT had found that there was a threat of material injury to the domestic industry caused by the imports from the EEC. This determination of the existence of a likelihood or threat of material injury had been based on three main elements: (a) the existence of large stocks of beef in the Community which could be used for export to Canada, (b) the likelihood of a resumption of exports of beef from the EEC to Canada and (c) the threat of retaliatory action by the United States against Canadian exports of beef to the United States because of alleged indirect displacement by EEC exports. As regards this latter aspect the CIT had found that there was a risk that Canada would be seen as a "backdoor broker" for subsidized products from the EEC. On the question of stocks, the CIT had been aware that for health and veterinary reasons the stocks of beef in the EEC were not permitted entry into Canada and it was therefore difficult to understand how the CIT could have arrived at the conclusion that those stocks could threaten injury to Canadian producers. Regarding the second element in the determination by the CIT, the representative of the EEC said that insufficient evidence had been provided by the CIT to support its finding that there was a likelihood of a resumption of massive sales. In this respect he also noted that there were only two suppliers from the EEC. On the third aspect, he said the CIT had based its findings on two elements: firstly, a letter from a trade association in the United States to its Canadian counterpart, and, secondly, alleged initiatives in the United States Congress to take measures against Canadian exports of beef, in case Canada would not take action against imports of beef from the EEC. He noted that the Agreement required that it be demonstrated "that the subsidized imports are, through the effects of the subsidy, causing injury within the meaning of this Agreement" (Article 6:4). His delegation considered that the concept used by the CIT that account should be taken of "the realities of the trading environment" was not in conformity with this requirement of the Agreement. Finally, he referred to the Recommendation on determination of threat of material injury adopted by the Committee on Anti-Dumping Practices. Although this Recommendation had not been formally adopted by the Committee on Subsidies and Countervailing Measures, it gave guidance as to how investigating authorities should interpret the notion of threat of material injury in a countervailing duty investigation. The key concept in this Recommendation was that a threat of material injury should be clearly foreseen and imminent. In his view nothing in the findings of the CIT showed that there was an imminent threat of injury to Canadian producers as a result of imports of beef from the EEC. He concluded by saying that his delegation considered that the determination by the CIT was not compatible with the requirements of the Agreement.

77. The representative of Canada said the CIT was a quasi-judicial independent body which made its determinations in anti-dumping and countervailing duty cases after an objective examination of the facts

submitted to it by the parties concerned and following public hearings on the question. In the case of imports of manufacturing beef from the EEC the CIT had indeed taken into account the threat of possible restrictive measures by the United States in the event of free importation into Canada of subsidized beef from the EEC. However, this factor which was relevant in the context of the North American beef market given the integration of the Canadian and United States markets, had not been the only one considered by the CIT. In fact, this factor simply reinforced the threat of injury. In its findings concerning the threat of injury the CIT had not hesitated to state at the outset that, in the absence of a finding of threat of injury, imports of subsidized manufacturing beef from the EEC could reach a considerable level. The CIT had found that there was no reason to believe that the subsidies granted by the EEC would be eliminated and that, consequently, the large volumes of beef exported to Canada by the EEC prior to the imposition of the quotas fixed in 1985 could be exceeded. The volume of those exports had reached record levels in 1984. The CIT had been convinced that imports of manufacturing beef from the EEC could not have penetrated into Canada without the help of the large subsidies found to exist by the Canadian authorities. The virtually complete disappearance of such imports following the imposition of the provisional duties was evidence of this. The CIT therefore believed that if the beef in question imported from the EEC was available at the price made possible by the subsidies, Canadian importers would buy this beef because Canadian beef would be unable to compete with those subsidized prices. Finally, the representative of Canada said that the Canadian countervailing duty legislation allowed any interested party to approach the CIT at any time to request the review of a determination of injury when the party in question considered that the conditions which had led to that determination had changed significantly.

78. The Committee took note of the statements made by the representatives of the EEC and Canada.

E. Reports on all preliminary or final countervailing duty actions
(SCM/W/128, 129, 130 and 131)

79. The Chairman informed the Committee that notifications under these procedures had been received from Australia, Canada and New Zealand.

80. The representative of the United States said his delegation had noted with interest that New Zealand had notified a countervailing duty action on imports of wheat from Australia (SCM/W/131).

81. The representative of Australia said his Government did not accept this questioning of the integrity of one of Australia's major export industries. His Government was of the view that in taking this action New Zealand had not acted in conformity with the requirements of the Agreement with respect to both the procedural and the factual aspects of the case. This view had been communicated to the Government of New Zealand at the highest level. The fact that the matter was presently before a court in New Zealand was an additional indication of the weak

basis for this case. His Government hoped that the matter could be resolved on a bilateral basis but it was determined that its position would be indicated.

