

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

SCM/M/28  
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Special Distribution

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Committee on Subsidies and  
Countervailing Measures

MINUTES OF THE MEETING HELD ON 26 APRIL 1985

Chairman: Mr. J.Y. Sun (Korea)

1. The Committee held a special meeting on 26 April 1985 in pursuance of the decision of the CONTRACTING PARTIES (L/5756) to examine the adequacy and effectiveness of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, and the obstacles to acceptance of the Agreement which contracting parties may have faced, providing an opportunity to non-signatory contracting parties to express their views in the discussion.
2. The Chairman recalled that the Committee had already had a special meeting on 19 March 1985 (SCM/M/26) to discuss the problems some developing countries had faced in their efforts to accede to the Code. The discussion had focussed on the procedural proposal "Draft procedures concerning commitments under Article 14:5" (SCM/W/86/Rev.2). At that time some delegates had clearly indicated that for various reasons they could not go along with the "Draft Procedures" or that they needed more time to reflect on various aspects of these procedures. In the light of this, it was his intention to explore whether the Committee could make further progress on SCM/W/86/Rev.2 before taking up the more general question of adequacy and effectiveness of the Agreement. He therefore asked delegations which had expressed concern about these procedures whether, upon reflection, they had changed their position.
3. The observer for Colombia said that before expressing his own opinion he would like to know whether delegations which had opposed the "Draft Procedures" had something to add.
4. The observer for Thailand noted that her country had earlier attempted to adhere to the Code but that it had been prevented from doing so by the tough conditions made upon Thailand by one signatory. She stated further that her delegation had closely followed the preparatory work regarding the adoption of the "Draft Procedures" and that note had been taken of the concerns expressed by various delegations. Although the "Draft Procedures" were not the ideal solution for developing countries, they provided a viable alternative which was far better than the present situation. She also stressed that the adoption of these procedures did not mean that developing countries were obliged to follow them, as the decision to adhere to the Code and the procedures to be followed were the sovereign right of the acceding developing country. Her delegation therefore urged signatories to proceed to adopt the "Draft Procedures" expeditiously.

5. The representative of India suggested that, instead of asking delegations if they had modified their positions expressed on 19 March 1985 (SCM/M/26), whether it would not be better to see whether the "Draft Procedures" appeared to meet the concerns of one delegation; this was all the more so since the requirements imposed by one signatory had been referred to as "extremely tough". The answer to this question would probably shed light on the course of action to follow. For his delegation document SCM/M/26 adequately and extensively expressed the concerns of India and consequently there was no need to repeat them again. He also pointed out that since there had been no informal consultations or meetings of any kind since 19 March 1985, those concerns remained unanswered.

6. The representative of Indonesia stated that her country, a very recent signatory to the Code, considered the "Draft Procedures" very useful particularly for those countries which were not yet signatories. Indonesia therefore supported the adoption of the "Draft Procedures" and invited other delegations to reconsider their position and accept the alternative approach.

7. The representative of Uruguay indicated that the "Draft Procedures" had posed certain difficulties to his authorities but since it offered a multilateral solution to the problem of some acceding developing countries, his delegation would not oppose the adoption of these procedures provided paragraph (iii) of the Chairman's explanatory statement could be included in the "Draft Procedures" (SCM/M/26, paragraph 4). This was suggested with a view to making it clear that these procedures would not affect the rights and obligations of existing signatories.

8. The representative of Brazil told the Committee that before making a statement on the adequacy and effectiveness of the Agreement, his delegation would be interested in having a reply to the question formulated by India.

9. The representative of the Philippines said that his delegation was in favour of the adoption of the "Draft Procedures".

10. The observer for Peru recalled that his delegation had already expressed its views on the subject at the meeting of 19 March 1985 (SCM/M/26). Although the "Draft Procedures" were not ideal, they constituted a practical solution which improved the present situation and facilitated the accession of developing countries. The document represented a compromise solution and it was for the acceding developing countries to decide whether to use it or not. It would not have been necessary to discuss any text if Article 14:5 were correctly applied. His delegation would expect the Committee to adopt SCM/W/86/Rev.2 as soon as possible.

11. The observer for Israel recalled his delegation's position on the subject matter (SCM/M/26) and the valuable contribution of those delegations which had drawn up SCM/W/86/Rev.2. He further recalled that as a result of the Ministerial Meeting and the last meeting of the CONTRACTING PARTIES the GATT was now engaged in an exercise to try to broaden the scope of all the Codes. Signatories therefore had a clear chance to make a positive contribution in the subsidies field. Israel would join those delegations which had indicated their willingness that interested developing countries might join the Code on terms which in no way altered the situation of existing signatories. His delegation would therefore urge the Committee to

move forward and adopt the "Draft Procedures". Delegations could also make it explicit that these procedures did not change the rights and obligations of existing signatories.

