

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

SCM/M/9

22 December 1981

Special Distribution

Committee on Subsidies and Countervailing Measures

MINUTES OF THE MEETING HELD ON 28-30 OCTOBER 1981

Chairman: Mr. B. Eberhard (Switzerland)

1. The Committee on Subsidies and Countervailing Measures held its ninth meeting on 28-30 October 1981.

2. The Committee adopted the following agenda:

- A. Adherence of further countries to the Agreement
- B. Examination of national legislation and implementing regulations (SCM/1 and addenda)
- C. Notification of subsidies (L/5102 and addenda)
- D. Reports on all preliminary or final countervailing duty actions (SCM/W/15, 16, 17, 18 and 20)
- E. Semi-annual reports of countervailing duty actions taken within the period 1 January 1981-30 June 1981 (SCM/7 and addenda)
- F. Report of the joint Group of Experts on the definition of the word "related"
- G. Other actions taken under the Agreement
- H. Annual review and the report to the Contracting Parties
- I. Other business
- J. Date of next meeting

A. Adherence of further countries to the Agreement

3. The Chairman said that as the last meeting of the Committee had been held on 27 October 1981 there had been no further adherences since that date. The present membership of the Committee was circulated in SCM/W/21, first paragraph.

4. The representative of Australia referred to the decision adopted by the Committee on 27 October 1981 (SCM/14) and said that he had been instructed by his authorities to make a statement on their reactions to that decision. The decision had been taken without prior consultation with one of the Parties most directly concerned. It was unacceptable to his authorities being, in their view, confrontational and not taking proper account of statements made by Australia. He said that since then he had had further discussions with other Signatories and with his authorities and in the view of the most important implications he wanted to ask the Committee to put this matter in suspense for the moment in order to enable further consultation to take place among interested Signatories with a view to resolving the matter in a mutually satisfactory manner. He would not, therefore, make his complete statement.

5. The representative of the European Communities said that were there a suspension of the decision of the Committee, the rights of other Signatories under Article 19:9 of the Agreement would have to be prolonged.

6. The Chairman said that the Committee took note of statements made by the representatives of Australia and the European Communities. He proposed that the Committee, depending on the outcome of additional consultations, and if it so wished, could envisage a possibility of re-examining the matter. Pending this possible re-examination the decision taken by the Committee (SCM/14) remained in force and, on the other hand, the Agreement was fully applicable to Australia.

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

7. The Chairman said that no new legislation had been notified since the April 1981 meeting. The Committee might wish to revert to certain points concerning various legislations raised at previous meetings (SCM/M/4, paragraphs 18-33 and SCM/M/6, paragraphs 6-12). The present status of notifications of national legislation was given in SCM/W/21, paragraphs 4-8. Signatories who had not, so far, informed the Committee of their actions under Article 19:5 of the Agreement were urged to do so without delay. He also said that he had been informed by the representative of Chile that a draft of the new countervailing legislation prepared by his authorities would be circulated to the Committee for discussion and comments.

8. The representative of Korea said that he had been instructed by his authorities to inform the Committee that a Bill for the amendment of the Customs Law had been submitted to the National Assembly and that all main provisions of the Agreement had been fully reflected in the Bill in order to ensure the conformity of Korean law with the Agreement. The text of the new legislation, once adopted, would be circulated to the Committee, probably before its next regular session.

9. The representative of the United States wished to enquire of the delegation of Canada as to the status of their proposed law governing the imposition of countervailing duties. His Government had very specific concerns in this respect which would apply not only to Canada but also to some other Signatories about insufficient transparency of their countervailing duty procedures. He expected that requirements of the Agreement in this respect would be fully taken into account.