82. The Committee took note of the statements made.

83. The Chairman said he had been informed by the secretariat that a considerable delay had occurred in the submission of reports under this procedure. In the case of the United States no reports had been received during the last nine months.

84. The representative of the United States said he acknowledged the momentary lapse in the prompt submission by his delegation of reports on countervailing duty actions; he recognized the importance of this notification procedure and said that steps would be taken to resume a prompt submission of those reports to the GATT secretariat.

F. Report of the Group of Experts on the Calculation of the Amount of a Subsidy

(i) Draft Guidelines on the Application of the Concept of Specificity (SCM/W/89)

85. The Chairman recalled that the Draft Guidelines on the Application of the Concept of Specificity (SCM/W/89) had been before the Committee at its regular meetings held in October 1985, April 1986 and October 1986. In view of the concerns expressed by the United States, the Committee had been unable to adopt the Draft Guidelines and had agreed to revert to this matter at its next regular meeting (SCM/M/32, paragraph 141).

86. The representative of the United States said his delegation was still not in a position to agree to the adoption of the Draft Guidelines on the Application of the Concept of Specificity.

87. The representative of Brazil expressed the disappointment of his Government about the fact that the Committee was unable to adopt the Draft Guidelines; he urged all signatories to reflect on possibilities to adopt the Draft Guidelines at the next meeting of the Committee

88. The Chairman said he would hold informal consultations to see whether it would be appropriate to revert to the Draft Guidelines at the next regular meeting of the Committee

(ii) Report by the Chairman on the status of the Group's Work

89. The Chairman recalled that at its meeting held on 23-24 October 1985 the Committee had adopted the Draft Guidelines on Physical Incorporation (SCM/W/74/Rev.1) with the exception of paragraphs 4(a) and (b) which had been referred to the Group of Experts for further consideration in view of comments made by the delegation of Chile in document SCM/W/94. The Group

had re-examined those two paragraphs but had not proposed any changes to the existing text. The Chairman proposed to hold informal consultations on this matter. It was so agreed.

90. The Chairman further said he had been informed by the out-going Chairman that, in view of the Uruguay Round of Multilateral Trade Negotiations, the Group wished to temporarily suspend its work. The Group would, however, remain on call and the Chairman might reconvene the Group whenever he found it appropriate to do so.

91. The representative of Hong Kong expressed his appreciation for the work done by the Group of Experts. This work, although not successfully concluded, had provided insight into important problems relating to the application of countervailing measures. In this regard he referred in particular to the issue of the application of countervailing measures against input subsidies and to the question of cumulative injury assessment. These two notions fell outside the existing disciplines of the Agreement and constituted a danger for all countries, including those which, like Hong Kong, did not grant subsidies. Many problems had been created by national laws on the application of countervailing measures which contained arbitrary and unilateral interpretations of the Agreement. In this connection he associated himself with the concerns expressed by the delegations of Canada, the EEC, Australia and India regarding the recently proposed amendments to the countervailing duty legislation of the United States.

92. The observer for Singapore said she supported the statement made by the representative of Hong Kong regarding the danger of unilateral interpretations of the Agreement in national countervailing duty laws.

93. The Committee took note of the statements made by the representative of Hong Kong and the observer for Singapore. The Committee took note that the Group of Experts on the Calculation of the Amount of a Subsidy would temporarily suspend its activities.

G. European Economic Community - Subsidies on Export of Wheat Flour - Report by the Panel (SCM/42)

94. The Chairman recalled that the Report by this Panel had been submitted to the Committee on 21 March 1983. It had been discussed by the Committee at its meetings of 22 April, 9 May, 9-10 June 1983, 10 May 1984 and 22-29 April and 28-29 October 1986. The Committee had not been able to adopt the Report and had agreed to revert to it at this meeting. However, informal consultations had made it clear that the situation had not changed and that the Committee would not be able to agree to adopt the Report at this meeting. He therefore proposed to postpone the consideration of this Report and to hold informal consultations with interested signatories as to how to proceed in the future. It was so agreed.

H. European Economic Community - Subsidies on Export of Pasta Products - Report by the Panel (SCM/43)

95. The Chairman said the situation with respect to this Panel Report was similar to the situation with respect to the Panel Report on Wheat Flour and he therefore suggested that the Committee follow the same procedure. It was so agreed.

