GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

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Special Distribution

Committee on Subsidies and
Countervailing Measures

MINUTES OF THE MEETING HELD ON 9 DECEMBER 1987

Chairman: Mr. L. Wasescha (Switzerland)

1. The Committee held a special meeting on 9 December 1987. The purpose of this meeting was to afford signatories the opportunity to continue the discussion of the Report by the Panel established in the dispute between Canada and the EEC on the imposition by Canada of countervailing duties on imports of boneless manufacturing beef from the EEC (SCM/85).

2. The Chairman recalled that the dispute which had led to the establishment of the Panel had been referred to the Committee by the EEC in July 1986 (SCM/75). At its meeting held in October 1986 the Committee had agreed to establish a panel (SCM/32, paragraphs 183-185). The Panel had submitted its Report to the Committee in October 1987 in document SCM/85. At its meeting held on 28 October 1987 the Committee had started its discussion of this Report (SCM/M/35, paragraphs 49-60). As a number of delegations had indicated at that meeting that they needed more time to reflect on the Report, the Committee had agreed to revert to this Report during a special meeting (SCM/M/35, paragraph 59).

3. The representative of Canada recalled that at the meeting of the Committee held in October 1987 his delegation had indicated that the Panel Report raised important issues which required careful examination before his Government would be able to take a position on the Report. At that meeting his delegation had also pointed to important implications of the Report, namely that certain producers were to be denied countervailing duty protection from injury caused by subsidized imports and that little incentive was offered to discipline the use of subsidies in certain areas. Regarding the origin and history of the dispute, the representative of Canada recalled that on 25 July 1986, as a result of a complaint of injurious subsidization from Canadian cattlemen, a subsequent thorough subsidy investigation by Revenue Canada and an injury finding by the Canadian Import Tribunal (CIT), countervailing duties had been imposed on imports of subsidized boneless manufacturing beef from the EEC. The EEC had contested this decision on the grounds that Canadian cattlemen had no standing to seek countervailing duty relief in this case as they were not part of the industry producing beef. Following a request by the EEC, a Panel had been established by the Committee to examine the consistency with the Agreement of the Canadian action, in particular regarding the determination that Canadian cattlemen were part of the Canadian

beef-producing industry and therefore eligible to petition for a countervailing duty on imports of beef from the EEC. The Panel had concluded that Canadian cattlemen were not producers of beef, could not be considered part of the Canadian beef-producing industry and were therefore not eligible to petition for countervailing duty action on beef imported from the EEC. Consequently, the Panel had determined that Canada's action had not been consistent with the relevant provisions of the Agreement and had suggested that the Committee recommend that Canada should terminate this measure.

4. Regarding the decision taken by Canada to consider cattle producers part of the industry producing manufacturing beef, the representative of Canada said that it had been based on specific economic realities. In general the process of identifying a domestic industry was straightforward as the injured industry producing the like product could be easily identified. In such instances any injury to producers of inputs used in the production of the like product was indirect and incidental although countervailing duties on imports of an end-product might have the effect of indirectly aiding input producers. This was sensible and appropriate in most cases as input producers often had a variety of markets for their products and might not themselves be materially injured by imports of subsidized end-products. Certain situations, however, did not lend themselves to this straightforward approach. This applied in particular to industries characterized by: (1) the use of inputs dedicated to the manufacture of only one end-product and which had no other economically viable uses; and (2) the use of only one raw material which underwent minimal processing and accounted for a substantial proportion of the value of the end-product. Such industries were thus able to fully pass back to input producers the injurious effects of subsidized imports. In the case of manufacturing beef, the production process, at least in Canada, was simple and started with one raw material input and yielded only one significant end-product. The value of the live animals used to produce manufacturing beef constituted 66 per cent of the value of the beef sold. Processors in effect acted as intermediaries in a market where demand was determined at the consumer level and supply by the number of cattle available at the farm level. The value of a cow to a processor was determined by the revenue he could receive from the beef he produced less his costs (i.e. transportation, slaughtering, boning and packaging). Thus, processors responded to lower market prices for beef by lowering their bid prices for cattle. Consequently, the injurious effects of imports of subsidized beef were felt primarily by cattle producers and not by beef processors who were able to transfer price decreases in their products to livestock producers via lower bid prices for cattle. The economic reality of these relationships was supported by the high degree of statistical correlation (85 per cent) between prices of beef and cattle in the Canadian market. It was on the basis of these characteristics that the Canadian investigating authorities and the CIT, an independent, quasi-judicial body, had determined that Canadian cattlemen, along with the processors, were producers of manufacturing beef and thus cattlemen were necessarily part of the industry producing manufacturing beef. Given the importance of their contribution to the value of the output of manufacturing beef, cattlemen had been judged to have standing to petition for countervailing duty relief.

