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 26 MARCH 1992

Chairman: Mr. Johannes Potocnik (Austria)

1. The Committee on Subsidies and Countervailing Measures ("the Committee") held a special meeting on 26 March 1992.

2. The Committee considered two items:

A. Canadian Countervailing Duties on Grain Corn from the United States - Report of the Panel (SCM/140 and Corr.1)

B. Australian Customs Amendment Act 1991 - Request by the European Communities for consultations provided for in Article 16 of the Agreement (SCM/145)

A. Canadian Countervailing Duties on Grain Corn from the United States - Report of the Panel (SCM/140 and Corr.1)

3. The Chairman recalled that the dispute which had led to the establishment of this Panel had been referred to the Committee by the United States in April 1987 (SCM/82). The Committee had discussed this matter at its meetings of 5 May, 3 June and 27 October 1987, and had held a conciliation meeting on 26 and 27 October 1989 (SCM/M/44). At a special meeting on 18 July 1991 the Committee had considered a request by the United States for the establishment of a panel (SCM/118) and had agreed at this meeting to establish a panel. On 21 February 1992 the Panel had submitted its report to the Committee (SCM/140 and Corr.1).

4. The Chairman of the Panel, Mr. Luzius Wasescha, introduced the Panel's report. He said that as indicated in SCM/M/52, the terms of reference of the Panel were as follows:

> "The Panel shall review the facts of the matter referred to the Committee by the United States in SCM/118 and, in light of such facts, shall present to the Committee its findings concerning the rights and obligations of the signatories party to the dispute under the relevant provisions of the General Agreement as interpreted and applied by the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement."

The matter dealt with the affirmative finding on 20 March 1987 by the Canadian Import Tribunal ("CIT") that "subsidizing of importations into Canada of grain corn from the United States has caused, is causing and is likely to cause material injury" to the Canadian grain corn industry.

5. He said that the Panel had met with the two parties to the dispute on 27 September and 4 November 1991. It had used as the basis for its examination of the disputed issues the written submissions of the parties to the dispute as well as factual information provided by the parties in response to specific questions by the Panel. On 13 January 1992 the Panel had submitted its findings and conclusions to the two parties, and had informed them that if no mutually satisfactory solution was reached by 3 February 1992, the full Report would be circulated to the members of the Committee. Accordingly, on that date the Panel released its full Report to the Committee. He said that the main legal issue before the Panel was the interpretation and application of Article 6 of the Subsidies Agreement, in particular the consideration by the Canadian authorities of subsidized imports in the determination of material injury or threat of material injury to its domestic industry.

6. The conclusions of the Panel appeared in paragraphs 6.1 and 6.2 of the Report and were as follows:

> "6.1 The Panel concludes that the determination of injury by the CIT in respect of "Subsidized Grain Corn Originating In or Exported from the United States of America" is not consistent with the requirements of Article 6 of the Subsidies Agreement because the CIT did not determine on the basis of positive evidence relating to subsidized imports of grain corn from the United States that material injury to Canadian grain corn producers was caused by such imports.
>
> 6.2 The Panel recommends that the Committee request Canada to bring its countervailing duty measure into conformity with Canada's obligations under the Subsidies Agreement."

In conclusion, he said that the Panel considered that by submitting the Report contained in documents SCM/140 and Corr.1, it had fulfilled its terms of reference.

7. The representative of Canada said that after careful consideration his government had decided to agree to the adoption of the Panel Report on Canada's countervailing duty action against imports of grain corn from the United States. He said that it remained the view of the Canadian Government that subsidized imports of grain corn from the United States had had injurious effects on Canadian corn producers for the period in question, and that the Report would not prevent Canada from taking action in the future against subsidized and injurious imports. However, it had been Canada's position throughout the Uruguay Round negotiations to pursue tighter rules relating to the injury standard in the areas of both countervail and anti-dumping. In Canada's view, this Panel report

provided useful interpretive guidance to Subsidies Code signatories with respect to the injury standard, and it was important that this interpretation be added to the body of GATT jurisprudence. Canada hoped that is decision to agree to the adoption of this report would serve to underline its commitment to ensuring the effective functioning of the Code's dispute settlement system.

8. The Chairman welcomed the decision of the Canadian Government and expressed the hope that the adoption of this Panel report would set a good example both in the Subsidies Committee and elsewhere in GATT. He said that in view of the conclusions contained in paragraphs 6.1 and 6.2 of the report, he proposed that the Committee decide that the Panel had carried out its mandate and that the Committee adopt the report.

9. The Committee took note of the statements and adopted the report of the Panel in SCM/140 and Corr.1.

10. The representative of the United States said that, on behalf of his Government, he wished to thank the Panel and the secretariat for their excellent work, and in particular to thank the Canadian authorities for their decision on the adoption of this Panel report. The United States hoped that this action by Canada would break up the logjam that had been the unvaried fate of all panel reports before the Subsidies Committee. His Government was among those that had panel reports pending before the Committee which it had not chosen to allow the Committee to adopt. His delegation had for several years participated in the efforts of numerous Committee chairmen to end this situation of blockage, and the action taken at the present meeting provided new hope that in the very near future the Committee would be able to adopt all reports heretofor remaining unadopted.

