

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

CCN. M/Spec/1  
23 January 1961

Special Distribution

## MINUTES OF THE MEETING HELD ON 14 DECEMBER 1961

Statement by Mr. S. Buchardt (Denmark)

1. The Committee on Subsidies and Countervailing Measures met on 14 December 1961. The participation in the meeting was limited to the representatives only.

2. The purpose of this meeting was to examine the matter raised by the United States in connection with the subsidies maintained by the European Economic Community on exports of wheat flour.

3. The Chairman proposed that, at the request of the Australian delegation, the Committee agree to add an additional item on its agenda concerning the resolution of the Committee of 17 October 1961 (CCN/17). The Committee accepted this proposal.

4. The representative of the United States said that the date of this meeting had been established in consultation with a few delegations who were in the best position to be flexible while those delegations which did not have such flexibility had only been told about the date. Therefore it was extremely difficult for small delegations to participate fully in the work of this Committee. If possibilities of those delegations were not taken into account it would reduce their effective consultation and involvement in the work of the Committee. The Chairman said that certainly many delegations were in this difficult situation and that all efforts should be made in the future to accommodate them to such as possible.

### Discussion on agenda of wheat flour

5. The Chairman reminded the Committee of the documents already circulated in connection with the above agenda item: the request for consultations under Article 17 of the Agreement (CCN/17) and the complaint presented by the United States against the Community concerning wheat flour export subsidies (CCN/Spec/1). Summarizing the substance of the discussion at the Committee's preceding meeting and consultations held since, he said that the first point discussed at the meeting on 10 October 1961 had been whether after the United States request for consultation, given its date and nature, the time had come for the consultation phase, taking into account in particular Articles 17 and 18 of the Agreement. In that connexion, the United States delegation had concluded that the conditions were fulfilled for opening an Article 17 procedure. The spokesman for the Community had also indicated his readiness to embark on that procedure, to the extent that he was disposed to give the Committee his delegation's version of the facts of the case. Nevertheless, the Committee had made no formal determination on the matter. The second subject examined had been that of the Committee's rôle in the

conciliation phase, given that under Article 17 it had immediately to review the facts involved and lend its good offices. Without prejudice to interpretation of those provisions, the Committee had instructed its Chairman to offer his good offices to clarify the facts of the case and the possibilities and limitations of conciliation between the two parties and to report back to the Committee. In order to facilitate his task and that of the Committee, the Chairman had requested both parties to state the facts of the case in writing, which the Community had declined to do. The Chairman had then contacted the delegations concerned. He had received a letter from the United States delegation dated 9 November 1981 in which the United States had made specific reference to the Article 17 procedure, together with a factual statement (subsequently circulated as document SCM/Spec/6). On 11 November, a consultation between the Chairman and the United States delegation had yielded the following result: the United States delegation had confirmed its readiness to facilitate a conciliation solution as already mentioned in its letter and had been prepared to clarify, in a first approach, its conception of the elements that could be the subject of conciliation, i.e. the prices and/or quantities of subsidized flour, in other words, in principle some of the effects of the Community subsidization. In view of the fact that neither the letter of 9 November nor the annex thereto took account of those conciliation elements, the United States delegation had temporarily withheld the document from circulation, pending the outcome of the good offices exercise and further clarification of the Community's position. The Chairman had informed the Community orally of the results of that discussion but no consultation had been possible before the end of November since the Community representative had not been available. On that occasion no new factual elements had been presented. The Community had indicated that it was not excluding conciliation but considered the United States complaint to be unfounded; nevertheless, the complaint raised important substantive problems as to the interpretation of certain concepts envisaged by the Agreement such as a representative period and definition of the world market. Following those discussions, the United States delegation had asked for the text in document SCM/Spec/6 to be circulated. In substance, therefore, the Chairman's consultations had shown that neither of the two parties was excluding conciliation a priori but had yielded no result at that stage. The Committee should now decide how it intended to review the facts in terms of Article 17 and lend its good offices. Nevertheless, the Committee should avoid taking any positions that might prejudice those of a panel or those that it might have to take itself in terms of Article 18:9.