5. The representative of Canada noted that the Panel had based its conclusions on the following grounds. Firstly, the drafting history of the provisions in the Agreement relating to the definition of industry revealed a general preference for legal standards employing objective criteria rather than criteria calling for the application of economic judgement. Secondly, the overall objective of the Agreement must be viewed as one of striking a balance between injuries to be remedied through countervailing duty action and injuries which might result from the use of countervailing measures. Thus, the fact that subsidies might be causing a particular injury did not by itself establish that the Agreement meant to provide a remedy for it. Thirdly, the Canadian interpretation would introduce an element of open-endedness into the Agreement's definition of domestic industry of the kind the drafters had been concerned to avoid. The Panel had not questioned that subsidized imports into Canada from the EEC might be injurious to Canadian cattle producers. Rather, in the Panel's view, neither the relevant provisions in the Agreement nor their drafting history supported Canada's position that the Agreement should be interpreted with sufficient flexibility to take account of the economic characteristics of the production of manufacturing beef in Canada.

6. The representative of Canada said one could debate at length the motivations of the drafters of the relevant provisions of the Agreement as well as the Agreement's objectives. The Panel's conclusions on these points, however, raised some general questions. In this regard he wondered in particular whether the Panel had not adopted too narrow an interpretation of the objectives of the Agreement and said it was worth noting that the important objectives of the Agreement, formulated in the preamble, were to ensure that the use of subsidies would not adversely affect or prejudice the interests of any signatory and that relief would be provided to those producers adversely affected by such subsidies. In view of these clear objectives he wondered whether it had not been the intention of the drafters to ensure that the provisions of the Agreement would translate the balance of rights and obligations sought in the preamble.

7. The representative of Canada further stated that the Panel Report had two serious implications. Firstly, the Report implied that certain producers were to be denied countervailing duty relief from material injury caused by subsidized experts within an agreed international framework of rights and obligations. Secondly, the Report offered little incentive to ensure that the use of subsidies would not adversely affect or prejudice the interests of any signatory. These were serious implications if one considered that export subsidies constituted more than 70 per cent of the total subsidization which had been found to exist in this case and that the consequent injury to Canadian cattlemen had been found not to be merely incidental but material.

8. Regarding the first of these implications, the representative of Canada said that Canadian cattle producers could not have received indirect relief through a countervail action taken on behalf of processors only because these processors were in a position to pass back to the cattle producers the injurious effects of subsidied beef imports and did not

themselves shoulder the burden of injury. In this regard, the CIT had noted in its report that processors had not taken a position on the question of material injury and had expressed no interest in participating in the CIT's injury enquiry. The CIT had felt that this was understandable as processors operated on margins and were able to pass back to primary producers any adverse pricing movement. According to the logic of the Panel Report, the only circumstance under which Canadian cattle producers could legitimately seek countervailing duty relief would be where meat imported from the EEC consisted of live animals. However, such trade did not take place between Canada and the EEC for commercial and technological reasons (e.g. transportation and handling costs). In this context the representative of Canada noted that very little meat was traded internationally in the form of live slaughter animals. The Panel Report had acknowledged that under certain circumstances, depending on the industry structure, cattle producers might be afforded indirect relief from injury caused by imports of subsidized beef while in other situations they would not. This argument essentially turned on whether cattle raising, deboning and processing operations could be separately identified in accounting and legal terms. If so, then these operations would constitute separate industries of which only one could legitimately seek countervailing duty relief against injurious imports of subsidized beef. However, in a situation where these operations were vertically integrated and where in accounting and legal terms one could not in practice separately identify these operations, the Report acknowledged that cattle raising operations would be offered indirect relief. This conclusion raised the possibility of differential treatment of certain producers on the basis of purely accounting reasons. The Canadian authorities questioned whether this was consistent with the objectives of the Agreement and whether the drafters of the Agreement had intended such a result.