I. United States - Definition of industry concerning wine and grape products - Report by the Panel (SCM/71)

96. The Chairman said informal consultations carried out by him had made it clear that the Committee would not be in a position to adopt this Report at this meeting and he therefore suggested that the Committee follow the same procedure as under items G and H. It was so agreed.

J. United States - Initiation of a countervailing duty investigation of softwood lumber products from Canada - Report by the Panel (SCM/83)¹

97. The Chairman recalled that the dispute which had led to the establishment of this Panel had been brought before the Committee by Canada in July 1986 (SCM/73). The Committee had held a special meeting for the purpose of conciliation under Article 17 of the Agreement (SCM/M/Spec/11) but since this conciliation procedure had not led to a mutually satisfactory resolution of the matter, the Committee had agreed, on 1 August 1986, to establish a Panel (SCM/M/Spec/12). At its meeting held in October 1986 the Committee had been informed of the terms of reference and composition of this Panel (SCM/M/32, paragraphs 195 and 196). The Panel had submitted its Report to the Committee on 25 May 1987 (SCM/83).

98. The Chairman of the Panel, Mr. Michael Cartland (Hong Kong) said the Panel had met with the two parties to the dispute on 10 October, 13 November and 12 December 1986. In addition, the Panel had met on 13 and 27 November 1986 and on 13 May 1987. In January 1987 the Panel had been informed by the parties that they had reached a mutually satisfactory solution of their dispute. This solution consisted of a Memorandum of Understanding concluded by Canada and the United States on 30 December 1986 to resolve differences with respect to the conditions affecting trade in softwood lumber products. Given the fact that the two parties had notified the Panel of this bilateral solution, the Panel had considered it appropriate to limit its Report to a brief factual description of its proceedings. In addition, in view of Article 18:7 of the Agreement the Panel had considered it necessary to provide in the Report some information regarding the nature of the bilateral solution (see paragraphs 8 and 9 of document SCM/83). Finally, he drew the Committee's attention to paragraph 10 of the Panel Report where the Panel concluded that, since the Memorandum of Understanding between Canada and the United States constituted a mutually satisfactory solution of the dispute which had been referred to the Panel, it considered that the work carried out in accordance with its mandate could be considered as having been completed.

¹The discussion of this item took place under the chairmanship of Mr. Navé (Israel), Vice-Chairman of the Committee.

99. The representative of the United States thanked the Panel and the secretariat for their work in this matter; his delegation was pleased that Canada and the United States had been able to reach a mutually satisfactory resolution of their dispute.

100. The representative of Canada also expressed his appreciation for the work done by the Panel and the secretariat.

101. The representative of the EEC said his delegation had taken note of the bilateral solution reached by Canada and the United States. He emphasized that this bilateral arrangement concerned the two parties only and requested that assurances be given by Canada and the United States that this arrangement would not adversely affect the interest of other signatories.

102. The representative of Canada said he did not expect the bilateral solution reached by Canada and the United States to have any implications for other signatories.

103. In view of the conclusion contained in paragraph 10 of the Panel Report, the Chairman proposed that the Committee adopt the Report. It was so agreed.

K. Canada - Imposition of countervailing duties on imports of manufacturing beef from the EEC - Terms of reference and composition of the Panel

104. The Chairman said the Committee had established this Panel at its meeting held on 29 October 1986; at the same meeting the Chairman had been authorized to decide, in consultations with parties concerned, on the terms of reference of the Panel and to decide, after securing the agreement of the parties concerned, on the composition of the Panel (SCM/M/32, paragraphs 184 and 185). He informed the Committee that the terms of reference of the Panel were as follows:

"To review the matter referred to the Committee by the European Community in SCM/75 relating to the standing of the petitioners and the definition of industry employed by the Canadian authorities in the recently concluded countervailing duty case against Community exports of boneless manufacturing beef to Canada and, in the light of the facts of the matter, present to the Committee its findings concerning the rights and obligations of the signatories party to the dispute under the General Agreement as interpreted and applied by the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade."

105. The Chairman said the Panel was composed of the following non-governmental members:

Chairman: Ambassador Carl Henrik von Platen

Members: Professor Robert E. Hudec
Mr. Adin Talbar

L. Canada - Imposition of countervailing duties on imports of grain corn originating in or exported from the United States

106. The Chairman said that on 5 May 1987 the Committee had held a special meeting on this matter following a request by the United States under Article 16:1 of the Agreement (SCM/M/33). At the end of that meeting Canada and the United States had been invited by the Chairman to enter into bilateral consultations as soon as possible in order to arrive at a mutually acceptable solution.