12. The representative of Yugoslavia said that the main obstacle to greater developing country participation in the Code was the United States bilateral position vis-à-vis developing countries. She appealed to the United States to review its position and practices towards developing countries as they differed from country to country. Since in her view there was little chance to achieve any positive results in the present session she would suggest to revert to the "Draft Procedures" in an informal meeting or in an ad-hoc group.

13. The observer for Colombia drew the Committee's attention to the fact that the "Draft Procedures" were the result of lengthy informal consultations initiated by the previous Committee chairmen and that Colombia was grateful to them for their efforts to try to resolve this delicate question. As it had been stated by other delegations, the problem was the United States position that commitments had to be negotiated bilaterally. Developing countries following the bilateral approach would have to renounce certain benefits which they had under the Code with the result that in the end it was not attractive for them to join the Code. The "Draft Procedures" were consequently extremely useful for they permitted the further accession of developing countries. This was why Colombia was interested in the alternative approach and shared the views of the various delegations that had supported the "Draft Procedures" both in the informal consultations and in the special meetings. Colombia would echo the suggestion of Uruguay to insert an additional paragraph covering the concerns of certain existing signatories. The adoption of these procedures would constitute a positive step and the removal of the main obstacle to accession of developing countries.

14. The observer for Singapore reiterated that the "Draft Procedures" represented a viable alternative without removing the existing option. His delegation would make an honest call to support adoption of SCM/W/86/Rev.2 since it was apparent that it did not affect the rights and obligations of existing signatories.

15. The representative of Turkey said that his delegation understood the concerns of certain delegations and the problems faced by observers and consequently would not object to the adoption of the "Draft Procedures".

16. The representative of the EEC said that the views of his delegation were reflected in SCM/M/26 and that the EEC was prepared to adopt the "Draft Procedures" even with the additional paragraph suggested by Uruguay and Colombia.

17. The representative of Chile told the Committee that his delegation had always been in favour of facilitating the accession of developing countries. He would have preferred a more straightforward approach to make this possible but if the acceptance of the "Draft Procedures" was the condition to permit the accession of developing countries, Chile would support these procedures.

18. The representative of Australia noted that there had been a perception by his authorities that perhaps the way in which the procedures were drafted could be interpreted as a softening of Article 14:5 of the Code. However, Australia was prepared to support the "Draft Procedures".

19. The representative of India noted that the issue before the Committee was not trivial or insignificant and that the fact remained that developing countries were susceptible to a unilateral interpretation of the Code which was not upheld by the letter and spirit of the Code. His delegation would appreciate it if signatories could address themselves to the concerns expressed by his delegation at the previous meeting. He also recalled that at the beginning of the present meeting he had asked whether the Committee could hear the views of a certain signatory, and that his request had been seconded by another delegation. If the conclusion of the present meeting was that the Committee was at an impasse, his delegation would like to make it clear that it was not India which was opposing the accession of other developing countries. Consequently, he would strongly object to any suggestion that his country was obstructing progress on this matter. However, in the absence of any positive indication from one delegation he did not see any reason to reconsider his position. He stated that it was for the chair to reflect whether further progress could be made on the basis of SCM/W/86/Rev.2, or whether any alternative course needed to be explored, or whether there was no possibility whatsoever of signatories reaching a consensus on this issue.

20. The representative of the United States strongly objected to those delegations which had referred to the past policy of his country as constituting a unilateral interpretation of the Code. He recalled that the policy of his government had always been to apply the Agreement to developing countries in return for increased discipline in the subsidies field (SCM/M/3, paragraph 11).<sup>1</sup> Article 19:9 had no restrictions on its use and he did not see why, by taking advantage of this provision in the past, his country had been accused of a unilateral interpretation. The United States was satisfied with its policy and history had shown that nearly all, if not all, developing country signatories had negotiated bilateral commitments with the United States. India was one of these countries which had negotiated a bilateral commitment and then reneged on part of it by not notifying that commitment to the Committee as it was supposed to do; some other developing countries had also reneged on the terms of their commitments. This had caused a certain degree of dissatisfaction in the United States with the way the policy was initially implemented and led to attaching certain conditions such as the concept of provisional application. His authorities were not unhappy with the current policy and were not seeking to change it. However, observers were and therefore, at the beginning of the informal consultations, one delegation had suggested that since the United States had no intention of changing its policy, it was up to the other interested parties to develop some possible alternative which could be proposed to the United States. This process led to working out the "Draft Procedures". His delegation had not

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<sup>1</sup>The text of this paragraph is contained in Annex I.

pronounced itself in favour, nor against the "Draft Procedures", but he was not in a position to accept something when there were statements by Pakistan and India such as those reproduced in SCM/M/26 paragraphs 17 and 25, respectively. It was not politically possible for him to take a position on the procedures until he was sure that they were acceptable to the Committee. This was particularly so because these procedures had grown out of the suggestion that an alternative to current policy was to be proposed to the United States.