9. The representative of Canada reiterated that a second major implication of the Panel Report was that little incentive was offered to discipline domestic and export subsidies on agricultural products in certain circumstances. The Report allowed signatories to continue to subsidize with impunity exports of agricultural products regardless of its effects, thus reinforcing the view shared by some signatories that there was an imbalance between the obligations in the Agreement regarding the use of subsidies on the one hand and obligations regarding the application of countervailing measures on the other. In this particular case the Report suggested that Canada could not take measures to counter imports of subsidized beef from the EEC which had been found injurious and had to accept that Canadian cattlemen be threatened with material injury. In this context he noted that exports of beef from the EEC to Canada, which had started in 1981, had risen to almost 25,000 metric tonnes in 1984. Such exports could not have entered the Canadian market without the benefit of massive export subsidies, as evidenced by the virtual disappearance of imports from the EEC following the imposition of countervailing duties. In this respect the consequence of the Report was that the Agreement would fall short of meeting its fundamental objectives, as reflected in its preamble.

10. The representative of Canada disagreed with the view expressed in the Panel Report that the interpretation of the concept of "domestic industry" used by Canada in this case would open up a Pandora's box. The criteria applied by the Canadian authorities in this case derived from sound economic principles to identify producers materially injured in certain instances and had a narrow range of applications. Contrary to what had been suggested at the previous meeting of the Committee, under these criteria steel producers would not be part of the industry producing automobiles, for example, because steel was not functionally dedicated to the production of cars, i.e. steel was used in a variety of other applications. The ability of auto manufacturers to pass back injury caused by imports of unfairly traded autos was, therefore, limited and steel producers would not be materially injured by such imports. These criteria would also preclude tomato producers from countervailing duty relief against imports of subsidized canned tomatoes to the extent that tomatoes were sold to a variety of markets, used to produce a number of end-products and were not functionally dedicated to the production of canned tomatoes.

11. The representative of Canada concluded by saying that the Report by the Panel had raised questions which were still being examined by the Canadian authorities and on which his Government welcomed the views of other signatories. The Report appeared to his Government to be based on perhaps too narrow an interpretation which, if accepted, would establish an important deficiency in the Agreement, namely that in certain circumstances there were no effective rules to deal with agricultural subsidies injurious to primary producers, either in terms of disciplines on subsidies or in terms of offsetting measures. The Canadian authorities were carefully reviewing these issues and implications.

12. The representative of the United States said he regretted that the United States was not in a position to agree to the adoption of the Panel Report at this time. The Report raised a number of troubling issues on which he made the following preliminary observations. Firstly, his delegation did not agree with the Report's legal conclusion that cattlemen were not part of the industry producing manufactured beef. This conclusion was, in the view of his delegation, a serious misreading of the provisions of the Agreement. Culled beef cattle could be used for essentially one purpose, the production of manufactured beef. In view of this circumstance it was odd to say as a matter of law that a cattleman who was producing for the manufactured beef market and had no other market for culled cows, was not a part of the beef industry. In reaching this conclusion, the Report had made a number of surprising claims. For example, the Report asserted that economic analysis was essentially irrelevant to the Agreement. It therefore skipped over the troubling fact that, according to the Canadian authorities, the injury in this case was felt almost entirely by cattle producers, since the price suppression resulting from subsidized imports was passed along down the chain of production. While the United States agreed that members of an industry should not be identified in a free-handed, arbitrary way to arrive at an affirmative finding of injury, his delegation also believed that the

Panel's rejection of economic analysis in interpreting the Agreement went too far. The Agreement, after all, had been designed to address economic issues and the effort of the Canadian authorities to define the beef industry in terms of certain highly relevant objective economic criteria could not be dismissed out-of-hand, particularly when these criteria appeared to conform to the language and purposes of the Agreement.

13. The representative of the United States said the most troubling element of the Report concerned its implications for the overall balance of rights and obligations in the Agreement. The bottom line was that the Report would permit an exporting country to provide export subsidies for processed beef on the grounds that manufactured beef was the internationally traded form of a primary product - the cow. At the same time, the Report had reached a series of legal conclusions the thrust of which was that an importing country could not consider injury to its cow producers engaged in the production of manufactured beef as a basis for offsetting the effects of export subsidies. This conclusion, if adopted, would introduce a serious imbalance in the Agreement. It was unfair on its face and underlined the deficiencies of the Report. Consequently, the United States delegation requested additional time to study the Report and reflect upon its complex aspects.

