

**GENERAL AGREEMENT ON
TARIFFS AND TRADE**

Committee on Subsidies and
Countervailing Measures

MINUTES OF THE MEETING HELD ON
10 MAY 1984

Chairman: Mr. H.S. Puri (India)

1. The Committee met on 10 May 1984.
2. The Committee elected Mr. H.S. Puri (India) as Chairman and Mr. F. Laschinger (Canada) as Vice-Chairman.
3. The representative of the United States expressed his Government's high appreciation for the work Mr. Ikeda had done over the last two years as Chairman of the Committee. Thanks to Mr. Ikeda the work of the Committee had been widely recognized by the signatories and by the contracting parties. The representative of Sweden fully subscribed to the statement made by the United States representative and said that Mr. Ikeda had confronted extremely difficult issues in a very able and constructive manner, both as Chairman of the Committee and of the Group of Experts. The representatives of Australia, the EEC and Brazil associated themselves with the previous speakers. Several representatives congratulated the new Chairman recalling his active participation in various GATT bodies and his sense of efficiency and conciliation. They expressed their conviction that Mr. Puri would discharge his duties in an excellent way.
4. The Chairman said that the agenda for this meeting had been circulated in the airgram convening the meeting (GATT/AIR/2004). It did not contain the item which the Committee had agreed to revert to at this meeting, namely "Matter referred by India under Article 17:1". The reason was that prior to this meeting the Chairman had been informed by the delegations of India and the United States that further progress had been made in their bilateral consultation; it therefore seemed advisable to postpone the consideration of this item to a subsequent meeting.

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)
 - (i) Legislation of Uruguay (SCM/1/Add.19)
 - (ii) Legislation of Australia (SCM/1/Add.18 and Suppl. 1 and 2, SCM/W/49, SCM/W/50, SCM/W/55 and SCM/W/58)

(iii) Legislation of New Zealand (SCM/W/51 and SCM/W/59)

(iv) Other legislations

C. Notification of subsidies

(a) Status of notifications (L/5603 and addenda)

(b) Quality of notifications (SCM/45, SCM/49 and addenda)

D. Semi-annual reports of countervailing duty actions taken within the period 1 July 1983-31 December 1983 (SCM/48 and addenda)

E. Reports on all preliminary or final countervailing duty actions (SCM/W/65 and Corr.1, 67 and 68)

F. Other business

(i) Outstanding injury determination in the United States

(ii) Draft guidelines for the determination of substitution drawback systems as export subsidies (SCM/W/71)

A. Adherence of further countries to the Agreement

5. The Chairman informed the Committee that since the last regular session on 17-18 November 1983, no further country had adhered to the Agreement.

6. The Chairman also recalled that at the last meeting the observer for Colombia had raised some problems related to the difficulties his country and other developing countries were facing in their efforts to accede to the Code. Following a suggestion by the representative of one country the Committee had requested the Chairman to hold informal consultations with a view to examining these problems in detail. The first round of such consultations had already taken place and it was the general feeling that they should continue, for the time being still at the informal level. He hoped to be in a position to make a substantial report to the Committee at its next meeting. It was so decided.

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

(i) Legislation of Uruguay (SCM/1/Add.19)

7. The Chairman recalled that at its last meeting the Committee had examined the countervailing duty legislation of Uruguay. Several delegations had made a number of comments and asked concrete questions regarding some aspects of this legislation. The representative of Uruguay had offered to respond to these questions at this meeting.

8. The representative of Uruguay recalled that in 1980 and 1981 his Government had approved legislation (SCM/1/Add.19) consistent with the Subsidies Code, although to date it had not been applied by any application of definitive or provisional duties. The Subsidies Code, being an international instrument approved by Uruguay (Law 15047 of 5 August 1980), was considered in his country's legislation as having the force of law. In

accordance with the rules on interpretation and integration of laws, matters not regulated by the Uruguayan legislation on countervailing duties (Law 15025 of 10 June 1980 and Decree 86/81 of 25 February 1981) were covered by the positive provisions in force, in this case the Subsidies Code, i.e. Law 15047. The representative of Uruguay also referred to the following specific questions:

- (a) On the concept "domestic production" (Articles 1 and 8, Law 15025 and Articles 1, 2 and 11 Decree 86/81): the expressions used in the Uruguayan legislation should not be deemed different in meaning from the wording used by the Code ("domestic production"). The expression "domestic producing activity" (Article 1, Law 15,025, Article 1, Decree 86/81) was synonymous with domestic producing sector or industry as mentioned by the Code in Article 2:1 ("by or on behalf of the industry affected"). The expressions "party affected", (Articles 1 and 2, Decree 86/81) or "complaint made by an interested party" (Article 8, Law 15,025 and Article 11, Decree 86/81) referred to the industry affected or to a party acting on behalf thereof in accordance with the definition in Articles 2 and 6 of the Code.
- (b) Responding to comments made by the Canadian representative regarding Article 4,5,6 (Decree 86/81) he said that Article 4 referred only to cases of dumping. Regarding Article 5, account should be taken of Articles 25 and 26 of that same Decree. Article 25 stipulated "the amount of the anti-dumping duties ... shall be equal to the difference between the comparable selling price defined in terms of Articles 3 to 10 of this Decree and the f.o.b. export price" and Article 26 "the amount of the countervailing duties ... shall be equal to the amount of the subsidization". Consequently, only dumping could be established by price comparison, whereas comparison of prices was deemed to be an important indication for determination of the existence of subsidization but not of its amount. Concerning Article 6, as stated in this provision "dumping shall be deemed to exist ..." referred solely to a presumption of dumping.
- (c) On comments regarding the rôle of the Ministry of Finance (Article 11, Decree 86/81) he indicated that both the Spanish original and the French translation (SCM/1/Add.19) were clear in that the Ministry of Finance would only order the initiation of the investigation. The Ministry would not determine the criteria required for imposition of the relevant duties as implied by the EEC representative. In his opinion this misunderstanding was due to a translation problem in the English version of SCM/1/Add.19.
- (d) On the issue of "the conditions for opening an investigation" (Article 12, Decree 86/81): this Article referred to a complaint by an interested party affected by dumping or subsidization but it did not imply the automatic opening of an investigation under Article 13. The requirements laid down in Article 2.1 of the Code were likewise respected in Uruguay's legislation which was even more demanding in respect of other criteria. Appreciation as to the adequacy of evidence was made by the Ministry which decided to initiate the investigation in the event of due substantiation. For such initiation the same level of proof was needed as under the Code.

- (e) As to the "substantiation of the complaint" (Articles 13 and 14, Decree 86/81) he considered that there seemed to be no contradiction between substantiation of the complaint and Article 2.1 of the Code. Article 12 of the Decree stipulated elements of proof to be supplied by the complainant, inter alia, an account of the circumstances pointing to the existence of dumping or subsidization, and elements which tended to substantiate the injury caused or threatened by imports. The fact of being well-founded, as mentioned in Article 13, referred to those circumstances. The complaint was well-founded when adequate proof was shown of subsidization, injury and causal link.
- (f) Referring to the question of "notification to the exporter" (Article 14, Decree 86/81) he said that although Article 14 of the Decree did not make provision for notification to the exporter and the exporting country, the competent Uruguayan authorities, in accordance with the fact that the Code had the force of law in Uruguay and acting in accordance with Article 2:3 of the Code, would make the relevant notifications at the appropriate time.
- (g) On the "imposition of provisional measures" (Article 16, Decree 86/81). This legal text should be examined in the light of the provisions of Law 15,025. Article 11 thereof stipulated that "the Executive may adopt precautionary measures if the Ministry of the Economy and Finance makes a preliminary finding that there is ... subsidization of an import and that there is sufficient evidence of material injury, on the basis of the investigations carried out", using the same wording as Article 5:1 of the Code. Thus, a preliminary finding was required before provisional measures were imposed.
- (h) On "time limits and delays" (Article 17, Decree 86/81). The twenty-one day period was extendible so that the complainant acting on behalf of a domestic industry could supply evidence supplementary to that required at the time of the complaint. As regards the exporter and signatory country of origin - in accordance with the Law 15,047 mentioned above - they could submit evidence within twenty-one days of having been notified (Article 17, Decree 86/81) and were allowed ten further days, in the event that submissions were disputed, for supplying additional evidence (Article 18, Decree 86/81). Lastly, the period allowed under Uruguay's legislation was one day longer than that suggested by the Committee on Anti-Dumping Practices.
- (i) On another question relating to "time limits and delays" (Article 19, Decree 86/81), the representative of Uruguay said that Article 12, Decree 86/81 stipulated the evidence to be submitted by the complainant so that the Ministry could examine within the forty-five days established by Article 14 the adequacy of this evidence. On the basis of those elements of proof, taken together with the evidence submitted by the parties in the periods established by Articles 17, 18 and 19, the investigating authority was in a position to make a well-founded decision as to the application of duties. Thus, the Ministry of Economy and Finance had a period of eighty-six days for study and decision, and not forty-one days as mentioned by the EEC.