10. The representative of the European Communities wanted some information about a decree published in Chile implying considerable increase of import duties in respect of subsidized products. The representative of Chile said that the decree in question did not imply any increase in the Chilean tariffs, it simply designated the Central Bank of Chile as a competent authority for receiving complaints from domestic producers affected by subsidized imports. The Central Bank had also been authorized to adopt procedures for investigation as provided for in the Agreement. If any countervailing duty would be applied in the future it would be done in conformity with the Agreement. He also referred to the draft regulation he had circulated to the Committee in order to get the reaction of Signatories, and to assure its conformity with the provisions of the Agreement. This regulation dealt with procedures for countervailing duty investigation. As to the application of countervailing duties he noted that the relevant provisions of the Agreement were applied, since its ratification had given it the force of a domestic law. He would appreciate it if Signatories would make their comments as soon as possible because the regulation would be adopted in the very near future. He said that Article 1 of the draft contained the concept of a subsidization situation. This was not meant to be a definition of a subsidy but an attempt to embody in a single concept subsidization, injury and a causal link between them. He stressed the importance attached by his authorities to the transparency of all proceedings and their determination not to allow countervailing duties to become a tariff barrier.

11. The representative of Yugoslavia informed the Committee that the legislative procedure for the ratification of the Subsidy/Countervail Code had been completed at the governmental level and the Agreement had been submitted to the National Assembly. As soon as the ratification procedure has been completed the national legislation would be circulated to the Committee. The representative of Canada said that the Canadian draft legislation was still before the Parliamentary Committee. He wanted to assure the Committee that the legislation provided for as much transparency as possible. He expected that the procedure would be completed by June 1982. Referring to the Chilean legislation he asked what preferential prices meant. He noticed that the draft regulation was very detailed on what was required from a complainant. He was appreciative of this but thought it might also contain something on what would be required from exporters. The Agreement contained many provisions designed to protect the exporter vis-à-vis domestic legislation and this should be reflected in the Chilean regulation. He also noted that the regulation did not provide for methods of calculating a subsidy. As to the question of transparency he said that although the first sentence of Article 7 provided for transparency, the second sentence seemed to take much of this away.

12. The representative of the European Communities associated himself with the comments made by the representative of Canada. He added that examples of subsidization quoted in the draft seemed to go outside the normal definition of a subsidy. For example it was unclear what was, in this context, the meaning of such terms as special credits or rebates. He also pointed out that the last sentence of Article 1 of the draft practically covered everything, in particular any kind of state intervention which did not need to be a subsidy. He considered that the Chilean authorities should have a very close look at this provision. Referring to Article 3 he remarked that complaints could be made by anybody, while the Agreement provided that a complaint would be accepted only if made by the industry, which meant at least a major part of

production. This major part concept should be reflected in the Chilean legislation. This legislation should also be made detailed on procedures to be followed by investigating authorities, on transparency and on motivation of findings. He concluded by suggesting that, as the Agreement was very explicit in many areas it should not be difficult for the Chilean authorities to redraft the proposed legislation in order to make it more consistent with the provisions of the Agreement. The representative of Austria said that as he had had no time to examine the proposed text in detail, he wanted to reserve his rights to revert to it at a later stage. The representative of Chile thanked the delegations which had commented on the proposal. He said he would refer all comments to his authorities. As the intention of his Government was to have the legislation adopted in the very near future he wanted to invite interested delegations to consult with him on various problems they may have in this respect as soon as possible.

13. The Chairman thanked the representative of Chile for having submitted the draft legislation. He urged Signatories, who had comments on this draft, to submit them to the delegation of Chile without delay. On the other hand he also wanted to invite the Chilean authorities to show some flexibility on the period for consultation.

14. The representative of Pakistan informed the Committee that his Government did not grant subsidies within the meaning of Article XVI:1 of the General Agreement and that the countervailing duty legislation had not yet been completed. Consequently no countervailing measures had ever been taken. He would keep the Committee informed about future developments in this field.

15. The Chairman said that the item concerning examination of national legislation should be maintained on the agenda in order to allow the Signatories to revert to particular aspects of some legislations at a later stage or in the light of their practical implication.

C. Notification of subsidies

16. The Chairman recalled that at its April 1981 meeting the Committee had agreed that Signatories should submit their responses to L/5102 before the October meeting and that the Committee should undertake an examination of the questionnaire as well as of qualitative aspects of responses to it at this meeting (SCM/M/6, paragraph 15). On 21 September 1981 the Acting Chairman of the Committee had circulated an Aide-Mémoire to remind the Signatories of the decisions previously taken by the Committee with regard to notifications of subsidies and to appeal urgently to the Signatories to make every effort to ensure that notifications, as complete as possible, be submitted sufficiently in advance to make possible their valid examination by the Committee at its October 1981 meeting (SCM/8). The very unsatisfactory status of notifications by Signatories was presented in SCM/W/22. Few Signatories had submitted their notifications. Some of the notifications so far circulated provided practically no details on the situation in the industrial sector. In the light of this unsatisfactory situation he felt obliged to say that if the Committee did not want to lose its credibility it should seriously reflect on how to remedy this situation. The first step could be to take a decision requiring Signatories to submit their full notifications by the end of this year. Signatories who considered that they did not grant subsidies in the