21. The representative of Pakistan said that he hoped the Committee would recommend some draft procedures; acceptance by the United States would facilitate the accession of the Code by developing countries. His delegation, in principle, still held the same position as in the last meeting. He further asked what the mandate for the present exercise was. A preambular paragraph to SCM/W/86/Rev.2 was necessary to explain why the Committee had found it necessary to elaborate Article 14:5. As to paragraph 1 of the "Draft Procedures" he wondered whether the Committee could recall the obligation of all contracting parties under Article XVI:1. He was not clear on the relationship between paragraphs 3 and 4, nor on the purview of paragraph 4; was it the subject of bilateral consultations between the acceding and any other country, or was it something subject to review and scrutiny in terms of paragraph 9. Finally, was there anything in the "Draft Procedures" which foreclosed the possibility of its retroactive application. As to more general matters, the speaker stressed that if the Committee was willing to recommend these procedures and if they were found acceptable to the United States, he could recommend to his authorities to go along with the consensus in the Committee. This would have to be confirmed subsequently as there was a new government in office. He finally reiterated his support for the cause of those developing countries interested in acceding to the Code.

22. The Chairman, referring to the mandate to address the problems of accession, said that the Committee in its regular session of 17 November 1983 (SCM/M/19) had decided that the chair conduct informal consultations with a view to examining these problems in detail. As to the question on paragraph 4, he said that precisely the main idea of the "Draft Procedures" was to avoid bilateral arrangements between delegations. As to the other questions, it was his intention to discuss them in detail in another forum for the Committee was not involved in a drafting exercise.

23. The observer for Colombia referred to the question of the mandate of the Committee. He wanted to dispel the notion that the whole exercise was carried out for the sake of one country only; the decision of the Committee in November 1983 was the result of the Ministerial Decision of 1982. Moreover, since the Committee had not, as of 17 November 1983, addressed the Ministerial Decision, the delegation of Colombia, supported by a number of other delegations, had found it necessary to ask the chair to hold informal consultations on the subject. The fact that many delegations participated in the consultations was proof that the exercise concerned more than one country. As to the comments made on paragraph 4 of the "Draft Procedures", he endorsed the view that the idea was precisely to multilateralize the procedures. Nevertheless, the optimal solution would have been to follow the letter of Article 14:5 in the sense that commitments were autonomous. The problem with the bilateral commitments was that the yardstick for assessment changed depending on the acceding country. If Colombia had been asked to

make a commitment similar to those made by some other delegations, his country would have probably joined the Code a long time ago. He finally reiterated that the new procedures would only apply to acceding developing countries.

24. The representative of India referred to some of the remarks made by the representative of the United States and registered his strong protestation and objection to the implication that India had in any manner reneged on its bilateral agreement with the United States. The speaker further referred to document SCM/M/3 where the position of his authorities was clearly reflected. He also referred to the successive subsequent meetings at which his delegation had stated his position. He recalled that paragraph 18 of SCM/M/3 was a specific reply to the policy statement made by the United States in 8 May 1980, on the relationship between Articles 14:5 and 19:9. In view of its importance for the present discussion, he<sup>1</sup> quoted the Indian statement made at that time (see SCM/M/3, paragraph 18).

25. The representative of India commented that it would follow from that statement that the US position had remained inconsistent with the provisions of the Agreement. The suggestion made by India in November 1983 had aimed at multilateralising the issue by raising it to the Committee level. He recalled that when the United States had invoked Article 19:9 against India, his delegation had requested the establishment of a panel to resolve the issue, a course which no other signatory had so far adopted. Subsequently however an agreement had been worked out and the panel was terminated. The speaker maintained that India had remained true to that agreement. He finally reiterated that the concerns of his delegation had been amply elaborated at the last meeting and that the chair and the Committee would be able to consider them.