6. The representative of the Community thanked the Chairman for his objective and impartial summary of the case as it stood, adding, however, that this was the first time since he had been participating in GATT meetings that he had seen a delegation submission containing falsifications such as those in document SCM/Spec/6. The Committee had been convened to review the facts, not unfounded allegations. Accordingly, the Community was ready to discuss each of the points presented by the United States delegation to show that in reality the latter was seeking something other than conciliation.

7. The representative of the United States said that she also appreciated the Chairman's summary of the case. When the conciliation procedure had begun on 9 November 1981 the United States were ready to discuss the facts in order to determine whether there was any basis for conciliation. Thirty-five days had since passed and her delegation was eager to proceed expeditiously because this dispute had been pending for nearly five years. She was pleased to have an opportunity to review the facts in the Committee as required by Article 17

in order to facilitate the conciliation process. In addition to the document SCM/Spec/6 which stated the United States' reasons for invoking this case she wanted to review some key facts. First consultations under Article XXII:1 of the General Agreement had been held in February 1977. They were followed in subsequent years, by a number of informal consultations and a new round of Article XXII:1 consultations and, in October 1980, by two technical consultations. Unfortunately none of these meetings had moved the issue any closer to its resolution. A particular cause of concern here was that even in the course of these conciliations during the last five years the situation had only become worse. In 1977 EEC commercial exports of wheat flour constituted about 62 per cent of total world commercial exports while in 1980 this share had risen to over 70 per cent. During the same time the volume of the EEC export had increased from 2.4 million metric tonnes to about 3 million metric tonnes. Export subsidies on export of wheat flour had been paid by the EEC since July 1967 except for a brief period from 1973 to 1975. Previously from 1962 to 1967 national export subsidies authorized by the EEC had been paid. Subsidization had resulted in a dramatic shift in market shares over the past two decades to the advantage of the Community. The data contained in SCM/Spec/6 had been obtained from the International Wheat Council and she could not understand why they were called counterfeit or fraud. Subsidization had resulted in the increase of the EEC share of world wheat flour commercial exports from an average of 28 per cent in the early 1960's to over 70 per cent in the most recent period. At the same time the share of the United States and of other exporters had sharply declined. This shift had been particularly damaging to these suppliers because the total volume of wheat flour exports had also declined over this period. Subsidization had allowed the EEC to obtain more than an equitable share of world export trade and the EEC exports had displaced exports of other suppliers. This situation had resulted in a virtual exclusion of the United States exporters from some traditional markets and from new markets. The case for material price undercutting was equally compelling, as there were many examples where EEC prices were at a level materially below those of other suppliers. The EEC had underbid the United States by nearly US \$70 per metric tonne in the October 1980 Yemen tender and by nearly US \$40 per metric tonne in the February 1980 Sri Lankan tender and by more than US \$100 per metric tonne in the May 1980 Yemen tender. Furthermore the EEC's complete dominance of the world wheat flour market had been achieved by subsidization which was as high as 75 per cent of the US representative f.o.b. price. The EEC would not have obtained such a dominant position without its policy of guaranteeing whatever subsidy was required to underprice competitors and thus gain a particular market. The method by which an EC subsidy was set was arbitrary and created a permanent source of uncertainty in the world flour market. She concluded by expressing her hope that the EC representatives would show willingness to find a mutually acceptable solution to this matter in the Committee.