sense of Article XVI:1 should accordingly notify the Committee. Following these notifications the Committee could have a special meeting sometime in February 1982 to discuss the matter.

17. The representative of Chile agreed with the remarks made by the Chairman and said that as a first step the Committee should invite Signatories who had not made their notification to explain why they had not submitted them, and in the light of these explanations the Committee should decide how to proceed.

18. The Chairman said that it would not be possible to have a meaningful discussion without having all notifications in due form. He said that as none of the Signatories had indicated that he would not be in a position to submit notifications by the end of this year, such a dead-line seemed to be acceptable to the Committee. He also noted that the Committee accepted the idea of having a special meeting in February to consider these notifications. The observer for Argentina asked whether such a meeting would be open for observers. The Chairman confirmed that it would be a normal meeting of the Committee. The representative of the European Communities said that the idea of having such a meeting was an excellent one but he wondered whether the matter was so urgent and whether it could not wait until the next regular session. The representative of Chile supported the proposal to have a special meeting in February to examine notifications of subsidies. He considered it a very important matter, not only to improve transparency but also to have an opportunity to discuss the substance of certain notifications. Referring to the notification by the European Communities (L/5102/Add.6) he said that in the first chapter there was a reference to restitution on cereals and as the amount of restitutions covered wide areas it was difficult to figure out its break-down by products. He requested the delegation of the European Communities to provide such information. He said that his understanding was that not only the Community but also individual member States would make their notifications of the subsidy measures within their competence.

19. The representative of the United States said that the proposal to have a special meeting was very interesting, however to have an equitable discussion it would be indispensable that countries which considered that they did not grant subsidies informed the Committee in advance of the meeting. The Chairman said that he had already confirmed the obligation to submit such "negative" notifications. As all the notifications were to be submitted by the end of this year other delegations would have sufficient time to study them. The date of the meeting would be fixed, taking into account the need to provide such a sufficient time. The representative of Finland wondered whether, taking into account the fact that notifications under Article XVI:1 were an obligation of all contracting parties to the GATT, members of the Committee could ask questions concerning notifications by observers as well.

20. The Chairman said that the discussion to take place in February would be the same as that which should have taken place at this meeting but which would not take place because the number of notifications submitted so far was insufficient. The representative of the United Kingdom on behalf of Hong Kong supported the proposal to have a special meeting. He thought it was important to have transparency and to examine notifications because it was what the Agreement was all about. As to the suggestion that members of the Committee should have an opportunity to ask questions about notifications made by observers he did not think it would be appropriate. Signatories had rights and obligations to each other which the observers did not have. Therefore he

considered that only notifications made by Signatories should be examined. The representative of Chile said that it would be very useful to have a special session as soon as possible at the beginning of the next year. At that meeting the Committee should look not only at notifications themselves but also at the questionnaire on subsidies to see whether it would be appropriate to change it to better fit the objectives of the Agreement.

21. The Chairman concluded that full notifications should be submitted by the end of 1981 and that subsequently the Committee would have a special meeting to deal exclusively with the questionnaire and with qualitative aspects of notifications by Signatories. This meeting would, in principle, take place in February 1982 but the exact date would be fixed in the light of the content of notifications and in consultations with delegations. It was so decided.

D. Reports on all preliminary or final countervailing duty actions

22. The Chairman recalled that notifications under these procedures had been received from the United States and circulated in documents SCM/W/15, 16, 17, 18 and 20.