26. The representative of Brazil told the Committee that in the light of the position adopted by the United States delegation, it should not be necessary for any member of the Committee to state its position on any procedures until there was an unequivocal expression from the delegation which had used Article 19:9. This should be a condition for delegations to look at any future documents. The representative of Brazil then referred to the more general question of effectiveness and adequacy of the Agreement. His delegation wanted to raise an issue which not only represented a serious obstacle confronting contracting parties wishing to join the Code but which threatened to disrupt the balance of rights and obligations upon which the adequacy and effectiveness of the Code rested. He was referring to the threat of recourse to, or invocation of, Article 19:9 as a means for securing from new signatories acceptance of obligations additional to those provided by the Agreement, thereby nullifying benefits available to those parties under the Code provisions. This problem had become particularly acute in light of recent developments and should be duly reflected in the report which the secretariat would be forwarding to the Working Group to be instituted under letter (b) of the Decision of the CONTRACTING PARTIES (L/5756). His

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<sup>1</sup>The text of the statement as quoted by the Indian representative is contained in Annex II.

delegation believed that the minimum recognition given in Part III of the Subsidies Code to the special situation, and consequently to the rights, of developing countries must be fully respected. He could therefore not fail to express his serious concern at the persisting attempts at nullifying benefits accruing to developing countries under Part III of the Code through what Brazil perceived as a mishandling of Article 19:9. This Article could only be seen as a last-resort clause to be invoked sparingly under circumstances which defied alternative solutions, and not as a tool to be systematically made use of with a view towards holding prospective signatories hostage to unilateral demands. It could only be deplored that this Article had been turned into a means for extracting concessions from acceding countries which went beyond obligations contained in the Agreement, while undermining rights available to those parties. What was further to be deplored was that this was an attitude which, notwithstanding the expressions of concern and disapproval it had met with among signatories of the Code, remained unchecked and had revealed itself increasingly successful in reaching its objectives.

27. Attempts at solving the problem, despite strenuous work on the part of successive chairmen of the Committee, had so far proved unsuccessful. As to the most recent attempt, as contained in document SCM/W/86/Rev.2, it seemed clear that the problems now facing developing countries wishing to adhere to the Code would not be solved by the mere adoption of the procedures concerning commitments under Article 14:5 as proposed in that document. As footnote number 5 and paragraph 7 indicated, the procedures did not rule out invocation of Article 19:9 in cases where either the Committee and its chairman were not able to complete the process within a given time-frame or in cases where an acceding country decided not to follow the Committee's recommendation. It should be born in mind that excessive or unjustifiable demands on the part of a signatory who intends, through this attitude, to retain the possibility of using Article 19:9 as it presently did, might be the cause for the Committee and its Chairman to be unable to complete the process in due time.

28. It was also important to point out that there was no reason why a developing country wishing to adhere to the Code should not do so forthwith and, once faced with the threat of invocation, or recourse to, Article 19:9 by one of its major trading partners as a means for extracting commitments under Article 14:5, bring the issue into the open in the Committee. Any such demands could and should in fact be brought to the Committee's attention without it being necessary to adopt any new set of procedures for that purpose. Furthermore, any signatory could, on the other hand, bring to the Committee's attention a specific export subsidy practice of a developing country signatory, not already subject to a commitment, and question the extent to which this practice was in conformity with the agreement, without there being a need for any new set of procedures either. His delegation was of the view that by adhering to the Code in greater numbers and by insisting on the strict respect for their rights as recognized therein, developing countries could, and hopefully would, be able to work more effectively towards redressing present imbalances.

29. In summary, Brazil would submit to all interested in solving this problem that: a) the approach proposed in SCM/W/86/Rev.2 did not rule out the possibility of resort to Article 19:9 as a means of extracting commitments which might represent an acceptance of obligations additional to

those contained in the Agreement or dilution of acquired rights under the Code; b) it was not necessary for new procedures to be adopted for the process of accession to the Code to be multilateralized, for once the acceding country had become a signatory it could make full use of the Committee and the provisions of the Code to bring problems it may be facing with any other signatory into the multilateral sphere; c) past discussion on this issue had shown that there was broad agreement among signatories that commitments under Article 14:5 were unilateral and did not constitute a condition for the adherence of developing countries to the Code; d) Article 14:8 provided a basis for any signatory to suggest, as the case might be, that acceding countries assumed increased disciplines in the subsidies area consistent with the letter of the Code. In conclusion, Brazil would wish to suggest that the Committee request the Working Party created in pursuance of the decision of the CONTRACTING PARTIES to reflect on this issue. His delegation was not implying that any signatory should renounce its rights under the Code. As it stood, the Code provided mechanisms capable of assuring transparent and multilateral consideration of situations of recourse to, or threat of invocation, of Article 19:9.

30. The representative of Pakistan reiterated that in the "Draft Procedures" there was no linkage between the background to the problem and the individual provisions of the former. He was still of the view that paragraph 4 represented a bilateral approach and that he would call it multilateral if the whole procedure (in paragraph 4) was simultaneously reported to the Committee, as provided for in Article 3 of the MFA. He finally asked if the Committee was in the first or final reading stage of the document, for if it were the final stage, he would perhaps recommend it to his authorities.

