

GENERAL AGREEMENT ON

RESTRICTED

SCM/M/37

26 February 1988

Special Distribution

TARIFFS AND TRADE

Committee on Subsidies and Countervailing Measures

MINUTES OF THE MEETING HELD ON 3 FEBRUARY 1988

Chairman: Mr. L. Wasescha (Switzerland)

1. The Committee held a special meeting on 3 February 1988.
2. The Committee adopted the following agenda:
 - A. Canada - Imposition of countervailing duties on imports of manufacturing beef from the EEC - continuation of the discussion of the Report by the Panel (SCM/85).
 - B. Other Business
 - (i) Special meeting of the Committee to examine notifications of subsidies received from signatories of the Agreement.
 - (ii) Date of the next regular meeting of the Committee.
 - (iii) Transmission of document SCM/W/89 to the Uruguay Round Negotiating Group on Subsidies and Countervailing Measures.
 - A. Canada - Imposition of countervailing duties on imports of manufacturing beef from the EEC - Continuation of the discussion of the Report by the Panel (SCM/85)
3. The Chairman said the purpose of this special meeting was 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): This Report had been submitted to the Committee in October 1987 and had been examined by the Committee at its regular meeting held in October 1987 (SCM/M/35, paragraphs 49-60) and at a special meeting held on 9 December 1987 (SCM/M/36). The Chairman recalled that at the special meeting held on 9 December 1987, some signatories had indicated that they needed more time to reflect on the Panel Report.

4. The representative of Canada said that his delegation had made a detailed statement at the special meeting on 9 December 1987 setting out the concerns of his delegation relating to the implications resulting from an adoption of the Panel Report. His delegation had also indicated at that meeting that the Canadian Ministers concerned had not yet had an opportunity to examine the Report. This was still the case; however, a memorandum on the Report to the Ministers was being prepared and his delegation hoped and expected that the Ministers would be in a position to examine this matter shortly. He added that the concerns of his delegation expressed at the last meeting had not changed and that it continued to have substantial difficulties with the Report. At the special meeting other delegations had indicated that they shared some of the concerns expressed by the Canadian delegation about the implications of the Report. His delegation welcomed further discussion in the Committee of the questions raised by a number of delegations at the special meeting. He concluded by saying that his delegation would be in a position to formulate its definitive views on the Panel Report once the responsible Canadian Ministers would have had an occasion to examine this case.

5. The representative of the EEC expressed the disappointment of his delegation about the fact that the Canadian authorities had not yet been able to determine their definitive position on the Panel Report. He recalled that countervailing duties on imports into Canada of frozen boneless manufacturing beef from the EEC had been in force since July 1986. The EEC had subsequently invoked the dispute settlement mechanism of the Agreement, and the Panel Report had been submitted to the Committee on 13 October 1987, i.e. almost four months ago. A first discussion of the Report by the Committee had taken place at the Committee's meeting held on 27 and 28 October 1987. At that meeting the Canadian delegation had indicated that the Panel Report raised some complex and important issues and that the Canadian authorities needed more time to study the Report and determine their position on the findings and conclusions contained in the Report. At the special meeting which had been held at the request of the EEC on 9 December 1987, the Canadian delegation had made a very long statement which, however, did not contain any new element. The arguments put forward by the Canadian delegation had been based essentially on the economic implications which the adoption of the Panel Report might have. In this regard the representative of the EEC reiterated a statement made by his delegation at the special meeting in reply to the views expressed by a number of delegations on the Panel Report:

"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."

Since the special meeting in December, no new developments had taken place. At this second special meeting the Canadian representative had limited

himself to making a brief statement in which he had referred to the statement made by his delegation at the special meeting held in December. The statement by the Canadian representative at this meeting contained no new elements, except perhaps the fact that, almost four months after the Panel had submitted its Report to the Committee, the responsible Canadian Ministers still had not had the occasion to examine this matter even though this case involved a violation by Canada of its obligations under international law. The representative of the EEC further noted that the Canadian delegation had said that a memorandum to the Canadian Ministers on the Panel Report was being prepared; however, given the period of time spent by the Canadian administration on the preparation of this memorandum, this gave his delegation no guarantee that the Canadian authorities would shortly be in a position to formulate their final opinion on the Report. While in past dispute settlement proceedings many kinds of arguments had been used to block the prompt settlement of disputes, the argument put forward in this case by the Canadian delegation - the fact that the Canadian Ministers had not yet had the opportunity to examine the matter - was novel. The Canadian attitude in this case contrasted with the statements made by Canada in the Negotiating Group on Dispute Settlement in favour of a better functioning of the dispute settlement mechanism in GATT. Unfortunately, this contradiction existed not only in this case but also in other pending dispute settlement cases involving Canada which had recently been the subject of discussions in the GATT Council. The representative of the EEC further pointed out that, since the introduction of countervailing duties by Canada on boneless manufacturing beef, following a finding by the Canadian Import Tribunal of the existence of a threat of material injury, no more exports from the EEC of the product subject to these duties had taken place. The EEC therefore considered that the Canadian attitude was dilatory and unacceptable, both from the point of view of the functioning of the dispute settlement process and from the point of view of the immediate commercial effects of the Canadian action. He concluded by saying that the EEC reserved its position with respect to future steps it might wish to take in this case.

