GENERAL AGREEMENT ON
TARIFFS AND TRADE

SCM/M/31
20 June 1986

Special Distribution

Committee on Subsidies and
Countervailing Measures

# MINUTES OF THE MEETING HELD ON 22-23 APRIL 1986

Chairman: Mr. E.O. Rosselli (Uruguay)

1. The Committee met on 22-23 April 1986.

2. The Committee elected Mr. E.O. Rosselli (Uruguay) as Chairman and Mr. A. Sivertsen (Norway) as Vice-Chairman.

3. 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 the Philippines (SCM/1/Add.23)

(ii) Legislation of Pakistan (SCM/1/Add.24)

(iii) Legislation of India (SCM/1/Add.25 and Corr.1)

(iv) Legislation of Sweden (SCM/1/Add.2/Suppl.1)

(v) Legislation of Chile (SCM/1/Add.16/Rev.1)

(vi) Legislation of Austria (SCM/1/Add.10/Rev.1)

(vii) Legislation of the United States (SCM/W/91/Rev.1)

(viii) Other legislation

C. Notification of subsidies

(i) Full notifications (L/5603 and addenda)

(ii) Up-dating of full notifications (L/5768 and L/5947)

(iii) Improvement of notifications (SCM/W/98)

D. Semi-annual reports of countervailing duty actions taken within the period 1 July 1985-31 December 1985 (SCM/69 and addenda)

E. Reports on all preliminary or final countervailing duty actions (SCM/W/97, 101 and 102)

F. Report of the Group of Experts on the Calculation of the Amount of a Subsidy (SCM/W/89)

G. Uniform interpretation and effective application of the Agreement (SCM/53 and 56)

H. European Economic Community - Subsidies on export of wheat flour - Report by the Panel (SCM/42)

I. European Economic Community - Subsidies on export of pasta products - Report by the Panel (SCM/43)

J. United States - Definition of industry concerning wine and grape products - Report by the Panel (SCM/71)

K. Working Party to examine obstacles which contracting parties face in accepting the Code (L/5930)

A. Adherence of further countries to the Agreement

4. The Chairman informed the Committee that since its last regular session in October 1985 no further countries had adhered to the Agreement.

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

(i) Legislation of the Philippines (SCM/1/Add.23)

5. The Committee had before it Presidential Decree No. 1973 amending subsection (a) of Section 302 of the Tariff and Customs Code of 1978, and Department of Finance Order No. 300 containing the rules and regulations for the enforcement of Section 302.

6. The representative of the United States, referring to Sections 6 and 7 of Department of Finance Order No. 300, pointed to the fact that the Tariff Commission was required to report on its injury investigation within forty-five days after receipt of a complaint, and that the Secretary of Finance was required to take a decision as to the existence of a subsidy within fifteen days from the date of receipt of the report of the Tariff Commission. He wondered whether a fair and effective investigation could be conducted within such a short period of time. He also asked how the Tariff Commission could assess the effects of allegedly subsidized imports before the Secretary of Finance had determined that imports had been subsidized.

7. The representative of the EEC asked whether under the countervailing duty legislation of the Philippines provisional measures could be taken on the basis of prima facie evidence of a subsidy, i.e. before completion of a preliminary investigation.

8. The representative of Australia said that the first paragraph of Section 4 of the Department of Finance Order seemed to provide for an immediate penalty in excess of what might be necessary to remove the injury. He wished to know whether the authorities of the Philippines considered that this provision was in conformity with the Agreement. He also asked whether the legislation of the Philippines allowed foreign suppliers involved in an investigation to submit information and to discuss a case and whether investigations could be suspended or terminated by the acceptance of undertakings.

9. The representative of the EEC asked whether the second paragraph of Section 4 of the Department of Finance Order, providing for retroactive duties on articles imported sixty days prior to the initiation of the investigation, was considered by the authorities of the Philippines to be in conformity with the Agreement.

10. The representative of the Philippines said that he would transmit the questions which had been raised to his capital and that he would appreciate it if those delegations which had put questions could provide him with a written text of their questions.

11. The Chairman said that the Committee would revert to the legislation of the Philippines at its next regular session.

(ii) Legislation of Pakistan (SCM/1/Add.24)

12. The Committee had before it the text of Ordinance No. III of 1983, providing for the levy of additional duties to check and regulate the import of subsidized goods. The representative of Pakistan stated that this Ordinance constituted a framework law; according to Article 11 of the Ordinance the Federal Government of Pakistan was empowered to make rules to implement the Ordinance. Such rules had not yet been promulgated.

13. The representative of the United States asked whether the authorities of Pakistan were of the view that the expression "or adversely affects the local market conditions in Pakistan" (Section 3:2 of the Ordinance) was in conformity with the Agreement. She also enquired whether Section 6 allowed for the introduction of provisional measures before information had been received from the exporters concerned. With respect to Section 6:5 she expressed her concern with the lack of standards to determine whether or not information was confidential and asked whether interested parties could have access to confidential information in summarized form. Finally, regarding Section 4 of the Ordinance she pointed to the fact that that Section contained no provision limiting the duration of the validity of provisional measures to a period of not more than four months.

14. The representative of the EEC wondered whether the expression "at its discretion" in Section 6:3 of the Ordinance was in accordance with Article 3:2 of the Agreement.

15. The representative of Australia expressed his concern about the definition of the injury criterion as provided for in Section 3 of the Ordinance. He also asked for a clarification as to the rules applicable to the level and duration of provisional duties. He referred in particular to Section 4:1 which permitted the Federal Government to impose provisional

duties at such rates "as it may think fit" and questioned whether this discretion was in accordance with the Agreement. Finally, he asked whether undertakings were possible under the legislation of Pakistan.