8. The representative of the Community said that the Committee should take into consideration certain points in SCM/Spec/6 as well as in the United States statement. Firstly, regarding the qualification of the Community refund system, to describe that system as arbitrary reflected inadequate knowledge of the Community mechanism. The Community was not disputing the analysis of the system, but could not accept its being termed arbitrary. Secondly, from the historical aspect, the United States delegation had said that the problem had first been raised in February 1977. In fact, the first letter on the matter had been addressed to the Community by the United States in February 1975 and the first consultation under Article XXII:1 had taken place in March 1975. Thereafter several consultations had been

held, and up until February 1981 the United States had mentioned only questions dating back to 1974. For seven years he had been trying to explain to the United States representatives that there was no problem, no dispute, but the same cases were always being brought up between the United States and the Community. One of those cases was that of Jamaica, the other that of Sri Lanka. The case of Jamaica had disappeared from the picture for the simple reason that two American firms had built mills in Jamaica and all exports to Jamaica had consequently diminished, including those by the Community. The second case was that of Sri Lanka, a traditional market for Community exporters, where the major cause of the decline in United States exports was the fact that following a change of government in Sri Lanka in 1974, the United States had ceased to offer PL 480 terms to that country. Some time later, United States exports had been resumed and there had been no further decline in United States exports since PL 480 had again been applicable in the Sri Lankan market. The United States administration had raised a case without due reflection, had become embroiled in it and could no longer withdraw. The third element was that Community and United States negotiators had met in Washington in 1978 and had decided formally that in negotiations on the subsidies and countervailing measures code, the Community would agree to integrate agricultural matters as the United States had requested, and that in return the United States would bury the hatchet, in other words, would close all formal 301 cases that had been opened. For the Community, the matter was closed because it was part of a package negotiated between the United States and the Community. Yet the United States was now maintaining a complaint based on that of 1974, raising the matter once more despite the agreements reached. As regards fallacious presentation by the United States, several factors should be underlined. In determining an equitable share the United States had taken no account of its own exports under PL 480; so that in its world market calculation, it had taken account only of its commercial exports. That was a major point, because the Community delegation would never accept any interpretation of the Code under which the United States could exclude its exports under PL 480. The second major point was the representative period. According to the United States, market conditions had never been normal since 1962, when Community refunds had been introduced. Consequently, the representative period calculations had been made in relation to the situation prior to the existence of the Community. Yet quite apart from PL 480, the United States had also subsidized flour exports, and well before 1962. According to the American reasoning, one would have to go back practically to 1893 to find normal conditions, i.e. a situation with no export subsidization. The Committee should therefore consider what should be a representative period in terms of the Agreement and whether the Agreement which had been in force for the past two years could be applicable retroactively. The Community would accept the Committee's interpretation on that matter. With respect to an equitable share the United States thinking was reflected in a letter in which that country - while recognizing that its sugar exports had been of the order of 14,310 tons in 1979, thereafter increasing to 58,700 tons in 1980, and 766,000 tons in the ten first months of 1981 - had concluded, nevertheless, that the Community had exceeded its equitable share because the United States would have hoped to export more. The fourth element was the price base. In the case of Yemen, the United States delegation had mentioned two dates. It would be relevant to know the f.o.b. price of wheat flour in the United States on the two dates mentioned. The United States had been selling flour commercially to Saudi Arabia and on the same day, in the same port of embarkation, for the same delivery date, the price quoted was US\$130 per ton lower than that offered to Yemen. That showed that in reality the United States

administration had been misled and had not realized that the offers to Yemen had been not genuine, but made solely to serve as a pretext for reactivating the 1974 complaint; there was falsification of the facts and the United States delegation should look at the price problem much more attentively. With respect to Sri Lanka, there were no commercial sales by the United States. Taking into account United States concessional sales terms, which were extremely favourable, it was easy to bid slightly higher prices and accuse other exporters of dumping. He was ready to submit tenders for the two countries mentioned by the United States. In the case of Yemen there had been twenty-four bids from twenty different companies, only one of them American. On the same day, for a Saudi Arabian tender, eighteen American companies had bid for flour. Under Note 34 to Article 17, the Committee could draw Signatories' attention to those cases in which, in its view, there was no reasonable basis supporting the allegations made. That footnote covered the present case very well. But, whatever the outcome of the Committee's discussions, the decision had already been taken in Washington because according to a Reuter report on 10 December - well before the current meeting of the Committee - Mr. Donald Dekieffer, General Counsel to the Office of the STR, had already announced that there would be a panel.