23. The representative of the European Communities drew the Committee's attention to a communication from his delegation circulated in SCM/W/19 concerning outstanding countervailing duty cases in the United States. All these cases had been pending before the United States authorities for a very long time. He wanted to underline that the prolonged procedures imposed a heavy financial burden on the firms involved and in many cases made exports virtually impossible. He urged the United States authorities to take a decision as quickly as possible. The representative of the United States said that the United States administration was making its best efforts in two of the cases concerning float glass to accelerate the matter but the cases were in the hands of the tribunal. Regarding the other two, it had had problems in arranging an on-the-spot investigation and receiving required information from the EC firms. In a number of other cases termination procedures had been set in motion. He wanted to emphasize that the administration was making all possible efforts to move these cases along. On his part, he wanted to enquire about the developments with respect to an order of the court in Milan of April 1980 which had forbidden US companies from importing acrylic fibres of polyester yarn into Italy, despite the fact that the EC had since imposed an anti-dumping duty on these products. The Court Order countervailed Article VI of the General Agreement and both the Anti-Dumping and Subsidies/ Countervailing Measures Agreements. It had also been admitted by Mr. Haferkamp that this order was inconsistent with the GATT and with the Community law. As it was the Commission's responsibility to ensure that member States did not take an action inconsistent with this law and with the General Agreement he would like to know what action had been taken by the Commission in this respect. The representative of the European Communities said that this problem had again been discussed with the Italian authorities and the result had been that the Court Order had never been officially notified to the customs authorities and that these authorities were not entitled to take any action against the imports in question. Consequently the import was free and no other measure than the normal duties and the anti-dumping duties imposed in accordance with the Agreement were authorized, If the American exports to Italy had stopped it was not because of that Court Order but because of the modification of the dollar-lira rate of

exchange. The representative of the United States said that his concern was that one of the contributing factors for the cessation of exports of these products to Italy had been that the court's injunction was still in place. It had a chilling effect on exporters, particularly as there was a threat that their exports could be confiscated upon arrival. The fact remained that this particular Court Order was still in place in violation of GATT rules, those of the Agreement and even the EC rules, and it had disturbing effects on trade.

E. Semi-annual reports of countervailing duty actions taken within the period 1 January 1981-30 June 1981

24. The Chairman recalled that the invitation to submit semi-annual reports under Article 2:16 of the Agreement had been circulated in SCM/7 on 20 August 1981. The following Signatories had notified the Committee that they had not taken any countervailing duty action during that period (SCM/7/Add.3): Austria, Brazil, Chile, Finland, India, Japan, Korea, Sweden, Switzerland, United Kingdom on behalf of Hong Kong, Uruguay, Yugoslavia and the European Communities. Countervailing duty actions had been notified by the United States and Canada (SCM/7/Add.1, and Add.2). The representative of Pakistan made an oral statement to the effect that no countervailing duty action had been taken by his Government against any of the Signatories.

25. The representative of Canada asked the representative of the United States whether his authorities had received a formal request from the US steel industry to initiate a countervailing duty action. If such a request had not been made why had Canadian producers received questionnaires about subsidies they might have received? The representative of the United States said that his authorities had received a request from Canadian companies for a statement on whether they could be subjected to countervailing duty or anti-dumping actions. In order to make such a statement his authorities had requested further information but had not received any answers. The whole procedure had nothing to do with an anti-dumping or countervailing duty investigation. Should any proceedings be instituted, the appropriate questionnaire would be sent and investigations would be conducted in conformity with the Agreement. The Chairman noted that with respect to the questions raised by the Indian delegation at the April 1981 meeting (SCM/M/6, paragraph 19) there was an agreement between the Indian and the US delegations to pursue the matter bilaterally. The representative of India said he might wish to revert to this matter in the Committee if a need so arose.

F. Report of the Joint Group of Experts on the Definition of the Word "Related"

26. The Chairman said that the Group of Experts on the Definition of the Word "Related" established jointly by this Committee and the Committee on Anti-Dumping Practices in April 1980 (SCM/M/3, paragraph 42) had completed its work and had submitted a report to the Committee in April 1981 (SCM/M/6, Annex I). The Committee had had a preliminary discussion of the report at its April 1981 meeting and had decided to revert to it at this meeting with a view to adopting it (SCM/M/6, paragraph 22). He added that this report had already been adopted by the Committee on Anti-Dumping Practices.

27. The representative of Japan said that he would not object to the adoption of this report, but he expected that in the future the Committee would revert to this question in order to develop more specific guidelines than those contained in the report. This should be done in the light of practical experience from the application of the present report.