16. The representative of Pakistan requested the delegations of the United States, Australia and the EEC to provide him with a written text of their questions; he would transmit all the questions to his capital.

17. The Chairman stated that the Committee would revert to the legislation of Pakistan at its next regular meeting.

(iii) Legislation of India (SCM/1/Add.25 and Corr.1)

18. The Committee had before it document SCM/1/Add.25 reproducing Section 9 of the Indian Customs Tariff Act, as amended, and the Customs Tariff Rules implementing Section 9.

19. The representative of the United States requested an explanation of the purpose of Section 2(a)(1) of the Customs Tariff (Second Amendment) Act. In particular he wanted to know whether this provision allowed the Indian authorities to levy countervailing duties on imports of articles the inputs of which had been subsidized in one country, exported to another country and transformed into a different product and then exported to India. Regarding the definition of domestic industry as provided for in the Customs Tariff (Second Amendment) Act and in Section 2(c) of the implementing rules he wondered whether the Indian authorities were of the view that the reference to "any activity connected therewith" was consistent with the way the notion of domestic industry was defined in the Agreement. With regard to the application of the injury criterion he pointed to the fact that the implementing rules referred to "material injury to any industry established in India" (Sections 13 and 15). He recalled that the Agreement defined the injury criterion in relation to the domestic producers of the like product and asked how the Indian provision related to the definition contained in the Agreement. Finally, with regard to Section 19:2 of the implementing rules, providing for a non-discriminatory application of countervailing duties, he asked whether this provision would preclude the levy of countervailing duties on a company-specific or country-specific basis.

20. The representative of Australia expressed his concern about the wording of the first sentence of Section 14:1 of the implementing rules; the words "at its discretion" seemed to suggest that if the designated authority had determined that there was not sufficient evidence of subsidization or injury, termination of the investigation was not automatic. This was in conflict with Article 2:12 of the Agreement which requires that in such a case the investigation shall be terminated.

21. In response to the questions put by the delegation of the United States the representative of India said that it was unclear to him whether the delegation of the United States considered that Section 2(a)(1) of the Customs Tariff (Second Amendment) Act was contrary to the Agreement. The purpose of this provision was to cover any subsidies which might have been granted to an article imported into India at different stages of its production process. Regarding the material injury criterion as laid down in the Indian legislation he stated that the words "any industry established in India" had to be interpreted in the light of the definition of domestic

industry contained in Section 2(c) of the implementing rules. As to the non-discriminatory application as provided for in Section 19:2 of the implementing rules he said that while the wording of this section might perhaps suggest that company-specific countervailing duty rates were ruled out, the intention of the drafters of these rules was to take into account differences between individual companies as regards the level of subsidies received. With respect to the issue raised by the representative of Australia concerning the wording of Section 14 of the implementing rules he stated that such discretion was not inconsistent with the Agreement; in this context he recalled that Article 4:5 of the Agreement grants the investigating authorities discretion in deciding to suspend or terminate an investigation upon acceptance of an undertaking.

22. The representative of the United States said that he understood the explanation given by the Indian delegate of section 2(a)(1) of the Customs Tariff (Second Amendment) Act as implying that the Indian law permitted the imposition of countervailing duties regarding input subsidies granted in several countries. If this interpretation was correct, he wished to know whether the Indian authorities took it for granted that all input subsidies granted in a particular country were passed through to producers in another country using the subsidized inputs. Regarding the definition of industry he reiterated that the Indian legislation contained several provisions which caused ambiguity. In the provisions of the legislation dealing with the injury criterion reference was made to "material injury to any industry established in India" (Section 9(B) of the Customs Tariff (Second Amendment) Act and Sections 13 and 15 of the implementing rules). On the other hand Section 2(C) of the rules provided for a definition of domestic industry in terms of producers of the like product. It was unclear how these two provisions could be linked up. Finally, he reiterated his concern about the inclusion in the definition of domestic industry of the expression "and any activity connected therewith".

23. The representative of Australia reiterated that under Article 2:12 of the Agreement the investigating authorities are obliged to suspend or terminate an investigation when they find either that no subsidy exists or that no injury is caused by the alleged subsidy; in his view Section 14:1 of the implementing rules was contrary to Article 2:12 of the Agreement. He would submit his question in writing.

24. The Chairman stated that the Committee would revert to the Indian legislation at its next meeting.

(iv) Legislation of Sweden (SCM/1/Add.2/Suppl.1)

25. The Committee had before it the text of Ordinance SFS 1985:738 on Dumping and Subsidy Investigation. Interested delegations had also been invited to examine an extract from the Record of the Cabinet Meeting of 9 September 1985 at which the Ordinance had been approved. The representative of Sweden explained that the Ordinance had to be considered in conjunction with the extract from the Cabinet meeting which contained a statement explaining the provisions of the Ordinance.

26. The representative of the EEC asked whether under Section 4:3 of the Ordinance third countries could petition for relief on the Swedish market.

27. The representative of the United States, referring to Section 9 of the Ordinance, wished to know whether provisional measures could be taken before a preliminary determination had been made of subsidization and injury and how long such provisional measures could remain in force.

28. The representative of Canada said that the Swedish Ordinance provided for a rather general framework and asked whether the Swedish authorities had the intention to publish more detailed implementing rules.