107. The representative of Canada said that no bilateral consultations on this matter had taken place between his country and the United States since the special meeting of the Committee on 5 May 1987. He informed the Committee that under the Canadian countervailing duty law the Canadian Import Tribunal could receive representations from interested persons on the question of whether the application of a countervailing duty would not or might not be in the public interest. The question whether the countervailing duty on imports of grain corn from the United States was in the Canadian public interest would be the subject of a public hearing which would take place on 6 July 1987.

108. The representative of the United States reiterated the serious concern of his delegation regarding Canada's use of mere potential for importation instead of actual imports, as the basis for a finding of injury. The United States would seek further bilateral consultations with Canada on this matter.

109. The Chairman said this matter would remain on the agenda of the Committee and invited Canada and the United States to inform the Committee at its next meeting of the results of their bilateral consultations.

M. Other business

(i) Seminar on anti-dumping and countervailing duty procedures

110. The representative of Brazil said that in the context of the GATT technical assistance programme, a seminar on anti-dumping and countervailing duty procedures had taken place in Brazil from 6 to 10 April 1987. Experts from the EEC, the United States and the GATT secretariat had participated in this seminar and he thanked those experts for their contribution to the seminar.

(ii) United States - Countervailing duty investigation on imports of fresh cut flowers from various countries

111. The representative of Canada drew the attention of the Committee to a determination made by the United States International Trade Commission (USITC) on 27 February 1987 in anti-dumping and countervailing duty investigations concerning certain fresh cut flowers from various countries, including Canada. In making its determination the USITC had cumulated imports within flower types. Imports of standard carnations, standard

chrysanthemums and pompon chrysanthemums had been found to be injurious while imports of mini-carnations, gypsophila, astroemeria and gerberas had been found not to be injurious. As a result, imports of standard carnations from Canada had been found injurious while imports of mini-carnations had not been found injurious. In making its determination, the USITC had ruled out exempting countries on de minimis grounds. The USITC had taken the view that to apply such a de minimis test would be inconsistent with the legislative intent of the Trade and Tariff Act of 1984. This investigation demonstrated that an inflexible application of the cumulation principle could lead to perverse results. Imports into the United States of standard and miniature carnations combined from Canada amounted to no more than \$40,000 per year and accounted for less than 0.05 per cent of apparent consumption in the United States. Imports into the United States of standard carnations alone were considerably less than \$40,000. Given the insignificant level of imports from Canada it was difficult to see how such imports could, by any criteria, be causing or contributing to material injury to the domestic industry in the United States; the insignificant level of imports from Canada also put into question the consistency of the USITC determination with the relevant provisions of the General Agreement and the Agreement on Subsidies and Countervailing Measures, particularly Article 6 of the Agreement.

112. The representative of Canada further said the United States Department of Commerce had found no evidence of the existence of subsidization against the Canadian producers of standard carnations. The only Canadian producer investigated had been found not to be subsidized and had been excluded from the countervailing duty determination. Nevertheless, the countervailing duty order as a result of the USITC finding applied to imports from Canada. In these circumstances there was no basis under the Agreement to have a countervailing duty order against the Canadian standard carnation industry and this order should therefore be rescinded.

113. The representative of the EEC said his authorities had some difficulties with the affirmative countervailing duty determination made by the United States Department of Commerce in January 1987 regarding imports of certain fresh cut flowers from the Netherlands. One of the programmes found to be countervailable by the Department of Commerce - aids for the creation of co-operative organizations - was a programme administered by the EEC and open to virtually all agricultural sectors in the EEC member States. Since the inception of this programme 5,000 individual projects had been financed; under this programme the Government of the Netherlands had, since 1978, submitted proposals relating to fourteen different agricultural sectors, including the flowers sector. Despite these facts the United States had considered that the use made of this programme by the Netherlands was such as to constitute a sector-specific benefit to the industry in question. His authorities were of the view that if put in a global EEC context it was extremely difficult, if not impossible, to find that this programme conferred sector-specific benefits. The facts cited showed that the programme should not have been countervailed; the amount of subsidization found by the United States authorities was small but this did not detract from the central issue that the programme involved was generally available within the EEC.

114. The observer for Colombia said exports of fresh cut flowers from his country to the United States had also been the subject of a countervailing duty investigation, as a result of which the Colombia exporters concerned had undertaken to renounce any government assistance measures. He reserved the right of his delegation to bring this matter before the GATT Council.