14. The representative of Australia recalled that at the last meeting of the Committee his delegation had expressed reservations regarding the narrow interpretation of Articles 6:5 and 2:1 of the Agreement which had led to the Panel's conclusions and which, if accepted, would deny the Canadian Cattlemen's Association standing to initiate countervailing duty action with respect to imports of beef. This narrow interpretation lacked reality as it would serve to deny "natural justice" to cattle producers whose input accounted for such a large proportion (more than 60 per cent) of the wholesale value of manufacturing beef. If the Agreement were interpreted in this narrow manner it would no longer be realistically capable of providing "natural justice" to producers of agricultural raw materials which did not enter into international trade but were destined for transformation into a related product which was traded and subject to the effects of export subsidies. This would be a significant change in the balance of rights and obligations under the Agreement. In this particular case it would deny Canadian cattlemen the opportunity to obtain relief from subsidized beef imports from the EEC. The Panel Report would also have wide implications for other agricultural products which were processed before being traded. A number of other processed products would also be denied relief if the Panel's narrow interpretation of Article 6:5 and 2:1 of the Agreement were to be accepted. In the view of the Australian delegation the producers of such agricultural raw products were able to seek relief under the Agreement against unfair competition from subsidized imports.

15. The representative of Australia further said his delegation had problems with a number of arguments in the Report. The Panel had incorrectly adopted a narrow interpretation of Article 6:5 of the Agreement in arguing that "the good they [the Canadian cattlemen] actually produced

(cattle) was not itself the like product, and their cattle-raising operations were clearly separate from the subsequent processing operations where cattle were made into manufacturing beef ..." (Paragraph 5:4) and then denying that the Canadian cattle producers, represented by the Canadian Cattlemen Association, should have standing under the Agreement to initiate countervailing duty action against subsidized imports of beef from the EEC. In the view of his delegation it was the cattle farmers who produced the beef. Abattoirs performed a necessary physical stage of the production function, and the production process was therefore a continuous line producing only one commercially significant end product, i.e. beef. The Canadian cattle producers should therefore be included in the definition of "domestic industry" under Article 6:5 of the Agreement and have standing to initiate countervailing duty actions. It would be inequitable if countervailing duty action were not available to the Canadian cattle producers. His delegation believed that this argued against the interpretation of "like product" and "domestic industry" adopted by the Panel. Further argumentation against the Panel's interpretation of these terms was provided if these terms were considered in light of the Second Interpretative Note to Section B of Article XVI of the General Agreement.

16. The representative of Australia further stated that the general objective of the Agreement also supported a wider interpretation of the term "domestic industry" which would ensure that relevant producers were able to seek relief under the Agreement. This objective was "to ensure that the use of subsidies does not adversely affect or prejudice the interests of any signatory to this Agreement and that countervailing measures do not unjustifiably impede international trade, and that relief is made available to producers adversely affected by the use of subsidies within an agreed international framework of rights and obligations." In this case it was the Canadian cattle producers who were affected through lower prices. The Canadian abattoirs would not be affected as for the most part they operated on a system of fixed charges regardless of the sale price of the output of the abattoirs. In this regard the Panel's comments in Paragraph 5.6 of the Report were not convincing.

17. The representative of Australia was also of the view that the Panel had adopted too narrow an interpretation of Article 2:1 of the Agreement. Article VI of the General Agreement referred to "material injury to an established domestic industry ...". His delegation maintained that Article 2:1 of the Agreement should therefore be interpreted as subject to the wider interpretation of "an established domestic industry" of Article VI:6(a) of the General Agreement.

18. The representative of Australia concluded by saying that his delegation was of course willing to participate in further discussion of the Panel Report. Moreover, his delegation intended to study carefully the argumentation put forward at this meeting by other signatories. However, he wished to make quite clear the difficulties Australia had with the conclusions and recommendations of the Panel.