29. In response to the questions raised by the representative of the United States the representative of Sweden said that since the Ordinance required that a countervailing duty investigation be conducted in accordance with the Agreement on Subsidies and Countervailing Measures, imposition of provisional duties prior to the investigation was not permitted and that, in accordance with Article 5:3 of the Agreement, the duration of provisional duties was limited to a period of not more than four months. Regarding the question raised by the representative of Canada he stated that his authorities were not intending to promulgate implementing regulations as the Ordinance had to be interpreted and applied in the light of the Agreement on Subsidies and Countervailing Measures. He requested the representative of the EEC to submit in writing his question on the right of third countries to petition for relief on the Swedish market.

30. The representative of Canada asked whether there was a right to appeal a governmental decree imposing a countervailing duty.

31. The representative of Sweden replied that there was no right of appeal in respect of the decree imposing the countervailing duty but that such decree could be reviewed by the government. On the other hand, while the decree imposing countervailing duty was not subject to judicial review, in individual cases of application of the decree there was a possibility of appeal to the administrative court of appeal.

32. The representative of the EEC asked whether in a case in which there was an appeal of the application of the decree to an individual case the legality of the decree imposing the countervailing duty could be challenged before a court.

33. The representative of Sweden replied that the legality of the decree introducing the countervailing duty could be challenged only if that decree were contrary to the Swedish constitution; in that case the Swedish courts would be obliged to disregard the decree.

34. The Chairman stated that the Committee would revert to the legislation of Sweden at its next regular meeting.

(v) Legislation of Chile (SCM/1/Add.16/Rev.1)

35. The Committee had before it an updated version of the Chilean countervailing duty legislation incorporating amendments made by a decision of the Central Bank of Chile of October 1985. The representative of Chile explained that the most important modifications resulting from this decision concerned the composition and voting procedures of the Commission which was competent to order the initiation of a countervailing duty investigation; in addition the revised regulations provided for shorter time-limits than the previous regulations.

36. The representative of the United States said that Section 9 of the revised regulations referred to "material injury to a productive activity in the country" whereas the Agreement required that injury be assessed in relation to a domestic industry consisting of producers of the like products.

37. The representative of Chile replied that as the Agreement had been incorporated into the Chilean legal system, the regulations had to be interpreted and applied in accordance with the provisions of the Agreement.

38. The representative of the EEC, referring to Article 1 of Decree No. 742, asked for a clarification of the meaning of the phrase "without prejudice to the powers of the President of the Republic to fix countervailing duties". This seemed to suggest that countervailing duties could be introduced outside the framework established by the regulations. Regarding Section 3 of the regulations he said there was no explicit requirement that a complaint be lodged by or on behalf of the domestic industry affected. He also asked what the status was of the report of the Central Bank as provided for in Section 13 of the regulations.

39. In response the representative of Chile said that under a law adopted in 1967 the Parliament of Chile had granted the President the authority to fix tariffs and countervailing duties by decree. Such presidential decrees had the force of law. In imposing countervailing duties the President was of course bound to observe certain legal requirements; in particular there had to be a report by the Commission recommending that countervailing duties be applied. He also stated that Chile had been very reluctant to introduce countervailing duties as his authorities were of the view that consultations with exporting countries were in many cases more appropriate than imposition of countervailing duties. With regard to the third point raised by the Community he stated that the function of such a preliminary report was to assist the authorities in deciding whether or not it was appropriate to take countervailing measures.

40. The representative of the United States requested a clarification of the statement made by the Chilean representative concerning the reluctance of Chile to apply countervailing duties. He recalled that in a number of cases Chile had applied countervailing duties on an m.f.n. basis and wondered whether under the revised regulations the m.f.n. principle would also be applied to the application of countervailing duties.

41. The representative of Chile stated that it was sometimes difficult to attribute the effects of subsidized imports to particular sources; in such cases the application of tariff surcharges on an m.f.n. basis and not surpassing 35 per cent was appropriate and not inconsistent with the obligations Chile had incurred regarding the binding of its tariffs. He recalled that this issue had been discussed at previous meetings of the Committee.

42. The representative of the EEC said that his delegation would submit questions in writing on the legislation of Chile.

43. The Chairman concluded by saying that the Committee would revert to the legislation of Chile at its next regular meeting.

(vi) Legislation of Austria (SCM/1/Add.10/Rev.1)

44. The Chairman recalled that the revised countervailing duty legislation of Austria had already been before the Committee at its meeting held in October 1985. As the representative of Austria had been unable to attend that meeting the Committee had decided to refer this item to its next meeting.

45. The representative of Austria stated that at the meeting of the Committee on Anti-Dumping Practices held in October 1985, several delegations had put questions regarding the anti-dumping legislation of Austria. Some of these questions were also relevant to the rules concerning the conduct of a countervailing duty investigation. With regard to Section 7:2 of the Anti-Dumping Law of 1985, he said that this provision corresponded to Article 2:6 of the Anti-Dumping Code and to Article 15 of the Agreement on Subsidies and Countervailing Measures. Section 14:2 of the Law corresponded to Article 4:1(i) of the Anti-Dumping Code. Regarding Sections 16 and 22:1 he stated that "dumping or injury" should be changed to read "dumping and injury". With regard to Section 23:1, providing for price undertakings, he stated that, in accordance with Article 7:1 of the Anti-Dumping Code, two kinds of price undertakings were possible: undertakings to revise prices, and undertakings to cease exports at dumped prices. He further stated that an undertaking to revise prices could be accepted even when the undertaking would not eliminate the margin of dumping if the revised prices were sufficient to remove the injury. With respect to section 31:1 he said that the members of the Advisory Board were the organizations listed in Section 32:1 acting in the field of foreign trade; the Advisory Board could make recommendations to the Minister of Commerce, Trade and Industry who was not bound by these recommendations. Finally, he said that Section 36 of the Law corresponded to the provisions on provisional measures contained in Article 10 of the Anti-Dumping Code.