- (j) On the "non-acceptance of an undertaking" (Article 22, Decree 86/81): Article 22 in fine stated that the Ministry of Economy and Finance may consider non-acceptance of an undertaking as a material indication of the existence of subsidization. This in no way implied prejudicing an examination of the matter but considering, in accordance with Article 4:5(c) of the Code, that the threat of injury was more likely to be realized if the subsidized exports continued.
- (k) On "violation of undertakings" (Article 24, Decree 86/81): the hypothetical case covered by the Decree referred to anti-dumping duties and so was not in breach of Article 4.6 of the Code which referred to countervailing duties.

9. With respect to other comments made by the EEC the representative of Uruguay underlined the following:

- (a) The absence of any specific definition in the Law or the Decree regarding material injury or criteria or causal link between imports and injury did not mean that in Uruguay these concepts had a different meaning from that of the Code since, as stated above, the latter was part of domestic legislation and those concepts were covered by its provisions.
- (b) As regards non-confidential information, this could be examined by interested parties since it was a general principle specifically recognized by Uruguay's legislation regulating administrative procedures and did not require any special provision in the specific case of subsidies.
- (c) As regards information of a confidential nature, Article 27 of Decree 86/81 determined how it was to be treated in accordance with Article 2:6 of the Code.
- (d) As regards oral hearings, although these were not expressly provided for in the Law or the Decree, the Uruguayan provisions regulating general administrative procedures allowed any form of evidence not prohibited by law.

10. The representative of the EEC said that his delegation would prefer to come back to the points mentioned by the delegate of Uruguay after having seen the minutes of this meeting. The representative of Canada took the same position.

11. The Chairman noted that delegations had indicated their appreciation for the effort made by Uruguay to provide a detailed reply on the comments and questions raised in the previous meeting of the Committee. He also noted the remark made by the representative of Uruguay that the Committee should take into account the fact that in Uruguay there had been no application of preliminary or final duties, and that the concepts used in the legislation were indeed those embodied in the Code. The Committee decided to revert to this agenda item at the next meeting.

(ii) Legislation of Australia (SCM/1/Add.18 and Suppl. 1 and 2, SCM/W/49, 50, 53 and 58)

12. The Chairman recalled that at its previous meeting the Committee had had a detailed discussion of the Australian legislation on the basis of written questions put by some delegations and responses from the delegation of Australia. Subsequently to this discussion, the Australian Ant-Dumping Act which also contained countervailing duty legislation had been amended. The amended text had not been notified to the secretariat in sufficient time to circulate it to the Committee at the present meeting. He would therefore propose the following procedures: (a) delegations which had already had a chance to examine the amended text might wish to ask questions and seek further clarification from the delegation of Australia at this meeting; (b) the secretariat would circulate, as soon as possible, the revised legislation to the Committee; (c) the Committee would revert to this legislation at its October 1984 meeting.

13. The representative of the EEC regretted that the points which he had raised before were still valid in the context of the revised legislation. He briefly referred to three points raised by his delegation at the last meeting (SCM/M/19, paragraph 18): countervailing duties could be imposed on imports benefiting from the so called "prescribed assistance", a very wide concept which went beyond Article VI:3 of the GATT; if goods were shipped to Australia at a particularly low freight rate (below the so-called "normal freight"), this could be considered as subsidization irrespective of, e.g., the fact that the low rate could be explained by the competitive forces in the market; countervailing duties could be imposed without applying an injury test to goods from a country which did not itself apply an injury test to exports from Australia. He also recalled that in the revised legislation, countervailing action could be taken in favour of third countries exporters; unlike the Anti-Dumping Code, the Subsidies Code did not contain such a provision, and while it was true that under Article VI:6 of the GATT, the CONTRACTING PARTIES could authorize such third country countervailing action no such authorization had been given to Australia.