28. The Committee adopted the report (as reproduced in SCM/M/6, Annex I).

29. The Chairman informed the Committee that the Group of Experts on the calculation of the amount of a subsidy was continuing its work. Because of its preliminary stage no report had so far been submitted to the Committee.

G. Other actions taken under the Agreement

30. The Chairman informed the Committee that on 28 September 1981 the Government of the United States had notified the Director-General of the GATT, as the depository of the Agreement that, effective 25 September 1981 the United States had withdrawn its invocation of the provisions of Article 19:9 of the Agreement with respect to India. Accordingly the United States had consented to the application of the Agreement to India. The Chairman recalled that the Committee had agreed to revert, at this meeting, to the draft decision circulated by the delegation of India at its April 1981 meeting (SCM/W/14).

31. The representative of India said that as the draft decision had been before the Signatories for some time now he expected that the Committee would be prepared to adopt it at this meeting. The representative of the United States said that his delegation was studying the proposal in the light of certain recent events including the one to which the Chairman had just referred. He wondered whether such a proposal was currently appropriate since none of the Signatories to the Agreement was invoking Article 19:9. He considered that further informal consultations were needed before the draft decision could be meaningfully discussed. The representative of the European Communities said that he fully agreed with the representative of the United States. The representative of India said that in the view of the fact that certain Signatories required further consultations he agreed that the matter be reverted to at the next meeting of the Committee. The representative of the United Kingdom speaking on behalf of Hong Kong said that he supported the proposal made by India, that members of the Committee should continue their informal consultations and that the Committee should revert to the matter at its next meeting. The Chairman said the Committee would revert to this matter, in the light of further consultations, at its next regular meeting.

H. Annual review and the report to the Contracting Parties

32. The Chairman said that the background information for the annual review of the operation of the Agreement had been circulated in SCM/W/21. On the basis of this information and taking into account developments that had taken

place at this meeting the secretariat had prepared a draft report to the CONTRACTING PARTIES. The Committee would consider this report before the end of the meeting.

I. Other business

(a) Panel members

33. The Chairman reminded the Signatories that they should inform him, without delay, about any changes in the list of panel members circulated in SCM/W/21.

(b) Export credits

34. The representative of Yugoslavia said that paragraph (k) of the Illustrative List of Export Subsidies contained a reference to an unspecified international undertaking on official export credits which seemed to be the OECD Arrangement on Guidelines for Officially Supported Export Credits? Some of the present Signatories were parties to this OECD Arrangement. However some other Signatories were not OECD members and they did not have access to this Arrangement. If these Signatories wanted to ensure that their policy in this field was in conformity with paragraph (k) they needed some more information about this arrangement. For this reason he wanted to propose that the GATT secretariat prepare a report on what had been agreed in the OECD on this matter. This report should contain, inter alia, information on the content of the Arrangement, agreed minimum interest rates, differences between the market rates and the agreed rates, costs of possible application of such an arrangement and on categorization of countries with respect to the credit rates. The intention of his proposal was to have purely technical information for the Signatories, non-OECD members, which was necessary in relation to the implementation of the Agreement and in particular paragraph (k).

35. Mr. Lindén (GATT) said that the OECD Arrangement had just been renegotiated and apart from some press information the secretariat did not have any official data on the new Arrangement. He thought it was premature to expect the secretariat to present information before the new Arrangement had actually entered into force. He could only promise that as soon as the new Arrangement had been finally adopted, the GATT secretariat would get in touch with the OECD secretariat to find out what information would be available and only then could it prepare a paper along the lines suggested by the representative of Yugoslavia.

36. The Chairman said that the secretariat would be ready to provide Signatories with all the information available to it as soon as possible. The representative of Yugoslavia said it was not clear what the Chairman meant by available. There was a lot of information in the press but such information was not authoritative. He simply wanted to have an authoritative information.

37. Mr. Lindén said that to provide authoritative information the GATT secretariat would have to rely on the OECD secretariat and he could not promise anything without knowing what the OECD's intention in this respect would be.

¹ See paragraph 70 below.

38. The representative of the European Communities said that the matter concerned an arrangement made within the OECD and if the representative of Yugoslavia wanted to have some information the best way was to ask the OECD secretariat directly.