46. The representative of the EEC said that as many of the replies given by the representative of Austria related to the anti-dumping aspects of the Austrian legislation, he might wish to revert to the Austrian countervailing duty legislation at the next regular meeting of the Committee.

47. The Chairman stated that the Committee would revert to the legislation of Austria at its next regular meeting.

(vii) Legislation of the United States (SCM/W/91/Rev.1)

48. The Chairman recalled that at its meeting in October 1985 the Committee had discussed the draft countervailing duty regulations of the United States. In view of the concern expressed by several delegations with certain aspects of these draft regulations (in particular the question of definition of sale and the standing of petitioners in initiation of a countervailing duty proceeding) and with the issue of cumulative injury assessment, the Committee had decided to retain the draft regulations on its agenda for the next meeting.

49. The representative of the United States said that the proposed rules contained in SCM/W/91/Rev.1 had not yet been adopted; however, many of the provisions of the draft regulations were similar to the provisions of the current regulations.

50. The representative of India stated that while he had taken note of the fact that SCM/W/91/Rev.1 contained draft regulations for the implementation of certain provisions of the Trade and Tariff Act of 1984, the concerns of his delegation related to the Act itself and in particular to the provisions concerning definition of sale and cumulation of injury. With respect to the concept of cumulative injury he stated that what was unique in the United States' legislation was not the concept of cumulation as such but the fact that the investigating authorities had no discretion in the application of this concept. Such automatic application of cumulation was not provided for in the Agreement on Subsidies and Countervailing Measures or in the General Agreement. He also drew a distinction between the assessment of injury on a cumulative basis and the joining of investigations. He wished to know how these concerns were addressed in SCM/W/91/Rev.1.

51. The representative of the EEC recalled that on previous occasions his delegation had expressed its concerns with some aspects of the draft regulations. While his delegation had taken note of the explanations given by the United States the concerns of his delegation had not been alleviated entirely.

52. The representative of Yugoslavia joined those delegations which at this and previous meetings of the Committee had voiced their concerns about the issues of definition of sale and cumulative injury assessment. The representative of Uruguay said that the concept of a probable sale was not in accordance with Article 2:1 of the Agreement which requires that there be evidence of the existence of a causal link between subsidized imports and injury.

53. The Chairman stated that the Committee would revert to the United States' draft countervailing duty regulations at its next meeting.

(viii) Other legislation

54. No comments were made on this item. The Chairman stated that the Committee would maintain this item on its agenda in order to allow the signatories to revert to particular aspects of any legislation at a later stage or in the light of the actual implementation of legislation.

55. The Chairman invited delegations which had put questions on the various national laws and regulations to submit these questions in writing by the end of May.

C. Notification of subsidies

(i) Full notifications (L/5603 and addenda)

56. The Chairman informed the Committee that since the meeting of the Committee in October 1985, full notifications of subsidies had been received from the Philippines and Turkey (L/5603/Add.29 and 30). In addition, a supplement to the full notification by Indonesia had been circulated in L/5603/Add.28/Suppl.1. A full notification had also been received from Israel but this notification had not yet been circulated (L/5603/Add.31).

The Chairman said that one signatory (Egypt) had not yet submitted its full notification and he urged this signatory to do so without further delay.

57. No comments were made on this item.

(ii) Updating of full notifications (L/5768 and L/5947)

58. The Chairman recalled that at its meeting in October 1985 the Committee had taken note of updated notifications submitted in response to the invitation contained in L/5768 from Yugoslavia, Hong Kong, Chile, Spain, Australia and Austria. Since that meeting further updated notifications for 1984 had been received from the EEC, New Zealand, Finland, Switzerland, Sweden and Canada (L/5768/Add.8-13). Updated notifications for 1985 had been submitted by Hong Kong, Uruguay, Japan and the United States (L/5947/Add.1-3 and 5).

59. The representative of Canada said that the Canadian notification circulated in L/5768/Add.13 covered 1984 and 1985.

60. The Chairman said that the situation in the field of notifications had deteriorated; he stated that a number of signatories had not yet submitted their updated notifications. He appealed to the signatories to do so without further delay.

61. The representative of the United States put several questions on the notification by Japan of certain programmes designed to assist small and medium enterprises facing difficulties which were caused by the recent appreciation of the yen (L/5947/Add.3). He said that according to this notification the measures consisted of special financing at less than the cost of funds to the Japanese Government, special tax treatment, special credit insurance treatment and special rescheduling of debts owed to the Government for past equipmented loaned. In his view the recipients of these benefits were exporting firms which, with the aid from this programme, would be able to continue to compete on world markets, even though under current exchange rates they had lost their comparative advantage. If these firms would reorient their efforts towards the Japanese domestic market, the increase of imports that was to be expected at the current exchange rates would, all other things being equal, be retarded. Against this background he wondered how the Japanese authorities could maintain that these programmes would neither increase exports nor decrease imports, as was stated in the notification.