9. The Chairman observed that while the Community representative had explained the facts of the case as he saw them, at the current juncture the Committee was not taking up the matter of their qualification. It could, at most, examine the facts as presented by one and the other party in order to determine the points of convergence. The Community had raised four fundamental questions concerning: the equitable share including definition of the world market, the representative period, retroactive application of the Agreement and the basic price taking into account the situation in regard to bids in a given market. The Community representative had asked the Committee to discuss those four questions and give an interpretation regarding them. Those four general questions went beyond the particular case under discussion and the question as to when and how the Committee would take them up would have to remain open at the current juncture.

10. The representative of the United States said that she considered that the purpose of the discussion was to seek conciliation in the Committee. She wanted to limit her intervention to four points raised but would refrain from giving some anecdotes of her own. She said that the drafters of the Agreement and those of Article XVI of the General Agreement intended a reference period to be when normal market conditions existed, which meant the period closely representing a time when there were no subsidies on the product in question. When one looked at the period a number of things had to be determined. Normal conditions meant that there was a certain flexibility in choosing the reference period and this approach had been confirmed by the practice of many GATT panels. In the 1958 panel on wheat flour between France and Australia the panel had looked at both inter-war and post-war periods (1934-1938 and 1948-1957). The whole period examined covered twenty years. In the 1978 sugar case between the EEC and Australia the panel recognized that it was necessary to take into consideration normal years to get an adequate picture of world export share. At the Havana review session in 1955 when Article XVI:3 had been discussed it had been agreed that the concept of equitable share meant to refer to world export trade and it was not quantifiable standard, but rather one which would vary from case to case. In the recent 1978 sugar case the EEC itself had argued for a five year period indicating that the years chosen should reflect normal market conditions. In the 1979 case between the EEC and Brazil, 1971-1973 and 1972-1974 periods had

been compared to 1976-1979. In a 1960 document which discussed the way in which contracting parties should notify their subsidies it was indicated that previous representative periods should be the latest period preceding the introduction of a subsidy or preceding the last major change in the subsidy. For these reasons the United States in their complaint had referred to the period prior to the subsidization which they considered as the representative period. Referring to the problem of PL 480 sales, the representative of the United States said that these sales, like special transactions by the EEC and other exporters, should be considered as development assistance. There were special rules governing such food aid under the FAO, and no-one had ever raised any questions with respect to PL 480 at that forum. Article XVI of the General Agreement and the Agreement on Subsidies dealt with commercial sales and PL 480, as development assistance was excluded from their scope. For these reasons it seemed quite clear that PL 480 sales should be excluded from consideration of this case. He wanted, however, to add that PL 480 sales had also declined considerably and their inclusion in the consideration would not have changed the case at all. As to the tenders he said that the EEC representatives had always insisted that they had not been real tenders. However analyses of all data behind these tenders clearly proved that they were real tenders and that the companies in question had not been making tenders on a frivolous basis. He also added that in several cases quoted in SCM/Spec/6 prices from other suppliers like Canada and Australia had been shown and the EEC quotes had been substantially below prices offered by those countries. He wondered whether the representative of the European Communities would consider these offers also as frivolous and made for some political purposes. He wanted to refute the idea advanced by the representative of the Communities that the US tenders were not valid. The increase of the EEC share in the world market of wheat flour could only be explained by the use of subsidies and a consistent pattern of price undercutting.