31. The Chairman said that the Committee was not at all in the final reading stage of the "Draft Procedures".

32. The representative of the United States noted that those who had recently joined the Code and those who were still outside it were in fact paying the price for those who had come into the Code under much less stringent conditions only to subsequently disappoint the United States side. He would also take this occasion to object strenuously to the Indian delegation's characterization of the United States legislation as being inconsistent with the Code. That was a finding which could only be made by the Committee as a whole after appropriate procedures had been followed. He also objected to the Brazilian delegation's characterization of the use of Article 19:9 as some form of nullification of benefits due to signatories of the Code. There was nothing in Article 19:9 which prohibited or impeded its invocation for any reason whatsoever; it might be considered by the Brazilian delegation to be some form of untoward behaviour on the part of the United States, but it was clear that it in no way nullified or impaired benefits of any signatory to the Code. Every country was free to join this Code at any time and in so doing, the country would have the benefits of Code membership, but might not necessarily have the benefits of recognition by the United States.

33. The representative of Switzerland noted that his country had always been in favour of encouraging the adherence to the Code of developing countries. The "Draft Procedures" went very far to meet the concerns of certain delegations. Switzerland was not very happy with certain parts, particularly paragraphs 7 and footnote 6, nor with the criteria set up in paragraph 4. In

his view, it should be made clear that these criteria would not prejudice other parts of the Code. Despite all this, Switzerland could go along with the procedures and join the consensus, but since it was evident there was no such consensus, he would suggest the possibility of adopting the procedures with a time limit i.e. with two years of validity.

34. The representative of Uruguay said that his delegation could share most of the remarks made by India and Brazil in the sense that Article 14:5 commitments were optional. The United States had a different view and its representative had made it clear in May 1980 that in order to benefit from the application of the Code by his authorities it was necessary to enter into certain commitments. The link between Articles 14:5 and 19:9 was therefore established only to be ratified later on in the "Draft Procedures". Uruguay disagreed with the linking of these two articles and wanted to recall that although there was nothing in the Code about the circumstances of application of Article 19:9 there was also Article 14:5. The United States position was a unilateral interpretation which differed from the letter of the Code. The representative of Uruguay further recalled that no sooner had his country signed the Code in 1981 when the USITC, by four votes, had found that Uruguayan exports of leather apparel goods, accounting for 2 per cent of the US market, were causing injury to the domestic industry. At the same time, the USITC had determined that automobile exports of one Asian country, accounting for 17 per cent of the US market, were not causing injury to the domestic industry. He therefore questioned the benefits deriving from the Code. He then requested a response to the question raised in paragraph 28 of SCM/M/26 in relation to paragraph 8 of the "Draft Procedures". His delegation would in light of the relevance of this document for acceding developing countries endorse the adoption of the "Draft Procedures" with the addition of paragraph (iii) of the Chairman's explanatory statement (SCM/M/26 paragraph 4 (iii)).

35. The observer for Israel said that his country did not favour the invocation of Article 19:9 to extract additional obligations from acceding countries. His delegation would advise those countries who had joined the Code through the bilateral approach not to prevent others from so doing through the alternative approach. The cause of the developing countries would be strengthened by the accession of further countries.

36. The representative of Brazil agreed with the United States representative that no conditions were attached to the application of Article 19:9 of the Code; this was why he had suggested in his previous intervention a particular course of action different from that described in the "Draft Procedures". As to the remarks that countries wishing to accede were paying the price for those who had acceded under more favourable conditions, he would note that all countries were paying the same price for obtaining the recognition of rights for which nothing should be paid. Moreover, in the recent past this price had become higher leading to difficulties which had been mentioned by the delegations of Colombia and Singapore. It was doubtful whether the so-called "commitments policy" of the United States was in conformity with the Decision by the CONTRACTING PARTIES of 28 November 1979, (L/4905). Paragraph 3 of this document stated that "The CONTRACTING PARTIES also note that existing rights and benefits under the GATT of contracting parties not being parties to these Agreements, included those derived from Article I, are not affected by these Agreements". He would merely add that these issues be reflected in the report to the Working Group on MTN Agreements and Arrangements.

37. The representative of India said that what had been described by the United States as "paying the price" had resulted in one country which recently had joined the Code in notifying its renunciation of any programme that was an export subsidy as enumerated in the Illustrative List. This was inconsistent with Article 14:2 which provided that the commitment of Article 9 shall not apply to developing country signatories, subject to the provisions of paragraphs 5 through 8 below. He was of the view that the country in question had not done this willingly but as a result of some negotiation. His position was that this kind of approach was inconsistent with the Code.