62. The representative of Japan provided some background information on the measures notified in L/5947/Add.3. He pointed out that since the autumn of 1985 the yen had appreciated by more than 30 per cent vis-à-vis the US dollar. While this appreciation in itself was welcomed by his Government, his authorities had to take account of the fact that the rapid and large appreciation of the yen had caused serious difficulties to small and medium enterprises. His authorities had therefore adopted temporary emergency measures designed to facilitate the process of positive adjustment of small and medium enterprises seriously hurt by the appreciation of the yen. A crucial aspect of this adjustment process was the reorientation of enterprises from overseas' markets to the domestic market. His Government was of the view that, given the context in which these measures were applied, they could not be considered as subsidies within the meaning of Article XVI:1 of the General Agreement.

63. In reply to the question put by the representative of the United States, the representative of Japan said that the measures notified by his Government were of a temporary nature, designed to encourage positive adjustment and very limited in terms of the maximum loan to each recipient and the conditions of the loans. Moreover, the measures were not related to export performance. Although it was true that many export-oriented firms were covered by the programmes, they were intended to encourage these firms to switch their focus to the domestic market. His authorities believed that these programmes would in no way promote exports. He recalled that on 8 April 1986 the Japanese Government had adopted the Comprehensive Economic Measures which provided for the expansion of domestic demand. This expansion of domestic demand would result in an increase in imports and facilitate the adjustment process of Japanese enterprises. Data on cases of business conversion observed so far showed that in about 50 per cent of such cases enterprises had switched towards production of services for the domestic market, e.g. real estate and retail services. There was therefore ample evidence supporting the view that the process of reorientation of enterprises towards the domestic market would not deter imports of foreign goods.

64. The representative of the United States asked what measures the Japanese Government had taken to ensure that the programme would not entail subsidization of exports. In addition he stated that certain industries covered by the programme, such as sporting arms and Christmas decorations, had a very limited domestic market which made it difficult to see how these industries could shift their focus from overseas' markets to the domestic market.

65. The representative of the EEC said that his delegation appreciated that Japan had notified these measures. The measures indicated in the notification were ancillary to changes in Japan's economic policy which he welcomed. He asked for a clarification as to the operation of the programme with regard to small and medium enterprises which were acting as subcontractors of large companies; he wondered how the Japanese Government would ensure that the benefits to small and medium enterprises would not be passed through to large companies.

66. In response to the questions of the delegate of the United States, the representative of Japan explained that his authorities had issued guidelines for the implementation of the Special Loan Measure. These guidelines provided that the use of the loans should be confined to business conversion and adjustment. The loan contract concluded between the responsible financial institutions and the borrowers was based on these guidelines. The responsible financial institution would have to be satisfied in each case that loans granted to cover operating funds would not be used to promote exports. In case of a violation of the loan contract the loan would be cancelled retroactively and the borrower would have to repay the loan immediately. As regards the scope for adjustment of certain industries such as those referred to by the representative of the United States, he said that the type of adjustment the Japanese Government wished to encourage was not limited to a shift from production of a particular product for overseas' markets to production of the same product for the domestic market; reorientation towards the domestic market could also mean that enterprises started producing new products for the domestic market on the basis of

production techniques employed in the previous business. Therefore the smallness of the domestic market for a product would not necessarily constitute a barrier to the type of adjustment envisaged by the programme adopted by his authorities.

67. In reply to the point raised by the delegate of the EEC, the representative of Japan said that this issue related to the requisite conditions for applicant companies. He explained these conditions were laid down in Section I:8 of document L/5947/Add.3. If the local government and the financial institution concerned were satisfied that all these conditions had been met, the applicant would in principle qualify to receive the loan. In this context the question whether the applicant acted as a subcontractor of a large company played no rôle.

68. The representative of the United States said that he understood that the Japanese Government had lowered the interest rates on loans granted under the programme; calculations by his authorities showed that the annual effective interest rate was now 4.4 per cent, substantially below the cost to the Government of the funds used. He asked whether the Japanese Government would correct or supplement its notification in this regard. Secondly, he asked whether the overall amount of lending under this programme had increased since 14 March 1986, i.e. the date of circulation of the notification, and whether any of the other benefits under the programme had been increased since that date. Finally, he wondered whether the Japanese Government intended to increase the benefits provided by the programme in case of a further appreciation of the yen.

69. The representative of Japan replied that he did not understand on what basis the United States authorities had arrived at the conclusion that the annual effective interest rate under the programme was 4.4 per cent; as shown on page 3 of document L/5947 the initial interest rate was 5.5 per cent for operating funds and equipment funds. As a result of the general lowering of interest rates in Japan, the interest rates on loans under the programme had fallen to 5.3 per cent on loans covering operating funds, and to 5 per cent on loans covering equipment funds and operating funds related to equipment funds. These changes in the interest rates would be notified under the General Agreement.[1] In any event, the budget available to financial institutions to cover the difference between borrowing and lending rates amounted to not more than 1.1 billion yen which was only 0.008 per cent of the value of the total production of the 128 industrial categories which had been designated as beneficiaries of the programme. With regard to changes in the programme since the date of its notification, he said that the only change which had occurred was the fall of interest rates. Finally, he stated that he could not make a definitive statement as to the future evolution of the programme but that for the time being his authorities had no plans to increase the benefits under the Special Loan Measure programme.

70. The Committee took note of the statements made.

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[1] See L/5947/Add.3/Corr.1

71. The representative of the EEC stated that his delegation had fulfilled its obligations concerning the notification of subsidies for 1984 and 1985; an updated notification for 1986 would be submitted as soon as possible. With respect to the notification by the United States circulated in L/5947/Add.5 he stated that his delegation had taken note of the fact that the United States was granting subsidies on the export of agricultural products. While recognizing that the United States had the right to do so, he would like to reflect on the compatibility of these measures with the General Agreement and the Agreement on Subsidies and Countervailing Measures and wished to reserve the right to revert to this notification at a future meeting of the Committee.