39. The representative of Yugoslavia said that the matter was of interest not only to Yugoslavia but to all Signatories not members of OECD. This information was relevant to the implementation of this Agreement and therefore it was important to this Committee.

40. The Chairman said that as the OECD Arrangement was administered by the OECD it would be impossible for the GATT secretariat to decide on the scope of information it could provide. Once the question had been clarified and such information was available the secretariat would distribute it to interested Signatories. Mr. Lindén said that the text of the previous OECD Arrangement was available in the secretariat for inspection by interested Signatories. He understood that the text remained unchanged, only the interest rates had been modified.

41. The observer for Israel said that the Agreement made a specific reference to an arrangement which in fact was not an OECD arrangement but was an arrangement between certain countries only administered by the OECD secretariat. For this reason even the OECD secretariat was not in a position to give information on its content. His Government was presently studying the Subsidy/Countervail Agreement and it would be important for this examination to have available all the relevant information.

42. The representative of Austria said that this seemed to be not only a technical problem and it would be difficult for the Committee to decide what kind of information falling within the competence of the OECD should be given to the Signatories.

43. The representative of Chile said that he could not agree that the matter in question was a technical one. He wanted to stress that this was first of all a problem of transparency.

44. The Chairman recalled that the text of the Arrangement in question was available for inspection by Signatories. As far as new interest rates were concerned, the secretariat would, as soon as they entered into force and if authorized by the OECD secretariat, make this information available to the Signatories.

45. The representative of the United States said that the issue of official export credits and its relation to the Agreement had been discussed earlier this year in the Group of Experts and in the Committee on Civil Aircraft. His Government was concerned about the continuous subsidization of official export credits and was hoping for complete elimination of such subsidization. Some progress had been made in this direction already but the subsidies in this area had not, as yet, been completely eliminated. His Government would follow developments closely in this regard and he wanted to reserve his right to come back to this issue at an appropriate meeting of the Committee in the near future.

(c) EC subsidies on malt barley

46. The representative of Chile said that he wanted to make a statement concerning the EC subsidies on malt barley. This matter was subject to a number of consultations between the EC and Chile and in the past it had always been possible, during these consultations, to obtain useful information which would, at least partially, alleviate some of his Government's preoccupations. However, in the course of the last year it had become evident that subsidies granted by the EC on the export of malt barley had been displacing Chilean export of the like product from third country markets, in particular Brazil, Bolivia, Peru and Venezuela. He wanted to inform the Committee that, having taken into consideration adverse effects of these subsidies, his Government would probably decide to request consultations with the European Communities under Article 12 of the Agreement.

47. The representative of the European Communities said that his delegation would certainly not object to having such consultations but he wanted to suggest that the representative of Chile should state under which paragraph of Article 12 he requested this consultation. The representative of Chile said that all necessary details would be contained in the formal request to be sent to the European Communities

(d) Export subsidies maintained by Greece

48. The representative of Japan said that earlier this year the United States had requested consultations with the European Communities on export subsidies maintained by Greece. He wanted to know what was the outcome of these consultations. The representative of the European Communities said that the EC Commission had provided the United States with all relevant information and that there had been bilateral consultations during which certain points had been clarified. The representative of the United States said that his Government was still studying the most recent information on the matter and that no final conclusions had so far been reached. He said that further consultations would probably take place in the future.

(e) EC export subsidies on wheat flour

49. The representative of the United States said he would like to raise the issue of wheat flour before the Committee. He noted that this discussion would set a precedent for the Committee and for the Agreement and he believed it would be very important to proceed cautiously and with full understanding of what was involved. He recalled that on 29 September the United States had requested formal consultations under Article 12 with the European Communities with regard to the EC export subsidies on wheat flour (SCM/10). Consultations on this matter had been held on several occasions in the past, including Article XXII consultations under the General Agreement. The latest consultations, held the preceding day, had not succeeded in producing a mutually satisfactory solution and they had left his delegation with no feeling that it could expect, through negotiations, a satisfactory solution to this matter. Therefore his delegation had decided to turn to the Committee in accordance with Article 13 to request conciliation. He would very much like to reach an amicable solution to this case. In making this request he noted that Article 13:1 provided that in a dispute concerning an export subsidy a Signatory could request conciliation thirty days after the request for consultations. There was no doubt that this dispute involved an export