11. The representative of the Community said that the facts presented by the United States had not been substantiated. On the basis of Note 34 to Article 17 the Committee should determine whether there was a reasonable basis. In his view, there was none. If the Committee were to accept any complaint automatically and embark on the conciliation procedure each time, unfounded cases could be brought before it systematically. With respect to PL 480, since 1954 it had had six objectives of which only one, the fourth, concerned promotion of the economic development of foreign countries; all the others were direct supports for United States foreign policy. The objectives had been amended in 1966 but only in order to encourage trade expansion and promote United States foreign policy. The subsequent amendment in 1972 had not changed that orientation. The Community representative asked whether the United States delegation could at least recognize that in future calculations of an equitable share account should be taken of concessional sales. Otherwise, in line with the United States delegation's reasoning, virtually all Community exports of flour to developing countries should also be considered as constituting economic aid. With respect to "normal conditions" it seemed clear from the history of negotiations on the terms in the context of the Agreement that the United States delegation had never sought to establish a link with export refunds but with other factors such as force majeure, unfavourable weather conditions, transport difficulties, the oil crisis, etc. If the United States nevertheless insisted on continuing the procedure in the present case, which was without any real substance, the Community would not oppose that. But the United States administration would have to face the consequences. With respect to the argument regarding increased Community exports, it should be noted that United States mills were

operating at 106 per cent of capacity and were unable to supply larger quantities; indeed, United States exporters sometimes even purchased and re-exported Community flour in order not to lose a market. The increase in Community exports was therefore often attributable to increased demand that United States exporters were unable to satisfy completely. The case brought by the United States was not sound. The Community was prepared to help the United States administration not to lose face, provided agreement could be reached at least to include PL 480 transactions in the calculation of an equitable share.

12. The Chairman said that the Committee should concern itself with facts, but because of the lack of transparency any determination was obviously very difficult to make. Moreover, the Committee would no doubt hesitate to risk a denial of justice by resorting to the possibility provided by Note 34 to Article 17. Conciliation was still possible and could yield a mutually acceptable solution. The fundamental points could then be clarified and the Committee could give an interpretation of a general character unrelated to any particular case. When giving interpretations, the Committee would no doubt not wish to intervene in any particular case.

13. The representative of the United States said that with respect to the footnote invoked by the representative of the European Communities, if the Committee were to believe that the fact that the EEC had obtained a 73 per cent market share over the course of the years from a 28 per cent market share prior to subsidization, did not constitute a reasonable basis for a case to be brought before it, then everybody should be concerned about the future of the Subsidy Code and about the dispute settlement process. The EEC share in the world export of wheat flour would not have increased had it not been for subsidization and it obtained more than an equitable share through the use of subsidies. He thought that this fact in itself was sufficient to substantiate the US complaint. The representative of the United States also said that the position of his Government on PL 480 was clear in that the appropriate forum to discuss rules governing it was FAO and that concessional sales of this nature were not covered by the Agreement or Article XVI of the General Agreement. That being said, even the inclusion of PL 480 sales would not have altered the basic facts of the case, as the EEC share, counting PL 480 transactions as well, had nevertheless increased from 22 per cent to over 60 per cent and this fact was not refuted by the representative of the Communities. However he considered that there were several reasons for which these sales should not be included in any review under the Subsidy Code, one of them being that there were some guarantees so that whenever these sales were made the commercial markets would not be disturbed.

14. The representative of Canada said that in order to have a meaningful process in the Committee, it should have available all pertinent facts and how these would apply to various provisions and obligations under the Agreement. He could agree with the statement by the representative of the European Communities that the Committee should assess the merits of the case to the extent of determining whether there was a reasonable basis for supporting the allegations made by the US Government. He was also in agreement with the Chairman's views that in this conciliation process the Committee should avoid pronouncing itself on the overall merits of the case beyond determining whether or not there was a reasonable basis for allegations for the reason that should the conciliation procedure not succeed and should the United States decide to press on with the dispute settlement procedures the Committee should not, at this point, prejudge what a panel might decide on

the merits of the case. He also thought that it would be useful if the EEC delegation could present, in a written form, its refutations of arguments used in SCM/Spec/6. He also pointed out that there was some confusion in the Committee as to the distinction to be made in specific examples between commercial and non-commercial shipments of wheat flour and it would be useful if the United States' delegation could provide more detailed data on this subject so that the Committee could examine it adequately.