19. The representative of New Zealand expressed his delegation's strong concerns about the implications of the Panel Report and its reservations about the Report itself. He recalled that the negotiations which had led to the conclusion of the Agreement had taken place on the basis of the Ministerial Declaration of 1973 which had stated that the objective of the negotiations was "to reduce or eliminate the trade restricting or distorting effects of non-tariff measures and bring such measures under more effective international discipline". This objective had been recalled in the first Paragraph of the preamble of the Agreement. When considering the Panel Report in light of this objective, one could conclude that the Report allowed the continuation of such measures, rather than curbing them.

20. The representative of New Zealand said the Report involved a case where subsidies had been granted in relation to agricultural products exported to the Canadian market. The detrimental impact and effect of those exports was felt by the farmers who raised the cattle. This detrimental effect was clearly explicable and identifiable by the economic effect of suppressed prices being passed back to farmers, i.e. by farmers being price-takers. In short, this was a situation where a category of producers was suffering the effects of subsidization. However, if the Panel Report were to be considered to be correct, the implication would be that the producers suffering the effects of the subsidization could not seek any relief under the Agreement. Even though they were, by any rational economic or common sense standard, the suffering or injured party, they were not even to be considered relevant for the purposes of adjudication under the Agreement. This was, in effect, the implication of the Panel Report which was even more inequitable when it was realized that the farmers concerned suffered double prejudice in certain circumstances: they produced and had to compete in markets against subsidized products because there existed no proper disciplines on the use of agricultural subsidies; in addition, at least in certain circumstances, they would not even have the right to protect themselves in their own market against subsidized products through the instrument of countervailing duties. The fundamental question raised by the Panel Report was how this inequitable and undesirable situation could be reconciled with the Agreement. The representative of New Zealand noted that the point could be made that the interpretation of the Agreement adopted by the Panel entailed more certainty and avoided open-endedness in the interpretation of the Agreement. However, this point had to be put in context. The practical implications of the kind of interpretation favoured in the Panel Report would be that in certain circumstances the way would be open to far more uncertainty and open-endedness of a more dangerous kind. The Panel Report would give rise to open-endedness in the sense that agricultural producers could obtain no protection against subsidized imports through countervailing duties. Uncertainty would be created for farm producers and investors in agricultural production.

21. The representative of New Zealand mentioned several relevant elements of the preamble of the Agreement. Firstly, it was recognized in the preamble that subsidies might have harmful effects on trade and production. Secondly, the Preamble stated that the emphasis of the Agreement should be

on the effects of subsidies. Thirdly, it was also provided that the effects of subsidies were to be assessed giving due account to the internal economic situation of signatories concerned. Fourthly, the preamble expressed a desire that relief be made available to producers adversely affected by the use of subsidies within an agreed framework. Fifthly, the Agreement was intended to provide greater uniformity and certainty in the implementation of the rules of the General Agreement on subsidies and countervailing measures. The Report by the Panel had implications which were contrary to these objectives. Firstly, while the harmful effects on trade and production of the subsidized imports of beef were evident, no effective remedy was available to the producers directly concerned. Secondly, the Agreement stated that the emphasis should be on the effects of subsidies which in this case were suffered by the cattlemen who, however, had no right of recourse. Thirdly, the Agreement also required that due account be given to the internal economic situation of signatories in the evaluation of the effects of subsidies. In this case, however, the Panel had failed to recognize an essential aspect of the internal economic situation, namely the integrated nature of the production process of beef. Fourthly, the producers adversely affected by the subsidies (the Canadian cattlemen) had no possibility to obtain relief. Finally, the conclusions of the Panel, far from contributing to greater uniformity and certainty in the implementation of the rules on subsidies and countervailing measures, led to less uniformity in that they intensified the existing imbalance against producers of agricultural products.

22. The representative of New Zealand expressed his reservations concerning some of the arguments which had played an important rôle in the Panel's reasoning. In this regard he mentioned in particular the manner in which the Panel had relied on the drafting history of the Anti-Dumping Code of 1967 and doubted whether it was appropriate to use the drafting history of provisions of that Code, which had been concluded twenty years ago, in the interpretation of provisions of the Agreement which had been concluded in 1979. It could not be assumed that signatories explicitly shared the same point of view (indeed the range of signatories had been different) when the same form of words appeared in an Agreement concluded at a much later date and with an entirely different set of objectives and coverage. It was all the more odd that the Panel appeared not to refer to any significant aspect of the drafting history of the Agreement itself. If one considered the objectives of the Agreement, as reflected in its preamble, it was evident that the context in which Articles 6:5 and 6:6 appeared in the Agreement was substantially different from the context in which similar provisions had appeared in the Anti-Dumping Code of 1967. His delegation believed that the Panel should have given more decisive weight to the context of Articles 6:5 and 6:6 and the objectives of the Agreement than to the drafting history of an entirely different legal instrument which had predated the Agreement by thirteen years.