72. The representative of the United States reiterated a request made on previous occasions by her delegation that all subsidies in the aircraft sector be notified; this should be done as soon as possible, but at any rate before the next regular meeting of the Committee.

73. The representative of the EEC said that bilateral consultations with the United States were being held in order to know precisely the scope of the request of the United States concerning notification of aircraft subsidies. He expressed the hope that these consultations would be successful.

74. The Chairman concluded by recalling that at its meeting in October 1986 the Committee would examine in detail all the notifications received by that time and that signatories who had not submitted their notifications would be asked to give a full explanation for this situation.

(iii) Improvement of notifications (SCM/W/98)

75. Mr. Sun (Korea), the outgoing Chairman, informed the Committee of the status of work of the Group of Experts established in December 1984 with a view to working out guidelines on notifications. He said that despite intensive discussions the group had been unable to make any progress; some suggestions made in the group even seemed to undermine the existing obligations with regard to the notification of subsidies as confirmed by various decisions by the CONTRACTING PARTIES. Therefore he had to conclude that, for the time being, it would not be useful to continue the work of this group. The group could resume its work when there would be a clear political will to strengthen the rules relating to notification of subsidies.

76. The representative of Japan expressed his appreciation for the efforts of the outgoing Chairman concerning the improvement of notifications. His delegation had actively participated in the work of the Group of Experts; his authorities considered that agreement on a set of guidelines on notifications of subsidies was very important and they therefore preferred that the work of the Group of Experts be continued.

77. The Chairman stated that he would continue to consult with all delegations on the issue of improvement of notifications. He drew the attention of the Committee to the factual note by the secretariat reproducing all decisions taken by the CONTRACTING PARTIES with respect to notifications under Article XVI:1 of the General Agreement (SCM/W/98). The decisions reproduced in this note were binding on all contracting parties and should be used as guidelines in the preparation of notifications under Article XVI:1. He expressed the hope that in the near future, more elaborate guidelines could be worked out.

78. The representative of Chile drew the Committee's attention to the proposal submitted by his delegation concerning the improvement of notification procedures under Article XVI:1 of the General Agreement (SCM/49/Add.5).

79. The Committee took note of the proposal submitted by the delegate of Chile.

D. Semi-annual reports of countervailing duty actions taken within the period 1 July 1985-31 December 1985 (SCM/69 and addenda)

80. The Chairman recalled that an invitation to submit semi-annual reports under Article 2:16 of the Agreement had been circulated in SCM/69 of 10 January 1986. Responses to this request had been issued in addenda to SCM/69. The following signatories had notified the Committee that they had not taken any countervailing duty action during the period 1 July 1985-31 December 1985: Austria, Brazil, the EEC, Finland, India, Israel, Japan, Korea, New Zealand, Norway, Pakistan, Spain, Sweden, Switzerland, Turkey, the United Kingdom on behalf of Hong Kong, Uruguay and Yugoslavia (SCM/69/Add.1). During the meeting he had also been informed that Indonesia had not taken any countervailing duty action during this period. Countervailing duty actions had been notified by Chile (Add.2), Canada (Add.3) and Australia (Add.4). No reports had been received from Egypt, the Philippines and Portugal. He was concerned about the number of signatories which had not fulfilled their obligation to submit a semi-annual report. Regarding the report by the United States, he said that it was regrettable that this report had been received only very recently and that it had not been possible to circulate it in time for the meeting. He emphasized that an effective functioning of the Committee required that signatories promptly fulfill the few obligations concerning notifications laid down in the Agreement. He appealed to signatories to strictly observe their obligations under Article 2:16 and reiterated the Committee's decision that semi-annual reports should be submitted not later than 28 February and 30 September of each year.

81. The Committee discussed the reports in the order in which they had been received.

Chile (SCM/69/Add.2)

82. The representative of the United States said that column 11 of the report provided data in terms of trade value instead of trade volume, as had been agreed by the Committee.

83. The representative of Canada said that while he agreed trade volumes should generally be shown, sometimes it was difficult to be consistent as to the inclusion of data in terms of trade volume or in terms of trade value, in particular where a case was in the initiation stage.

84. The Chairman recalled that the Committee had indeed agreed that, whenever possible, data should be provided in terms of trade volume.

Canada (SCM/69/Add.3)

85. No comments were made.

Australia (SCM/69/Add.4)

86. The representative of Australia said that on 18 November 1985 a countervailing duty investigation had been initiated on hand hacksaw blades imported from Brazil; this case should have been included in the semi-annual report.

87. The representative of the United States said that in four cases listed in the Australian report, no final outcome had been reported. Two of these cases, involving refrigerators and stainless steel tubing had been initiated more than a year ago. In this context she referred to Article 2:14 of the Agreement. Moreover, some sort of final determination should also have been made in view of the fact that in these cases provisional measures which under the Agreement could not remain in force more than four months, had been taken in August 1985. She further requested an explanation of the fact that in three cases concerning imports from New Zealand provisional duties had been introduced on the same date, although the investigations had been initiated at widely different dates. Finally, she said that the column listing provisional duties did not contain an indication of the rates of the duties imposed.

88. The representative of Australia said that presumably the two cases referred to by the representative of the United States had been finalized after the date of circulation of the report. He would seek further information on the issues raised by the delegate of the United States.