15. The representative of the United States said that she was quite concerned about an apparent departure from the procedure as set forth in the Agreement. Her delegation was very flexible and did not insist on strict adherence to the time limits provided for in the Agreement, however thirty-five days had elapsed since the United States requested a conciliation and questions raised in the Committee seemed to require a panel determination. If the Committee were to go into them, it would have prejudged any future determination. She considered that the Committee should not set a precedent that conciliation would be a rehearsal for the panel itself. That would be a very dangerous precedent. The Agreement provided for a thirty day period during which the panel should be established and this period could be used to continue conciliation, but no precedent should be set that conciliation would last for another seven years.

16. The representative of Australia said that he supported the Chairman's view that it was not for the Committee at this point of time to attempt to come to any final "finding" on the substance of the issue. The Committee should "review the facts involved" as required in Article 17. As to the references which had been made to the footnote 34 to Article 17 this was of relevance only in the event of a "finding" that there is no reasonable basis for the allegations. This was something quite different from making a finding on the substance. Having reached the stage of Article 17 the Committee's rôle should be to encourage the Signatories involved to develop a mutually acceptable solution. It seemed to him difficult to have conciliation when one party was maintaining that there was no dispute, but nevertheless the next stage was provided by Article 17:2 - mainly that Signatories should make their best efforts to reach a mutually satisfactory solution. In this case he read "Signatories" as referring not to the Committee but to the United States and the European Communities. He would have guessed from what he had heard that the best efforts had not led to a mutually satisfactory solution and therefore Article 17:3 came into operation.

17. The representative of the United Kingdom speaking on behalf of Hong Kong said that he agreed fully with the representative of Australia on the question of procedures. The Committee should follow the meaning of the Article 17 very carefully. The function of the Committee was to review the facts and to encourage Signatories to find an arrangement. This was what the Committee was presently doing. Then there was Article 17:3 which provided what should be done if the matter remained unresolved.

18. The representative of the Community said that he would not have disputed the Community share if the calculations had been made objectively. Nor had he disputed that sales under PL 480 were governed by FAO rules; it would be wrong, however, to conclude that in those conditions there was no need to take them into account when calculating an equitable share. Even if the Community share had increased, other countries' exports had also increased because the flour market was expanding and the United States had not been able to take up its share. If that increase had indeed taken place, it could be attributable

to factors other than the Community refund system - for example, lack of interest on the part of United States flour exporters as had been suggested by a periodical of that country's milling industry. The Community delegation was ready to help the United States delegation and even, despite the fact that the case was not founded, to give certain undertakings. With respect to procedure, in particular Article 17:1, the Committee should lend its good offices and try to achieve conciliation. In that context, the first step would be to define an equitable share. It would also have to be determined whether United States exports had really been displaced, and how one could displace production that was already operating at 106 per cent of capacity.

19. The Chairman noted that the facts and their qualification were still under dispute. As some speakers had observed, the Committee could not take the place of panels, nor take any decisions prejudging what panels might recommend in specific cases. Nevertheless, and taking into account the footnote to Article 13, it might be possible to extend the time period and continue consultations and conciliation until the end of January 1982. If no result had been achieved by then, Article 17:3 would be applicable.

20. The representative of the United States said that she appreciated the Chairman's efforts to find a mutually acceptable solution but she could not agree with the suggestion to extend this matter as this would be contrary to the spirit of the Agreement. She thought that the situation had developed in such a way that it was more appropriate to have recourse to footnote 35 to Article 18 rather than to the footnote 30, which provided for a more rapid establishment of a panel when the Committee so decided. She wished to recall that at the previous meeting of the Committee there had been an attempt by the EEC to delay the conciliation procedures because they had insisted that the United States submit a written statement of the facts. The United States had done so on 9 November 1981 and at the same time her delegation requested that conciliation begin immediately. She had heard nothing to contradict the United States' position that the conciliation had begun on 9 November 1981. During the course of conciliations the US representatives met with the Chairman on two occasions to discuss conciliation while the EEC continued to maintain simply that there was no dispute and therefore it did not make a move which could be characterized as conciliatory. The EEC had also delayed this meeting. Now the Chairman was asking the EEC to do what they should have done during the month of conciliation. She could not see any reasons to revert to footnote 30 and to unduly delay the matter again. It would be not only unfair but it could undermine the integrity of the Agreement. She formally requested that the Article 17:3 be followed to the letter and that a panel be established within thirty days i.e. by 14 January 1982. In the meantime the United States delegation would be willing and ready to continue to conciliate during that period.