23. The representative of New Zealand further stated that, apart from the question whether it was appropriate to use the drafting history of the Anti-Dumping Code of 1967, his delegation also disagreed with the conclusions drawn from this drafting history by the Panel. The essential

question which had been raised by Canada in this dispute was how far back in the production process the term "producers" of a like product could be interpreted in relation to the concept of "domestic industry". This was a "vertical" issue which, in the view of his delegation, was not addressed in the drafting history of the Anti-Dumping Code referred to by the Panel. The references made by the Panel to that drafting history related to the "horizontal" question of which like products were to be considered when assessing injury. For example, if one considered in its proper context the reference made by the Panel to a point of view expressed by the United Kingdom (SCM/85, Paragraph 5.11), it was quite clear that a totally different point of view had been made in the statement referred to. In explaining its position, the United Kingdom had stated:

> "... in a case of dumping of teddy bears, for example, it would be necessary to decide whether the effects of the imports could and should be assessed in relation to the domestic production of teddy bears alone or of soft toy animals or of all soft toys."

This ... ed quite clearly that the issue was how broad the definition of the term "like product" should be and not who should count as a "producer" of a like product. It was indeed questionable whether the "vertical" issue was at all explicitly present in the minds of the drafters of the Anti-Dumping Code of 1967. This might well be explained by the way in which dumping and anti-dumping occurred at that time. Dumping occurred right across the board, from product to product but it was doubtful whether there was a systematic problem related to the "vertical" issue. However, there was such a problem present in the case of subsidies where a much looser set of disciplines existed on the lower processed end of the scale in the form of certain non-primary products. This was a fundamental factual difference between the Agreement and the Anti-Dumping Code. This difference, which entailed in the case of the Agreement the importance of the "vertical" issue, should at the very least have modified any presumption that the intention of the drafters of the Anti-Dumping Code could be presumed to be present in the Agreement.

24. The representative of New Zealand said it was difficult to reconcile the weight which had been given by the Panel to a different legal instrument (the Anti-Dumping Code of 1967) with the lack of weight placed on the finding of the Panel in the dispute between New Zealand and Finland on anti-dumping measures applied by New Zealand to imports of Finnish transformers. In Paragraph 5.15 of its Report the Panel had written that

> "... the statements in that report which appear to be at odds with this definition were not written with direct reference to Articles 6:5 and 6:6."

The importance of this statement was not entirely clear. It could equally have been made with respect to the drafting history cited in respect of the Anti-Dumping Code of 1967. In any case, one could raise here the question as to the appropriate interpretation of the paragraph of the preamble of the Agreement which referred to Article VI of the General

Agreement. The representative of New Zealand noted that the Panel had expressed the view that its interpretation of the concept "domestic industry" was not inconsistent with the manner in which that concept had been applied in the dispute between New Zealand and Finland. The Panel had taken this view upon the ground that

> "whenever there are parallel product lines within a single firm, there will always be an issue as to the true separability of the interchangeability of production resources."

His delegation believed there were grounds to doubt the consistency of the approach adopted by the Panel in this case with the approach adopted by the Panel established in the dispute between New Zealand and Finland. The latter Panel had argued that it was the

> "overall state of health of the New Zealand transformer industry which must provide the basis for a judgement whether injury was caused by dumped imports."

Indeed, this Panel had specifically stated that to decide otherwise would

> "allow the possibility to grant relief through anti-dumping duties to individual lines of production of a particular industry or company - a notion which would clearly be at variance with the concept of industry in Article VI."