subsidy and the United States considered to have facts showing that the Communities had acted contrary to their obligations under the Agreement. He acknowledged that there was an ambiguity in the language of Articles 12 and 13 that could give rise to procedural objections to the request for conciliation at this time. Article 12:1 consultation concerned export subsidies alleged to be inconsistent with the Agreement. The party requesting consultations under Article 12:1 might ask for conciliation, according to Article 13:1, thirty days later. Article 12:3 provided for consultation concerning any subsidy alleged to cause injury, nullification or impairment or serious prejudice. According to Article 13:2 a Signatory could ask for conciliation within sixty days of the request for consultations under Article 12:3. The ambiguity here was that in this case his delegation had claimed both, the export subsidy having an effect inconsistent with Article 10 and causing nullification or impairment and serious prejudice under Article 8. The question therefore had arisen whether provisions of Article 13:1 or Article 13:2 were applicable. Another question was whether a Signatory, who had asked only for consultation under Article 12:1, would be free in a panel, to plead that the measure in question had adverse effects under Article 8. The Committee should address these questions. As his delegation had opted for conciliation under Article 13, he would like to have the advice of the Committee as to the procedural method by which the matter should be dealt with. He believed that best efforts had been made in bilateral consultations to reach a solution but no such solution had been found. Therefore it was appropriate to move promptly to other provisions of the Agreement.

50. The representative of the Community said that since the United States had first raised the question he had studied the record on flour. From his experience in the matter, he saw no ambiguity as between Articles 12 and 13 of the Agreement; the only ambiguity was in the request made by the United States.

51. The Chairman said that, following the statement just made, and having regard to document SCM/10 and to the fact that consultations had been held without result, the matter could be referred to the Committee for conciliation. With regard to the conciliation procedure the Agreement was somewhat vague; in his opinion the procedure should be kept flexible. Regardless of the question of the time-limit, which in any case could be extended, if the conciliation process was to have any chance of success it should begin with the fullest possible exchange of information between the two parties. Then the Chairman, in agreement with the Committee, might lend his good offices with a view to possible conciliation, on which he would report to the Committee. He made that suggestion purely as a preliminary and with no desire to set a precedent that might detract from the flexibility which the procedure must possess.

52. The representative of the United States said that he found the Chairman's suggestion very useful and he believed that the good offices of the chair would be entirely appropriate in this matter. Pursuant to this suggestion he wished to propose that the parties concerned consult with the Chairman at the earliest possible mutual convenience to decide on future procedures and exchange of information and on all other issues that might come up. He stressed that conciliation should proceed in a rapid manner.

53. The representative of the Community said that he agreed that the Committee should proceed cautiously and in full knowledge of the facts. It was very important that the provisions of Article 17 should be complied with. The Article provided that the Committee should immediately review the facts involved and then lend its good offices. The Committee ought therefore to undertake such a review before embarking upon the conciliation procedure. He was ready and willing to begin the review straight away. On the present occasion he would not give the Community's version but would describe the sequence of events in the case as they had really happened. The question might be asked whether the procedure prescribed in Article 12 had been followed. The consultations held the previous day had begun at 11 a.m. and ended at 13.20 p.m; how then, he asked, could the facts of such a complex matter have been clarified as prescribed by Article 12:5? The United States delegation had made the same statement as in 1975 and had admitted that there was nothing new to add to the file. He was sure that, if the United States delegation had made a statement to the Committee straight away, it would have been exactly the same as that made in 1975.

54. The Chairman said that the Committee was certainly ready to review the facts; the question was, however, whether it was in a position to do so properly without have before it a detailed history of the case. It would seem preferable for the Committee to be supplied with the accessory in writing and to meet very soon thereafter.

55. The representative of the United States said that the facts had not indeed changed for the better for some time, the situation had even got worse. He was prepared to accept the Chairman's recommendation and to proceed immediately with conciliation including the review of the history of the matter. He believed that once the Committee had got the full picture of the matter it would become evident that the issues that his delegation had raised were substantive and well documented.