115. In response to the remarks made by the representative of Canada, the representative of the United States said that three Canadian companies had been subject to the countervailing duty investigation of imports of standard and miniature carnations. One company had been found not to be subsidized and was therefore excluded from the countervailing duty order. Regarding the countervailing duty investigation of fresh cut flowers from the Netherlands she said the estimated net subsidy found with respect to the aid for the creation of co-operative organizations was only 0.17 per cent ad valorem and that this would not have much impact on the volume of shipments to the United States of fresh cut flowers from the Netherlands. Nevertheless, her authorities continued to believe that this programme was countervailable because the Government of the Netherlands had selected only a few activities within agriculture to receive funding under this programme and no standard criteria had been established to determine eligibility for the programme. She believed this finding of specificity was in accordance with the Draft Guidelines on the Application of the Concept of Specificity (SCM/W/89). On the countervailing duty investigation on fresh cut flowers from Colombia she said a suspension agreement had been reached with the Colombian exporters which provided that those exporters would renounce the subsidies in question. As long as the exporters observed the terms of this agreement they could continue to export to the United States without being subject to a countervailing duty order.

116. The representative of the United States further denied that her authorities had adopted an inflexible approach to the cumulation issue. In this regard she reiterated that the USITC cumulatively assessed the price and volume effects of imports from more than one country only in those circumstances where such imports had a collective impact on the domestic industry. To determine whether those circumstances existed the USITC considered whether the imports in question competed with each other and with like domestic products, whether the imports were reasonably coincident in time and whether the imports were subject to investigation. In making a determination as to whether imports competed with each other and with the like domestic product, the USITC considered such factors as the degree of fungibility, customer requirements, quality issues, geographic markets, lanes of distribution, etc. Where warranted by this type of analysis, the USITC had declined to cumulate. However, if imports met those requirements they had a collective impact on the domestic industry and it was therefore appropriate to cumulatively assess the price and volume effects of the imports. In the fresh cut flowers case the USITC had examined those factors by looking only at flowers of the same type from each country. It had found no significant quality or other differences among imported flowers and between domestic and imported flowers. Moreover, it had found significant overlap in marketing areas.

The USITC had therefore concluded that it was appropriate to cumulatively assess the volume and price effects of the imported flowers to the standard carnation and standard chrysanthemum industry in the United States.

117. The representative of Canada said his delegation would seek further clarification on this matter on a bilateral basis and wished to have the opportunity to revert to this issue at the next meeting of the Committee.

118. The representative of the EEC said his authorities would also seek further bilateral consultations with the United States on this issue and he reserved his delegation's right to revert to this matter at the next meeting of the Committee.

119. The observer for Colombia said his country would seek bilateral consultations with the United States, if necessary under Article XXII:2 of the General Agreement.

120. The Chairman said the Committee would revert to this matter at its next meeting.

(iii) United States - Review and revocation of countervailing measures

121. The representative of Canada raised some questions with respect to the procedures for review and revocation of countervailing measures in the United States. Under current procedures in the United States it took a minimum of two years to reflect major changes in margins of subsidization. Although over-payments were reimbursed, those procedures nonetheless imposed an unnecessary burden on exporters. He asked whether the United States intended to review its countervailing duty review procedures with a view to permit quicker revisions of countervailing duty orders; if this was not the case, he would urge the United States to do so. Furthermore, the representative of Canada said that there were many longstanding countervailing duty orders in effect in the United States. Many countries had included in their countervailing duty legislation "sunset" clauses to ensure periodic reviews of the need for the application of countervailing measures. Under the Canadian law an injury finding lapsed after five years unless a review by the Canadian Import Tribunal had led to the conclusion that a finding should be continued. However, the United States countervailing duty legislation did not contain a similar clause. He asked whether the United States had plans to introduce such a clause; if this was not the case, he urged the United States to do so.

122. The representative of the United States said the countervailing duty law of her country provided for annual administrative reviews of countervailing duty orders upon request. Due to the large volume of subsidized imports into the United States it was difficult to conduct those reviews more rapidly. In reviewing countervailing duty orders her authorities took into account all comments by interested parties which necessitated some time.

123. The Committee took note of the statements made.

N. Date of next regular meeting

124. The Chairman said that, in accordance with a decision taken by the Committee at its meeting in April 1981 (SCM/M/6), the next meeting of the Committee should take place in the week of 26 October 1987. However he would consider whether it would be possible to organize this meeting in conjunction with a meeting of the Negotiating Group on Subsidies and Countervailing Measures.