In other words, the Panel had generalized its judgement and argued that anti-dumping duties on individual lines of production would be at variance with the concept of industry in Article VI. It had not based that judgement on a view that individual lines of production could not be identified; on the contrary, it seemed to be making this point precisely because individual lines of production could be identified. Finally, the representative of New Zealand said his delegation was not convinced that the argument made by Canada concerning a continuous process of production was not valid. The Panel Report on the dispute between New Zealand and Finland suggested that the possibility of making a distinction in terms of criteria of Article 6:6 was not necessarily identical with the more substantive question of determining where a line had to be drawn in determining which were the relevant producers per se.

35. The representative of the EEC expressed his delegation's disappointment with the contents and results of the discussion of the Panel Report. He reiterated that the Report was precise, clear and unanimous and confirmed the conclusions of the Panel which had examined the dispute between the EEC and the United States concerning the definition of industry in the case of wine and grape products. Yet, nearly two months after the Panel had submitted its Report to the Committee, there were no signs of meaningful progress in the Committee's discussion of the Report. He noted that some of the delegations which had spoken on the Report had not yet determined a definitive position. Regarding the views expressed by the United States, he said he was surprised that the United States was now

rejecting the Panel Report because of its substance, whereas in the case of the Wine Panel the United States had not raised substantive objections to that Report but had established an artificial linkage between that Report and another Panel Report. On the substance of the arguments developed by Canada and the other delegations which had spoken, he said these arguments were essentially economic, and not legal arguments, focussing on the economic implications of the Panel's conclusions. In light of the arguments made by these delegations and in view of the fact that some of these delegations had requested in another forum that a review be undertaken of the provisions in the Agreement on the definition of the term "domestic industry", he wondered whether the basic problems of these delegations was not the text of these provisions, rather than its interpretation by the Panel. The fact that the Panel had drawn conclusions which in the view of these delegations had undesirable economic implications did not mean that the Panel's conclusions were unfounded from a legal point of view. If delegations were of the view that deficiencies existed in the provisions of the Agreement regarding the concept of "domestic industry", they were free to raise this as an issue for negotiations in the Uruguay Round. However, this did not detract from their obligation to observe the existing provisions of the Agreement. The attitude taken by some delegations on this Report also raised a more general problem with respect to the functioning of the dispute settlement mechanism of the Agreement. If the Committee was not able to agree to adopt a Panel Report which was intellectually sound and clear, one could wonder whether there still was a prospect for satisfactory and effective dispute settlement under the Agreement. In this regard the representative of the EEC also noted that there was a contradiction between general declarations of principle made by some delegations regarding the need to strengthen the dispute settlement mechanism and their attitude in this particular case. He concluded by pointing to the practical implications of the fact that the Committee had not yet been in a position to adopt the Report. Since July 1986 Canada had been applying countervailing duties on imported beef from the EEC, and Canada's inability to accept the Panel's recommendations meant that these duties continued to apply. As a result of the application of these duties, EEC exports of beef to Canada had ceased. His delegation therefore considered that this matter was very urgent and that the Committee should not continue to discuss issues which were irrelevant to this case; the basic issue raised by the Canadian action was not whether the relevant provisions of the Agreement were sound but whether Canada had acted in conformity with these provisions.

26. The representative of Chile said his delegation fully agreed with the views expressed by the delegation of the EEC. The Panel had submitted a legally perfect Report and the fact that the Report might have certain economic implications could not be a reason to reject the Panel's conclusions. The Committee was not the appropriate forum to amend the Agreement; the task of the Committee was to ensure that the existing provisions were interpreted and applied correctly. He therefore requested the delegation of Canada to reconsider its position and expressed the hope that the Committee would shortly be in a position to adopt the Report.

27. The representative of Hong Kong said the discussion of the Report in the Committee had raised a number of interesting issues. The Committee had before it a Panel Report which interpreted provisions of the existing Agreement. Many arguments made by previous speakers pointed to a perceived need to change the existing rules. However, a possible revision of the provisions of the Agreement was the task, not of the Committee but of the Negotiating Group on Subsidies and Countervailing Measures. Regarding the view expressed by some delegations that the Panel had adopted too narrow an approach to the definition of industry, he said one also had to take into account the fact that the absence of a strict and narrow interpretation of the Agreement might lead to abuse of its provisions. His delegation proposed that the Committee consider the recommendations of the Panel in light of the existing rules of the Agreement and in a spirit which would respect the Agreement's dispute settlement mechanism.