38. The representative of Pakistan, referring to the point made by the United States that those countries which entered a long time ago did so under more favourable conditions, indicated that the purpose of the present exercise was to facilitate accession rather than to make it almost impossible. He wondered whether the notion that exports subject to quantitative restrictions should not be presumed to cause any injury to the domestic industry should not be considered as an important element in paragraph 4 of the "Draft Procedures".

39. The observer for Peru saw the problem in the fact that one signatory applied the Agreement in a manner not consistent with its letter. In the present circumstances the "Draft Procedures" were the best practical solution. It did not affect the balance of rights and obligations of developing country signatories, and their concerns could be alleviated if this idea was made explicit in the text. In this vein, their concerns were fully met in paragraph (iii) of the Chairman's explanatory statement (SCM/M/26, paragraph 4) which could be incorporated in the text. Since most delegations could agree to the "Draft Procedures" with the additional paragraph, he would welcome the views of the United States delegation on this amended version. He finally invited delegations to speed up the consideration of the procedures.

40. The Chairman noted that many delegations had expressed support for the "Draft Procedures" and had urged their adoption. He further noted that other delegations had referred to their statements made on 19 March 1985 (SCM/M/26) and indicated that their concerns remained valid. In view of the fact that a mutually acceptable solution was not foreseen in the immediate future, he would ask the delegation of India and Brazil whether there were any alternative proposals to deal with those problems.

41. The representative of India reiterated his points registered in the last part of paragraph 19 supra.

42. The Chairman said that more time was needed to reflect on the "Draft Procedures" and that the Committee would revert to this question in a subsequent meeting. In the meantime the Chair would hold informal consultations. He also noted that certain delegations had suggested an amended version of the "Draft Procedures" and this had been echoed by most delegations. He further recalled another suggestion by Switzerland and certain legal questions raised by Pakistan. All these points would be taken into account in the informal consultations.

43. The observers for Israel and Colombia recalled that all interested developing country observers supported the adoption of the "Draft Procedures". The representative of Pakistan noted that any delegation in its bilateral consultations should feel free to follow the "Draft Procedures". The representative of Chile recalled that his delegation was in favour of the "Draft Procedures". The representative of the EEC was confident that the minutes of the meeting would give a clear picture of the discussions and who was opposed to the adoption of the "Draft Procedures".

44. The Chairman then referred to the more general question of effectiveness and adequacy of the Agreement and pointed out that the Committee had been actively engaged for some time in the examination of certain important issues. What he had in mind was, for instance, the examination of national legislation, the work of the Group of Experts and, last but not least, consideration of Document SCM/53 (the so-called Samurai paper). He did not propose that these issues should be discussed today, as work in this regard seemed to be progressing reasonably well. He would, however, invite at this stage both signatories and observers to make any general comments they wished to make on the effectiveness and adequacy of the Agreement.

45. The representative of Australia stated that the concern of his delegation centered on the lack of a common understanding among signatories on certain key provisions of the Code, addressed particularly in the "Samurai text" (SCM/53). It was the desire of Australia to see a constructive analysis of SCM/53 undertaken within the Committee with a view to achieving consensus capable of remedying the disparate interpretations given to Articles 8, 9 and 10 by some signatories. This process would provide an opportunity to resolve the whole range of issues that the document had raised. As the text dealt with products other than primary products and as the obligations addressed were only those of the Code, it would be inappropriate, in the view of his authorities, for the text to be referred to the Committee on Trade in Agriculture which had both a narrow product coverage and a broader legal base.

46. The representative of the EEC said he did not want to enter into a discussion on what to do with document SCM/53. The position of his delegation was well known as to where the most appropriate place for discussion of that document was. The Committee should seek the most appropriate means to resolve the various problems which existed, which were not simply problems of interpretation of Articles 8, 9 and 10 of the Code. In this vein, he recalled that delegations had participated in a similar exercise in 1982 when preparing the Committee's contribution to the Ministerial meeting. At that time the Committee had talked of "continuing efforts to ensure that the practices of all signatories, including their domestic legislation, in the field of subsidies and countervailing measures, are in conformity with the provisions of the Agreement" (SCM/33, paragraph 2). He finally hoped that the Chairman's summation would be sufficiently broadly based to cover divergent positions.

47. The Chairman took note of the previous statements and made it clear that it was not his intention to sum up the discussion. Appropriate time would be provided for delegations to air their views.

48. The representative of the United States drew the attention of the Committee to document L/5496/Add.1 of 21 November 1983 in which the Committee

had made a specific addition to its report to the CONTRACTING PARTIES. What was said in paragraphs 27, 28 and 29 could still be valid, perhaps with minor alterations, if any. Moreover, since it was generally enough to meet everybody's needs at that time it might serve again for the Committee to handle this question.