14. The representative of the United States wondered whether further written questions could be put to Australia by mid-July. The Chairman responded affirmatively. The representative of the United States indicated that in this case his delegation would reserve its right to submit more written questions. He reiterated some concern about the conformity of the revised legislation with the Code and expressed the hope that a satisfactory solution would be found.

15. The representative of Australia said that the revised legislation was in conformity with the Subsidies Code. He noted that while some of the questions raised by the EEC had been asked before, his delegation would make an effort to answer them again. The representative of the EEC made it clear that the reason why certain issues were raised again was because his delegation was not quite satisfied with the answers. He invited Australia to give some more explanation on these points.

16. The Chairman proposed to the Committee that any questions which delegations might wish to ask would be supplied to the secretariat for circulation and onward transmission to the delegation of Australia. The

Committee would receive responses to these questions from Australia in time before the next meeting so that a comprehensive and meaningful discussion could then take place. The representative of the EEC said that since his delegation had already submitted to the Australian delegation an "Aide Memoire" with all the points raised, he may not resubmit them.

17. The Chairman said that those delegations who had already put questions to Australia and considered that they were still valid did not need to repeat them. They should however indicate this fact to the secretariat so that it could prepare a consolidated list of questions. Delegations which would like to ask further questions should submit them, through the secretariat, as soon as possible. The Australian delegation would reply to all those questions in advance of the October meeting. It was so decided.

(iii) Legislation of New Zealand (SCM/1/Add.15, SCM/W/51 and 59)

18. The Chairman recalled that pursuant to the examination of its legislation the delegation of New Zealand had been invited to further examine various points raised in the Committee and to supply additional information. In particular, the representative of New Zealand had said that he might be able to make available to the Committee early in 1984, copies of the amended act and of the implementing customs instructions. In the course of the meeting the secretariat had received from the representative of New Zealand some information on the dumping and countervailing duties legislation but it had not been possible to circulate it to the Committee.

19. The representative of New Zealand said that he had hoped to make available to the Committee copies of the amended act and the customs instructions. Unfortunately, due to technical reasons, he had only been able to supply the amended act which came into force early this year; the customs instructions (a clarification of the procedures which the New Zealand customs had carried out in the past) were in their final draft and should be available shortly for circulation. He welcomed questions in writing on the legislation and promised to reply to them at the next session of the Committee in October 1984. He finally recalled that New Zealand's constitutional conventions dictated that national legislation should be in conformity with any international agreement before adoption; if some element was not appropriate, reservation was made. This had been the case with New Zealand's acceptance of the Subsidies Code.

20. The Chairman invited delegations to follow the same procedures as had been agreed to for the examination of Australia's legislations. Delegations would submit questions in writing, through the secretariat, and the Committee would revert to this matter in October. It was so decided.

(iv) Other legislations

21. The Chairman recalled that at the previous meeting some delegations had expressed their interest and concern on certain aspects of the implementation of the Chilean legislation. It was then agreed to revert to this matter at this meeting. As there were no requests for the floor, the Chairman reminded signatories who had not, as yet, formally notified the Committee of their actions under Article 19:5 of the Code that they should do so without further delay. The Committee should decide to maintain this item on the agenda in

order to enable signatories to revert to particular aspects of some legislations at a later stage or in the light of the actual implementation of national legislation. It was so agreed.

C. Notification of subsidies

(a) Status of notifications (L/5603 and addenda)

22. The Chairman reminded the Committee that in accordance with the decision of the CONTRACTING PARTIES at the 20th session, contracting parties should, in 1984, submit new and full notifications on their subsidies presently granted or maintained. Both in this Committee and in other GATT fora, considerable importance had been attached to the question of transparency. signatories should therefore make their very best efforts to promptly notify in as comprehensive a manner as possible their subsidies on agricultural and industrial products. The Committee had so far received only five notifications, namely from Chile, Hong Kong, India, the United Kingdom and the United States. He appealed to other signatories to submit their full notifications as early as possible, especially because a special meeting of the Committee would take place in the week of 22 October 1984 to examine the new notifications. He further said that the secretariat would circulate by the beginning of July, a paper on the status of notifications.