United States (SCM/69/Add.5)

89. The representative of Yugoslavia asked why so many cases listed in the report by the United States concerned steel products.

90. The representative of the United States replied that under United States domestic law any industry which believed that it was injured by imports of foreign subsidized products was free to file a petition. The steel industry in the United States considered that its foreign competitors were heavily subsidized; by filing petitions it was simply using the laws.

91. The representative of India urged the United States to submit its semi-annual report well in advance of the Committee's meeting. With reference to a recently concluded case involving welded carbon steel standard pipes and tubes from India (SCM/69/Add.5, page 4) he said that this case was a good example of certain generic problems of a procedural nature which he had already mentioned on other occasions. Firstly, the lengthy and complicated questionnaire used by the investigating authorities in the United States constituted a heavy burden on his authorities and on Indian enterprises, in particular small enterprises which were not well equipped to respond to the detailed questions. He said that there was a need to shorten and simplify this questionnaire. Secondly, he was concerned about the short period of time within which the investigating authorities in the United States had to make a preliminary determination which meant that there was not enough time to collect and verify information. He considered that

in cases in which a preliminary determination was made on the basis of the best information available, credence should be given to the information contained in written communications from the foreign governments concerned. In the case of steel pipes and tubes the United States had taken provisional measures despite the fact that, before the date of the preliminary determination, the Indian Government had stated that the programme under investigation, i.e. the Cash Compensatory Support Programme, provided for the refund of indirect internal losses borne by the exported product. Moreover, in earlier cases the United States authorities themselves had determined that there existed a direct linkage between the Cash Compensatory Support Programme and the incidence of the indirect taxes. When an alleged subsidy practice had been investigated in one case, the results of that investigation should be used in a new investigation involving the same practice if such a new investigation was conducted within a reasonable period of time after the first investigation, in particular where no change in the programme had taken place.

92. The representative of the United States said that she could understand that the questionnaire used by her authorities could sometimes be lengthy and complicated. The length of this questionnaire was to some extent related to the number of programmes under investigation. Unfortunately, the United States had found that subsidy programmes used by foreign governments were becoming more complicated and this was reflected in the questionnaire. Her authorities were always available to help respondents facing difficulties in replying to the questionnaire. With regard to the use of written communications from foreign governments, she said that her authorities usually took into consideration such statements at the time of the preliminary determination, prior to verification of that information. Regarding the question whether or not to re-examine programmes which had been investigated in other cases, she said that the United States law did not permit confidential information which had been collected and verified in a particular investigation to be used in another investigation. In addition, she wondered how one could assess whether or not a change had occurred in a programme without re-examining that programme in a new investigation.

93. The representative of Yugoslavia pointed to the high level of countervailing duties imposed on imports of steel products and to the existence of undertakings and "grey area" measures in this sector. These restrictive measures affected imports from developing countries in particular. The real problem which had to be addressed was the lack of competitiveness of the steel industry in the United States. Secondly, she wished to reserve the right to revert at a later stage to the question of the manner in which the United States had calculated the countervailing duty rates in the case of welded carbon steel pipes and tubes from Yugoslavia (SCM/69/Add.5, page 10). Thirdly, she noted that in this case a very short period of time had elapsed between the initiation of the investigation and the application of definitive duties. The United States had explained this by the fact that the Government of Yugoslavia and the exporting firms concerned had not submitted the adequate information. In this regard she wondered whether the United States had taken into consideration that, as a newcomer to the United States market, Yugoslavia was not familiar with the countervailing duty procedures of the United States, and whether the United States had taken into account the provisions of Part IV of the General Agreement. Finally, she recalled that the United States did not apply the injury test to Yugoslavia as her country had not ratified the Agreement.

This denial of the application of the injury criterion was inconsistent with an existing bilateral agreement between the United States and Yugoslavia under which the United States had granted m.f.n. treatment to Yugoslavia.

94. The representative of India echoed some of the concerns expressed by the representative of Yugoslavia. Referring to the countervailing duty investigation on steel pipes and tubes from India he noted that the imports investigated in this case represented only 0.1 per cent of the United States domestic consumption. He wondered whether this could be regarded as sufficient to cause injury to the United States steel industry and whether the authorities of the United States had kept the provision of Part IV of the General Agreement in mind. In general, he commented that the application of countervailing duties by the United States had taken dimensions that had never been envisaged.

95. Regarding the questions put by the representative of Yugoslavia, the representative of the United States said that it was true that the United States had made several voluntary export restraint arrangements in the steel sector, including an arrangement with Yugoslavia. The high rate of the countervailing duty on steel products from Yugoslavia reflected the level of subsidization that had been found to exist. He could understand that persons who were new to countervailing duty investigations had some problems in filling in the questionnaire; however, in the particular case of steel imports from Yugoslavia the respondent had been given several opportunities to provide the requisite information. That information had not been given and therefore, in accordance with Article 2:9 of the Agreement, the United States had made findings on the basis of the best information available.

96. The Chairman concluded by saying that, in view of the questions raised by several delegations, the Committee would revert to the reports submitted by Chile, Australia and the United States at its next meeting.

E. Reports on all preliminary or final countervailing duty actions (SCM/W/97, 101 and 102)

97. The Chairman said that notifications had been received from Canada and the United States.

98. No comments were made in this regard.

F. Report of the Group of Experts on the Calculation of the Amount of a Subsidy (SCM/W/89)

99. The Chairman recalled that at its meeting in October 1985 the Committee had decided to postpone adoption of the draft guidelines on 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 decision had been taken in view of the concern expressed by one delegation.