49. The observer for Argentina stated that the Agreement in question, which had emerged from the negotiations of the Tokyo Round, dealt with what was one of the most pressing problems for the business interests of his country, due mainly to the practices followed by other contracting parties in the agricultural sector. That was why his delegation had always followed, in its capacity as observer, the work of the Committee with great interest and wished to place its position on record so that it could form part of the report which the Committee was to submit to the Working Group on MTN Agreements and Arrangements. As to the substance of the matter, his delegation was of the opinion that there were various shortcomings in the Agreement that prevented its acceptance by his country. The difficulties were to be found at two levels. The first concerned the interpretation given by certain developed contracting parties to the provisions relating to the application of the Agreement to a developing contracting party. As had been seen, that problem had been confronted not only by his delegation but also by the delegations of other developing countries, and that the Committee had sought to circumvent the situation by trying in recent months to establish an interpretation concerning the commitments referred to in Article 14:5. For the time being, his delegation was not convinced that the interpretation constituted significant progress towards eliminating the substantive obstacle, which was the imposition of additional bilateral commitments beyond those deriving from the general legal framework created by the Code. The second aspect which his delegation wished to place on record related to the inappropriate functioning of the Agreement, due in particular to the existence of different interpretations of the provisions of various articles, and to the fact that the dispute settlement procedure had proved useless or almost useless. Those limitations in the provisions of the Agreement were being increasingly felt by his country, since the bulk of the disputes submitted to the Committee related to agricultural products or processed agricultural products and to interpretations of the provisions of the Agreement dealing with subsidies for such products. From the experience with the functioning of the Code during the years it had been in existence it could be stated that, in its present wording, it represented no progress whatsoever over the equally controversial provisions of the General Agreement in Article XVI, and in particular paragraph 3 thereof. All these points had been reflected in the report that had been submitted by the Committee to the CONTRACTING PARTIES in 1983, in particular in document L/5496/Add.1, and in the various statements of the Chairmen of the Committee concerning interpretations of various provisions of the Agreement, such as Articles 8, 9 and 10. In short, his delegation felt that the Code constituted one of the major failures of the Tokyo Round. The commercial consequences for his country had been a growing imposition of countervailing duties on Argentine exports by developed countries and the non-application of the injury test in a particular market. Apart from that, there was the fact that through the Code, attempts had been made to impose exacting commitments on developing countries, while no solution had been found for the subsidy practices of developed countries, particularly in the area of agriculture.

50. The representative of Uruguay recalled the serious difficulties the Committee had confronted when a dispute arose between two signatories. Document SCM/53, which his authorities were examining, aimed at achieving an adequate interpretation of the Agreement.

51. The observer for Colombia stated that the Code could not be said to be adequate nor effective when unilateral interpretations permitted the extraction of commitments from acceding developing countries. The fact that no solution had been found to the problems of accession, as the present debate had shown, was not a good indication of the effectiveness of the Agreement.

52. In view of the negative comments on the Agreement, the representative of Canada made it clear that his country did not consider the Code to be a major failure of the Tokyo Round; the Code had carried the issues as far as the drafters could at that time. There were indeed lacunae in the Code, discovered partly from working with it, caused by the inability to come to agreement for instance on agricultural matters. The discovery of its weaknesses could not be a basis for the Code's condemnation. Instead, delegations should recall the positive aspects, i.e. transparency and discipline, it had brought to the practices of signatories with countervailing duty systems. Instead of simply condemning certain practices some positive work could be carried out through the Group of Experts and through negotiations.

53. The representative of Pakistan noted that, contrary to the original intentions, the Code had shown increasing evidence of becoming an instrument of protectionism.

54. The representative of Chile said that the Codes were the contracting parties' common interpretation of the General Agreement. He further shared the view of the Canadian delegation that the Code could be improved. The different interpretations of the Codes were the result of some countries not being signatories to the Codes. Accession to the Codes should be facilitated and this was also why his delegation supported the "Draft Procedures".

#### Other Business

55. The Chairman informed the Committee that at the October meeting, the Committee would discuss two draft guidelines:

- (a) Draft Guidelines for the Application of the Concept of Specificity in the Calculation of the Amount of a Subsidy other than an Export Subsidy - SCM/W/89. This paper had been submitted to the Committee on 25 April 1985.
- (b) Draft Guidelines on Physical Incorporation - SCM/W/74/Rev.1. This paper was being circulated.

Signatories who wished to make comments on any of these papers were requested to submit them, in writing, to the secretariat, by 15 September 1985. All these comments would be duly taken into account in the Committee's consideration at its October 1985 meeting.

56. The Chairman finally said that all observations made would be recorded in the minutes of the meeting in accordance with normal practice so that the secretariat could carry out its responsibilities under sub-paragraph (b) of the decision of the CONTRACTING PARTIES (L/5756).