23. The representative of Australia informed the Committee that his delegation would be submitting to the secretariat a full notification within the next few weeks. The representative of the EEC indicated that a full notification was to be ready soon. The representatives of Norway and Canada also said that notifications would be submitted in the near future.

24. The Chairman recalled that pursuant to the decision of the Committee taken at its meeting of 17 November 1983, signatories were invited to submit written comments on points raised in document SCM/45, reproduced in the annex to document SCM/49. So far, only the EEC and the Nordic countries had responded to this request. It was therefore disappointing that only two replies had been submitted when many members of the Committee had often stressed the need to improve the quality of notifications. He further recalled that the notifications under Article XVI:1 were regarded as one of the most important notification requirements under the General Agreement. The Chairman therefore appealed to signatories to submit their comments on points raised in SCM/45 at the earliest possible date so that the discussions in October could be meaningful and substantial.

25. The representative of Australia associated himself with the views expressed by the Chairman and indicated that he had already received some preliminary comments from his capital which he would provide to the secretariat for circulation. The representative of Chile recalled that he had submitted to the secretariat some comments on an informal basis. He echoed the views of others on the importance of the subject matter and suggested to hold informal consultations under the Chairman's guidance. The representative of the United States informed the Committee that his delegation was finalizing a preliminary response that would be available for circulation in the near future. He looked forward to some procedure to further the work on improving the questionnaire.

26. The Chairman told the Committee that apart from the replies of the EEC and the Nordic countries, the Canadian delegation had also submitted some comments (SCM/49/Add.3) during the course of the meeting. Referring to the procedure to be followed, he reminded delegations that a tentative procedure had already been agreed to; comments to SCM/45 would be submitted in writing; the secretariat would put together a consolidated paper on the submissions received after which informal discussions would take place. He hoped that many signatories would respond to the points raised in SCM/45.

D. Semi-annual reports of countervailing duty actions taken within the period 1 July 1983-31 December 1983 (SCM/48 and addenda)

27. The Chairman said that an invitation to submit semi-annual reports under Article 2:16 of the Agreement had been circulated in SCM/48 on 19 January 1984. Responses to this request had been issued in addenda to SCM/48. The following signatories had notified the Committee that they had not taken any countervailing duty action during the period 1 July 1983 to 31 December 1983: Austria, Brazil, Egypt, Finland, India, Japan, Korea, New Zealand, Norway, Pakistan, Spain, Sweden, Switzerland, United Kingdom on behalf of Hong Kong, Uruguay and Yugoslavia. Countervailing duty actions had been notified during the period under reference by Australia, Canada, Chile, the EEC and the United States. He recommended consideration of these reports in the order in which they had been submitted:

Canada (SCM/48/Add.2)

No comments.

Australia (SCM/48/Add.3)

28. The representative of the United States, referring to column 11 of the semi-annual reports labelled "Trade Volume", enquired in which units the figures were expressed. He wondered why in the second line "mechanically refrigerated freight containers" columns 4 to 9 were not filled whereas 10 was; he also suggested that in cases such as this it would be useful to have an explanatory footnote. Referring to all reports, except that of the United States, he invited delegations to indicate in the appropriate columns the amounts of subsidies given. The representative of Australia said that he would revert to the first two questions at the next meeting. On the more general question, since in the Australian report all cases in question had been settled through price undertakings, he wondered whether it would be necessary to supply more details, as requested by the United States delegate. The representative of the United States said that although his delegation had not reported the basis on which undertakings in the United States had occurred, it would probably be useful information that should be included.

29. The Chairman recalled that the Anti-Dumping Committee had taken a decision to indicate the amount of dumping. He invited delegations to reflect on the matter and to come back to this in the next regular session of the Committee. It was so decided.

EEC (SCM/48/Add.4)

No comments.

United States (SCM/48/Add.5)

30. The representative of the United States pointed out a typographical error on page 7 of the United States report: item 51 "Unwrought Zinc" was from Spain, and item 52, "Rayon Staple Fibre" was from Sweden.