11. He noted that the Panel Report in SCM/140 and Corr.1 remained a restricted document, and proposed that its derestriction be considered at the upcoming regular meeting of the Committee in April. In response to Canada's statement that nothing in the report would prevent Canada from taking action against subsidized and injurious imports, he said that as long as there were imports which were subsidized and which were causing or threatening to cause injury as determined in accordance with the standards set forth in the Subsidies Code and in the interpretations of the Subsidies Code - as, for example, the Panel report just adopted -, no one could find any fault with Canada's position.

12. The representative of the EEC said that the Community agreed with the statement by the United States that nothing in this or any other panel report could prevent a signatory from taking countervailing duty action, provided the relevant provisions of the Subsidies Code were respected. His authorities agreed entirely with the contents of the Panel report on grain corn, which the Community saw as re-affirming the principle that (1) investigating authorities, when carrying out their duties, had to base themselves on positive evidence; (2) that whenever such authorities

considered that special factors had to be taken into consideration, this determination had to be made on the basis of positive evidence; and (3) that these authorities had to explain fully their reasoning in this regard.

The Committee took note of the statements.

B. Australian Customs Amendment Act 1991 - Request by the European Communities for consultations provided for in Article 16 of the Agreement (SCM/145)

13. The Chairman recalled that the EEC had raised this matter at the meeting of 1 May 1991 (SCM/M/51, paragraphs 13-17) and that on 22 October 1991 the Committee had discussed this matter (SCM/M/54, paragraphs 7-12). The Committee now had before it a request by the EEC for consultations provided for in Article 16 of the Agreement (SCM/145).

14. The representative of the EEC said that his authorities were concerned about the potential effects of the Australian countervailing duty legislation as amended by the Customs Amendment Act 1991, and had made these concerns public. He said that the Community regretted the apparent haste with which it had conducted this procedure to date, and explained that there had been some administrative misunderstandings which had speeded up the process more than had been intended. However, this did not detract from the Community's belief that this matter needed to be clarified and a solution found to what the Community perceived as a potentially serious problem. The Community had requested bilateral consultations with Australia, and while it had not yet received a reply due to the short time involved, was confident that such a reply would be forthcoming. The Community had based its request for consultations on Article 16 in order to put these consultations on a multilateral footing within the framework of the Subsidies Code. Nevertheless, the Community looked forward to bilateral consultations with Australia, which it hoped would lead to a mutually satisfactory solution.

15. The representative of Australia said that his country was surprised that a question which was being considered in the normal process of the Subsidies Committee should be raised at the present meeting and as a matter possibly leading to dispute settlement. As the Committee was aware, the Australian legislation was already under examination in the Committee. Specific aspects of concern to the EEC had been addressed at the October 1991 meeting and would be discussed again at the April meeting. Australia had responded to the points raised and would elaborate on these responses at the April meeting. As the Community had noted, Australia had received a communication dated 9 March 1992 requesting bilateral consultations under Articles 3 and 16 of the Code in regard to "some provisions of recently enacted Australian anti-dumping and countervailing duty legislation, in particular about Clause 7 of the Customs Amendment Act 1991 and the notion of domestic industry contained therein". That communication, which was only in part reproduced in document SCM/145,

sought Australia's agreement to these consultations and stated that "a mutually convenient date and venue for consultations can be arranged in the near future, once Australia has agreed in principle to these consultations".

16. Australia had not yet responded to this request and welcomed the EEC's expressed willingness to await that response. However, in these circumstances Australia questioned the listing of this matter for consideration at a special meeting of the Committee which had been convened for another purpose. Within a week of Australia's actual receipt of the EEC communication, this item - which involved a matter on which bilateral consultations had been formally requested but had yet to take place - had been placed on the agenda of the present meeting without consultation with one of the parties involved and, it seemed, without the notice normally required under GATT and Code procedures. Australia therefore believed that it was inappropriate for the process taking place at the present meeting to be considered, for the purposes of Article 17, to be a valid consultation possibly leading to further action under Article 16 or 18. He said that while Australia would be happy to consult with the EEC in accordance with Code provisions, it could not accept that the discussions at the present meeting constituted consultations envisaged in any part of the Code. Furthermore, his authorities believed that the process by which this item had been listed on the Committee's agenda was irregular and inappropriate, and that the discussion at this special meeting had no status. Australia would respond shortly to the EEC's request for consultations.

17. The representative of the EEC reiterated that the Community considered the bilateral aspects of this matter TO BE very important. However, the Community disagreed with Australia regarding the legal status of the consideration of this item at the present meeting. This was not to say that this process had to lead to dispute settlement, as there were many cases of bilateral consultations held within a multilateral framework which did not lead to dispute settlement. The Community believed that Article 16 was a proper legal basis for beginning a consultation process which would be carried on bilaterally, and that the inclusion of this item on the Committee's agenda had been appropriate. It was not the Community's view that this procedure was in any way irregular.

18. The Chairman suggested that the two parties hold consultations on this matter as soon as they felt it appropriate, with a view to reaching a mutually acceptable solution.

19. The Committee took note of the statements and agreed to revert to this item, if necessary, at its next regular meeting.