28. The representative of Israel said the Panel Report might have important consequences for his country, in particular in the area of processed agricultural products. His delegation considered the Report also in light of the need to ensure the effective functioning of the Agreement's dispute settlement mechanism. Regarding the points made by some delegations on the negative implications which the adoption of the Report might have, he agreed with other delegations that a distinction should be made between the legal interpretation of the existing provisions in relation to the case before this Panel and the amendment of the Agreement in those areas where it was felt that the Agreement was insufficient. The latter task should be left to the Negotiating Group on Subsidies and Countervailing Measures. He pointed to various positive elements of general importance in the Report which could prevent undesirable unilateral interpretations of the Agreement. In this regard he referred in particular to the last two sentences in Paragraph 5.6. His delegation fully supported the view expressed by the Panel in this paragraph that a balance had to be struck between the injuries to be remedied and the injuries resulting from the remedies. Regarding the various arguments made by certain delegations concerning the necessity to take into account the special nature of the production process in the interpretation of the concept of "domestic industry" in cases involving processed agricultural products, he noted that the same delegations had in another context rejected the specificity of agriculture. He supported the narrow interpretation of the term "domestic industry" and expressed the view that it should apply in cases involving processed agricultural products as well as in cases involving industrial products. Finally, he noted that the delegations which had expressed their disagreement with the Panel's conclusions had pointed to the need to strengthen the disciplines over subsidies; he said one should bear in mind that there was also a need for improved disciplines over countervailing measures and in this regard the Panel Report could make an important positive contribution. His delegation was in favour of the adoption of the Report by the Committee.

29. The representative of Japan said his delegation could support the adoption of the Panel Report.

30. The representative of Korea said his delegation also supported the adoption of the Report by the Committee and expressed his delegation's concern about the fact that the Committee was once again not in a position to adopt the Report. While his delegation could understand the concerns expressed regarding the possible economic implications of the Report, he believed that the provisions of the Agreement on the definition of "domestic industry" should be interpreted in a narrow manner. If the need was felt by some delegations that it was necessary to amend the Agreement's provisions to broaden the scope of this concept, this should be discussed in the context of the Uruguay Round.

31. The representative of Brazil said his delegation could accept the Panel Report which was based on a correct interpretation of existing legal standards and helped to avoid the erosion of the existing rules.

32. The representative of Hong Kong said that all signatories should respect the definitions of the terms "domestic industry" and "like product" laid down in the Agreement.

33. The representative of Australia said that there appeared to be some confusion in some countries' statements between comments on the economic implications of the adoption of the narrow interpretation of "domestic industry" in the Panel report and arguments that certain economic criteria have a rôle to play in determining what constitutes "domestic industry". He also said that the fact that the issue of definition of "domestic industry" had been raised by his and other delegations as an issue in the Uruguay Round did not mean that these delegations had conceded a particular interpretation of the Agreement's existing provisions on this point. In his view, the negotiating process in the Uruguay Round neither added to nor subtracted from signatories' rights and obligations under the Agreement. By raising the issue of definition of "domestic industry" in the Uruguay Round, Australia had not suggested that there was a need to revise the relevant provisions of the Agreement. Rather, in raising this issue in the Uruguay Round, his delegation had been motivated by the fact that there existed differing views on this issue. He said that it would be invidious if countries were to be inhibited from raising in the Uruguay Round problems and issues pertaining to existing GATT provisions and arrangements by claims that in doing so they were effectively conceding a particular interpretation of existing rights and obligations.

34. The Chairman noted that the meeting had been useful in that it had provided the opportunity for a comprehensive discussion of the substance of the Panel Report. In this discussion many participants had expressed their concerns over the functioning of the dispute settlement mechanism of the Agreement. Regarding the contents of the Report, some delegations had explained their views on the implications of the adoption of the Report and some of these delegations had requested more time in order to formulate their definitive position on the Report. Other delegations had stated that the conclusions drawn by the Panel were well founded and had pleaded in favour of the adoption of the Report. Finally, one delegation had pointed to the urgency of this matter given the economic effects of the

continued application by Canada of countervailing duties on imports of beef from the EEC. The Chairman suggested that the Committee authorize him to hold informal consultations with a view to convening another special meeting of the Committee early in 1988 to continue the discussion of the Panel Report. It was so agreed.