Chile (SCM/48/Add.6)

31. The representative of Spain requested a clarification on the figures in column 11 of the semi-annual report, labelled "Trade Volume". He invited the Chilean representative to produce under column 11, disaggregated figures in rows 1 and 2 for each product (refrigerators, washing machines, kitchen ranges, stoves, waxers and liquifiers) and for each country (Brazil and Spain). The same was also true in rows 5 and 6 for safety fuses from Brazil and Spain. The representative of Chile said he would supply the requested information bilaterally. The Chairman also proposed to correct the typographical error "Miles" under column 11 above the figure 6.865 in the English version of the document under review. The representative of Chile said that the correct units were "thousands" and that the French version should also be corrected.

E. Reports on all preliminary or final countervailing duty actions (SCM/W/65 and Corr. 1, 67, 68, 69 and 70)

32. The Chairman said that notifications under these procedures had been received from the EEC and the United States. No comments were put forward.

F. Other business

(i) Outstanding injury determination in the United States

33. The representative of the EEC referred to two cases where the United States were maintaining countervailing duty orders without giving the Community exports the benefit of an injury test to which the EEC was entitled under the Code. The first case concerned Greek tomato products and dated back to 1972. The second case concerned float glass from the Federal Republic of Germany and the United Kingdom, against which proceedings had been initiated in 1976. The EEC had made repeated requests to the United States authorities that an injury determination should be made. However, no such determination had been made until now, apparently because of the large number of cases before the ITC, including cases which started before the entry into force of the Subsidies Code and also because an injury determination could not be made before a definitive calculation of the margin of subsidy was carried out by the Department of Commerce. He repeated his delegation's urgent request to the United States authorities to carry out the injury test without further delay.

34. The representative of the United States took note of the cases mentioned by the representative of the EEC. He also recalled that there had been questions and litigation concerning some of these cases and that the transition period after the entry into force of the Code had also led to a substantial backlog of cases pending before the ITC. He promised a precise answer, hopefully to the satisfaction of the EEC, on the current status and

progress of these cases, which he would communicate bilaterally to the EEC. The representative of the EEC reserved his right to come back to this issue at a future meeting.

(ii) Draft guidelines in the determination of substitution drawback systems as export subsidies (SCM/W/71)

35. The Chairman said that the document before the Committee (SCM/W/71) was the product of very hard work of the Group of Experts and that it represented a well balanced consensus. Some delegations who had not participated in the work of the Group of Experts had requested some more time to reflect on it and consequently the Committee should defer its consideration. Bearing this in mind, the Chairman suggested that if the secretariat received no comments from delegations before 1 June 1984 the Committee would proceed on the assumption that the document would be ready for adoption at the October meeting. He finally reminded delegations that all signatories were welcome to designate experts to participate in the above-mentioned Group.

36. The representative of Chile raised the question whether the guidelines would take the form of a decision, a recommendation or an interpretative note.

37. The representative of Austria said that he did not participate in the work of the Group of Experts and that given the importance of the subject matter contained in SCM/W/71 and the procedural aspects involved, it would be advisable to deal with this matter under a separate agenda item and not under "Other business".

38. The Chairman, referring to the point raised by the representative of Chile, indicated that the draft guidelines would constitute an understanding on the manner in which signatories intended to implement the Code when calculating the amount of certain subsidies. The understanding would not add new obligations or detract from existing obligations of signatories under the Code. In his view, the method of adoption or acceptance by the Committee of guidelines elaborated by the Group of Experts was a matter to be dealt with a certain flexibility. Referring to the point raised by the representative of Austria, he saw no difficulty in following his suggestion that the Committee deal with the matter under a separate agenda item at its next meeting. He further recalled that the participation in the Group was open to experts nominated by signatories. For this purpose it would be helpful if the Chairman were notified of the name of the expert so designated. The Chairman proposed that the Committee come back to this item at the October 1984 meeting. It was so decided.

39. The representative of the United States suggested that, as there was a possibility that other papers might be forthcoming from the Group of Experts before October, the Committee should also consider these other documents. The Chairman seconded the suggestion and the Committee accepted it.

Date of the next regular session of the Committee

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 will take place in the week of 22 October 1984.