ANNEX I

(SCM/M/3, paragraph 11)

"The representative of the United States believed that the Agreement negotiated on subsidies and countervailing measures in the MTN was one of the most important, perhaps the most important, agreement emanating from the MTN. The United States had long sought greater discipline over the use of subsidies that conferred unfair competitive advantages upon the products of the subsidizing country and believed that the new subsidies/countervailing Agreement was a significant initial step in this direction. He also believed that through the Agreement significant gains had been made in the area of transparency with respect to the use of subsidies, in the area of consultation, conciliation, and dispute settlement procedures at the international level: and in the area of transparency and due process with respect to the administration of domestic countervailing duty laws and regulations. He said that the United States was pleased that the Agreement finally laid out an agreed international framework for taking countervailing actions in respect of problems generated by the use of trade distorting subsidies. He recalled that the United States had taken the necessary legislative and administrative steps to implement fully its obligations under this Agreement, and the relevant United States laws and regulations in the countervail area had been notified in SCM/1/Add.3. He believed it crucial that all signatories implemented the Agreement on a timely basis, both on the subsidies side and on the countervailing measure side, in fulfilment of their obligations. He expected that a systematic review of how signatories had implemented the Agreement would be undertaken by the Committee this autumn. Referring to the procedures for dealing with export subsidy commitments made by developing countries as called for by Article 14:5, he said that his own informal contacts with developing countries had led him to believe that considerable uncertainty remained as to the position of the United States with respect to commitments by developing countries in the export subsidy field. He recalled that the United States' countervailing duty law was enacted in 1897 without an injury test. Under the protocol of provisional application, this law was consistent with the GATT obligations of the United States. When the United States expanded the scope of the countervailing duty law to cover duty-free imports in 1975, an injury test was included for such imports to comply with their GATT obligations. Prior to the negotiation of the subsidies code, the United States still had no injury test in its domestic countervailing law for dutiable merchandise. One of the major objectives of the trading partners of the United States in negotiating this code was to have the United States expand its injury test to dutiable products and to make the test one of "material injury". The fundamental negotiating position of the United States had been that they would give other countries a material injury test in their law for dutiable, as well as duty-free, products in return for increased discipline over other countries' trade distorting subsidy practices. Essentially, this remained their position. With respect to developing countries, he believed that increased discipline entailed commitments by developing countries to bring their export subsidy practices into line with their own particular trade and development needs. In some developing countries, this implied a complete and prompt phase-out of export subsidies; for others, it implied a less rigorous reduction of export subsidies. The United States' position was that it could extend the benefits of an injury test in its law only to those countries that had undertaken increased discipline in the subsidies area. In the case of

developing countries, this meant that the United States could only apply its new countervailing duty law to those developing countries that had undertaken commitments with regard to their export subsidy practices. The United States was flexible as to the contents of these commitments, as long as there was a commitment to eliminate export subsidies as soon as possible depending upon a country's competitive and development needs. The United States was anxious to have developing countries sign this Agreement and to extend the benefits of their new countervailing duty law, including an injury test, to them. He said that while he in no way contested the right of any country to sign this code without the commitments he had referred to, his Government would find it impossible to apply their new law to imports from developing countries which did not provide commitments."

ANNEX II

(SCM/M/3, paragraph 18)

"The observer for India joined the observer for Colombia in stressing the concern that the statement by the representative of the United States had caused to developing countries, potential signatories to this Agreement, and the danger that such restrictive interpretations were taking the goal of developing countries' participation further away. He recalled his statement made on behalf of developing countries at the March meeting of the Committee. He was happy to note that the United States were not questioning the right of developing countries to accede to the Agreement without any commitments being made in terms of Article 14:5. He was concerned that despite this recognition, the United States had, in their domestic legislation, provisions which necessitated these commitments, at least in terms of application of the injury test to developing countries. In terms of logic one would tend to draw the conclusion that the United States legislation was not in line with the provisions of the Agreement, not even in line with their interpretation of the provisions of the Agreement. He hoped that the Committee would include this aspect of the United States' domestic legislation in its systematic review. He stressed that several aspects of the United States policy and of its implementation of the Agreement were still not clear to him. How could one talk about commitments "across-the-board" in terms of all developing countries? Who would decide what a developing country's competitive needs were apart from that country itself? Would it be an across-the-board decision irrespective of the requirements and needs of a particular developing country? These matters should also be reviewed when the Committee undertook the review of the United States legislation. He also considered it inconsistent with the Agreement that the United States legislation established a link between Articles 14:5 and 19:9. He strongly endorsed the view expressed by the observer for Colombia that this approach nullified benefits under Articles 14:1 and 14:2 and jeopardized the balance of interests that developing countries had secured in this Agreement."