6. The representative of Canada said that at the special meeting held in December 1987 his delegation had made it clear that consultations in Canada on a matter of such importance as the Panel Report which was now before the Committee took some time. The Canadian Ministers had of course been informed from the very beginning of the evolution of this dispute settlement proceeding; however, Canadian officials needed some time to fully explain to their Ministers all the facts of the case and the implications of possible decisions they might wish to take. In assessing those implications the Canadian officials had to take into account the important questions which had been raised by his delegation during previous discussions in the Committee of the Panel Report. In this context he emphasized that his delegation was not satisfied that it had received adequate responses to the questions it had raised regarding the implications of the Panel Report. Canadian Ministers had to have a clear understanding of these implications before they could come to a conclusion. For this reason his delegation had indicated in December 1987 that another meeting of the Committee on this Panel Report in January-February 1988

might be premature. This had proven to be correct. Canadian officials had needed more time to collect all relevant information for their Ministers and many of the questions raised by the Canadian delegation in the Committee remained unanswered. With respect to the reference made by the representative of the EEC to Canada's general attitude on dispute settlement procedures, he said there was no question of Canada's commitment to an efficient functioning of dispute settlement procedures. Moreover, the remarks by the representative of the EEC were irrelevant to this particular case. The Panel Report which was being examined by the Committee had raised some important questions which, in the view of his delegation, had not yet been addressed adequately.

7. With respect to the remarks made by the representative of Canada on the premature nature of this second special meeting of the Committee on the Panel Report, the Chairman recalled that he had convened this meeting after conducting informal consultations and securing the agreement of all interested delegations with the date of this meeting.

8. The representative of the EEC asked whether the Canadian delegation could mention a date for another meeting on the Panel Report, which would not be premature.

9. The representative of Canada replied that his delegation was not in a position to indicate an appropriate date for the next meeting of the Committee on this matter; however, his delegation was prepared to keep the Chairman and interested signatories informed of the evolution of the decision-making process in Canada with respect to the Panel Report and to inform the Chairman when his delegation would be able to respond more directly to the implications of the Panel Report.

10. The representative of the EEC reiterated that since July 1986 exports of boneless manufacturing beef from the EEC to Canada had been blocked as a result of the application of countervailing duties by Canada and that the Panel had recommended that these duties be repealed; he also reiterated his delegation's disappointment with the delay in the resolution of this dispute caused by the Canadian attitude.

11. The Chairman summarized the discussion as follows. The EEC had expressed the view that the arguments presented by Canada in relation to the Panel Report were based essentially on the economic effects which the adoption of the Report might have, and not on legal grounds. This signatory had also recalled the serious economic effects of the countervailing duties imposed by Canada on imports of boneless manufacturing beef from the EEC. The Canadian delegation had emphasized that it had not yet obtained satisfactory answers to the questions it had raised in previous discussions of the Panel Report in the Committee; it had also pointed out that the examination of the Panel Report and its possible implications by the relevant Canadian authorities would take some time and had indicated that at the appropriate moment his delegation would give its definitive views on the Panel Report. It therefore appeared that the Committee was not able to make further progress on this matter at this

time. The Chairman suggested that he would remain available for further informal consultations with interested signatories on this case and on other unresolved cases and that, in light of these informal consultations, he would convene another meeting at an appropriate moment.

12. The representative of the EEC recalled that his delegation had reserved its position with respect to future steps it might wish to take in this case. He further emphasized that the only dispute settlement proceeding under consideration by the Committee at this meeting was the dispute between the EEC and Canada on the application by Canada of countervailing duties on boneless manufacturing beef from the EEC.

13. The representative of the United States said the last remark by the representative of the EEC reflected solely the views of the EEC.

14. The Committee took note of the statements made.

B. Other business

(i) Special meeting of the Committee to examine notifications of subsidies received from signatories of the Agreement

15. The Chairman said he had held informal consultations on the timing of a special meeting of the Committee to examine notifications of subsidies under Article XVI:1 of the General Agreement by signatories of the Agreement. In light of those consultations, he proposed that such a special meeting be held in conjunction with the next regular meeting of the Committee. It was so agreed.

(ii) Date of the next regular meeting of the Committee

16. The Chairman proposed that, in view of the fact that the Uruguay Round Negotiating Group on Subsidies and Countervailing Measures would hold its next meeting on 1-3 June 1988, the next regular meeting of the Committee be held in the week of 30 May 1988. It was so agreed.

(iii) Transmission of document SCM/W/89 to the Uruguay Round Negotiating Group on Subsidies and Countervailing Measures

17. Following a request by the Uruguay Round Negotiating Group on Subsidies and Countervailing Measures, the Chairman proposed that the Committee transmit to this Negotiating Group document SCM/W/89 (Draft Guidelines on the Application of Specificity on the Calculation of the Amount of a Subsidy other than an Export Subsidy).

17. The representatives of the United States, Canada and Australia indicated that they needed to consult with their authorities before they could agree to the Chairman's proposal. The representative of Australia added that a possible transmission of this document to the Negotiating Group should in no way compromise the responsibilities of the Committee to oversee rights and obligations under the Agreement; if the Committee made

this document available to the Negotiating Group, this should not be interpreted to imply that the Committee transmitted its responsibility for this particular issue to the Group.

19. The Chairman proposed that the requested document be transmitted to the Negotiating Group if and when the representatives of the United States, Canada and Australia would have informed him that their authorities had no objections to this transmission. The note accompanying the possible transmission of this document to the Negotiating Group would reflect the statement made by the representative of Australia. It was so agreed.