21. The representative of the Committee noted that there was a proposal for continuing conciliation; the Community was ready to accept it and to seek mutually acceptable solutions. If that proposal was not acceptable to the United States, the Community could only defer and would not oppose the United States request. In any case, the United States decision had been made well beforehand as evidenced by Mr. Dekieffer's statement on 10 December. From the legal aspect, he wished to know when the request for conciliation had been presented. In his view, the conciliation procedure had only been initiated at the current meeting when the Committee had examined the facts, so that the time period would run from then. However, given the United States insistence that a panel should be established and the time periods shortened,

the Community would concede to that request. Nevertheless, the Community's acceptance carried a legal reservation because the procedure was at the limit of legality under the Agreement. The procedure had been initiated solely because one member of the Committee had not wished to continue conciliation.

22. The Chairman noted that the request for establishment of a panel had been made by the United States and that the Community delegation was not opposing it. In accordance with the Agreement, the panel would be established by 14 January 1982 with a membership and terms of reference to be determined by the Chairman in consultation with the interested parties. It was so decided.

#### Acceptance of the Agreement by Australia

23. The Chairman referred to the second item on the agenda concerning the decision of the Committee of 27 October 1981 (SCM/14). He said that a number of consultations had taken place between Australia and other Signatories and as a result of these consultations some modifications had been proposed to this decision. The Chairman read the text of the revised decision. The Committee adopted this text (SCM/14/Rev.1).

24. The representative of the Community stated that the new decision in no way altered the fact that the Agreement, including the annex, was fully applicable to Australia. Furthermore, at the Committee's meeting on 27 October (cf document SCM/M/8 of 25 November 1981, paragraph 14) it had been recorded that "statements made by Signatories had underlined the fact that unilateral interpretations of the provisions of an Agreement could not be authoritative, nor could they bind Signatories. The only authoritative interpretations were those made by the Committee which was entrusted with the implementation of the Agreement."

25. The representative of Canada said that in the view of various statements made by the members of the Committee and the Chairman at the meeting of 27 October 1981 and in the view of the decision just adopted he wanted to reaffirm that the Agreement applied fully to Australia and that unilateral interpretation of the Agreement were neither authoritative nor binding on Signatories.

26. The representative of Australia said that his delegation was also of the view that binding interpretations of the Agreement might be made only by the Committee.

27. The representative of Sweden speaking on behalf of the Nordic countries reiterated the declaration made on behalf of the Nordic countries on 27 October 1981 and reproduced in SCM/M/8, paragraph 8, and recalled the Chairman's conclusion in paragraph 14 thereof.

28. The Chairman stated that there was a unanimous view in the Committee that the only authoritative interpretations of the Agreement were those made by the Committee which was entrusted with the implementation of the Agreement. The Committee agreed with this statement.

Annex I

1. In pursuance of the decision of the Committee on Subsidies and Countervailing Measures taken at its meeting of 14 December 1981, concerning the establishment of a panel to examine the complaint by the United States (SCM/Spec/6), the Chairman, after securing the agreement of the Signatories concerned, set the following terms of reference and the composition of the panel:

I. Terms of reference

"To examine, in the light of the relevant provisions of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade the facts of the matter referred to the Committee by the United States concerning subsidies maintained by the European Communities on the export of wheat flour and in the light of such facts to present to the Committee its finding as provided for in Article 18 of the Agreement."

II. Composition

Chairman: Ambassador Fumihiko Suzuki (Japan)

Members: Mr. E. Hobson (Canada)  
Mr. R. Lempen (Switzerland)

2. The date of the establishment of the panel, for the purpose of Article 18:2, is 22 January 1982.