56. The Chairman said that, in order to save time but more particularly in order to have a better understanding of the procedure to be followed and to make better preparations for it, it was essential to begin with a preliminary phase of exploration and consultation with the Chairman, who would then report to the Committee on the case and the prospects for conciliation.

57. The representative of the Community said that the Community, having been so taken to task for failure to meet its obligations under the GATT, would make a point of abiding by them scrupulously on the present occasion. The first question was, what was the legal basis for the Chairman's proposal. Article 17 said that the Committee should immediately review the facts. He asked whether the Chairman's proposal derived from that Article or represented a procedure anterior to the application of Article 17. If the latter case, there was as yet no conciliation procedure, because that procedure must be carried out strictly in accordance with Article 17.

58. The Chairman said that the precedents set in the GATT had always left the door open to a pragmatic approach. Before matters were taken any further, therefore, it would be useful for the Chairman to be somewhat better informed, on the Committee's behalf, of the facts at issue. In the light of the information supplied by both parties, and after consultation with other delegations, a decision could be taken regarding the procedure to be followed.

59. The representative of the United States said that the procedure suggested by the Chairman was fully acceptable to his delegation. He believed that the present stage of the procedure was within Article 17 and that the Chairman's proposal was consistent with this Article.

60. The representative of the Community said that, after hearing what the Chairman and then the United States representative had to say, he wondered whether the procedure suggested by the Chairman was indeed that prescribed by Article 17.

61. The Chairman said that the matter had been referred to the Committee but that the facts which the Committee was to review were not yet known. That was why he had proposed that he should make them known to the Committee. As to the stage reached in the proceedings, the Committee was about to go into Article 17 but had not done so.

62. The representative of the United States suggested, as a compromise, that the time-limits provided for in Article 17:1 started to run on the date when the parties to the dispute, had submitted their written statements to the Chairman.

63. The representative of the Community said that the United States delegation was free to do as it wished. After that delegation had made its submission, the Committee should meet again and the Chairman should decide on the date for that meeting. The time-limit prescribed by Article 17:3 could not run from the date of the request for conciliation. It could run only from the time when the Committee had reviewed the matter.

64. The representative of the United States said that his interpretation of Article 17:3 differed from that of the representative of the European Communities. The language of this paragraph was very clear when it said that "any Signatory involved may, thirty days after the request for conciliation, request that a panel be established by the Committee". Although, in his opinion, the request for conciliation had already been made at this meeting he was ready, in a spirit of compromise, to postpone these proceedings for some time, until the written request had been submitted to the Chairman. The clock would start to run as of that moment.

65. The representative of the Community said that the time-limit of thirty days did indeed run from the time of the request for conciliation. However, there was no provision in the Agreement for the exploratory phase proposed by the Chairman. That was an ad hoc solution which prejudged nothing. The Committee should have time to discuss the arguments submitted in writing by the United States, and even if the Committee's meeting did not take place within thirty days the United States delegation would be entitled to ask for a panel. The Community delegation, for its part, would make no submission in writing because it preferred to present its arguments orally. It was willing to agree to the phase proposed by the Chairman on condition that the Committee then discussed the Chairman's report and the provisions of Article 17:1 were complied with.

66. The Chairman considered that, in the interests of good procedure, it was desirable that the Community delegation should also state its views in writing. The representative of the Community said that he would put nothing

on paper but could refer the Chairman to an American Journal which would give him all the facts.

67. The Chairman observed that everyone agreed in principle on the phase of clarification with the Chairman. He would therefore do his best to clarify the facts of the case and report them to the Committee. The Committee would be able to meet in the very near future when that phase was completed.

68. The representative of the Community said that he accepted what the Chairman had said; he also accepted the Chairman's interpretation, and accepted it without interpretation. The representative of the United States said that his position was exactly the same.

69. The Committee agreed that the Chairman should proceed as he had proposed (see paragraph 67 above).

(f) Report to the Contracting Parties

70. The Committee examined the report prepared by the secretariat and agreed on the text to be submitted to the CONTRACTING PARTIES (L/5231).

J. Date of the next meeting

71. The Chairman said that according to the decision taken by the Committee at its April 1981 meeting (SCM/M/6, paragraph 36) the next regular session of the Committee would take place in the week of 26 April 1982 following that of the Committee on Anti-Dumping Practices.