100. The representative of the United States informed the Committee that his delegation was not in a position to agree to adoption of the draft guidelines at the present meeting.

101. The representative of Canada regretted that the United States was once again unable to agree to adoption of the paper on specificity. He expressed the hope that the United States' delegation would be in a position to accept the paper at the next meeting of the Committee. He hoped that pending the adoption of these guidelines all signatories would apply the concept of specificity as contained in SCM/W/89.

102. The representatives of the EEC, Sweden on behalf of the Nordic countries, Japan, India and Uruguay echoed the statement made by the representative of Canada.

103. The representative of New Zealand said that although the paper contained no definitive solution and left room for improvement his delegation could support the paper on specificity.

104. The Chairman concluded that the Committee would revert to this issue at its next regular meeting.

105. The Chairman informed the Committee of the status of work of the Group of Experts on the Calculation of the Amount of a Subsidy. The following issues were being examined by the Group: criteria with regard to the distinction between subsidies and other measures with a possible trade distorting effect; export restrictions; indirect subsidies; equity and aspects of drawback systems. The Group had also considered paragraph 4(a) and (b) of SCM/W/74/Rev.1 which had not been included in the Guidelines on Physical Incorporation adopted by the Committee in October 1985 (SCM/68). The Chairman expressed the hope that at its meeting in October 1986 the Committee would have before it draft guidelines on some of these issues. However, the lack of progress in the Committee with respect to the question of the concept of specificity was adversely affecting the work on other issues and resolution of this problem was therefore imperative.

106. In reply to a question by the representative of Uruguay, the Chairman said that the topics considered by the Group of Experts were decided by the delegations participating in the work of the Group; delegations could raise any issue of interest to them provided that they made a written contribution on that issue.

107. The representative of India emphasized the importance of the work of the Group of Experts and encouraged other signatories, in particular developing countries, to actively participate in the Group.

108. The representative of the EEC echoed the statement made by the representative of India.

## G. Uniform interpretation and effective application of the Agreement (SCM/53 and SCM/56)

109. The Chairman recalled that at its last meeting the Committee had discussed problems which had arisen regarding uniform interpretation and effective application of the Agreement. Many signatories had recognized the importance of the efficient functioning of the Committee and expressed a strong wish to render the Code and its dispute settlement procedure fully operational. In this regard they considered that document SCM/53 would constitute a good basis for concrete discussions. On the other hand the EEC

and the Spanish delegations had been of the view that as most of these problems also related to agricultural subsidies, they would better be dealt with in the Committee on Trade in Agriculture. However, a number of signatories had considered that the Committee on Subsidies and Countervailing Measures had well-defined responsibilities regarding subsidies and that signatories had an obligation to ensure that these responsibilities be effectively discharged in this Committee. At the end of the discussion the Committee had agreed to revert to this matter at this meeting. He further said that the discussion in the Committee was strictly limited to the existing obligations under the Agreement and it was not the Committee's intention to work out new rules or prejudice in any way the possible content or organization of the new negotiations.

110. The representative of the United States said that the series of consultations undertaken by various Chairmen of the Committee, which had resulted in document SCM/53, had its origins in the Committee's inability to resolve the two disputes figuring in the agenda items H and I of this meeting. As a consequence, this agenda item was directly relevant to those two agenda items. If the Agreement was to be anything more than an Agreement on Countervailing Duties, then this agenda item was also relevant to agenda item J of this meeting. He reiterated his delegation's position that there was a real need to come to a uniform interpretation and effective application of key provisions of the Agreement. There was something wrong when a 1958 dispute could be resolved on the basis of Article XVI:3's "more than equitable share" rule, while a 1983 dispute could not be resolved on the basis of Article 10's rule. There was something wrong when disputes in 1979 and 1980 could lead to findings of serious prejudice on the basis of Article XVI:1, while a 1983 panel found it impossible to come to a finding on the basis of Article 8's rule.

111. Referring to the proposed start of a new round of trade negotiations, he said that an exercise aimed at arriving at a uniform interpretation and effective application of the rules which resulted from the last round of negotiations was important for the United States, and it should also be important for other members of the Committee. Any new round of negotiations had necessarily to take into account what had gone before. In the United States the negotiation of this Agreement during the Tokyo Round had been billed as a major achievement, justifying important concessions on the part of the United States - not least the provision of an injury test in countervailing duty cases involving dutiable products from Code signatories. In exchange the United States was supposed to obtain increased discipline over others' use of subsidies. Consequently, the key question for the United States was whether, in the Tokyo Round, the discipline over governments' use of subsidies had been improved through the negotiation of this Agreement. Until the Committee entered into a serious exercise aimed at clarifying the current situation, this question would remain, at best, unanswered.

112. The representative of the United States further said that it was no secret that the EEC delegation had always opposed a clarification exercise in the Committee and had insisted that issues related to agricultural trade were the exclusive province of the Committee on Trade in Agriculture. This had always seemed a bit strange because it had been the representative of the EEC who had suggested such an exercise at the Committee's eighteenth meeting on 9-10 June 1983 (see SCM/M/18). At that meeting he had urged that the

Committee undertake a review of Articles 9 and 10 of the Agreement in order to clarify the rules of the game (paragraph 50). What the EEC representative had asked the Committee to do was precisely what the Committee was discussing at this meeting. As to the Committee on Trade in Agriculture, it was clear that it was a negotiating body and that its work would be used as an important contribution toward agriculture negotiations in a new round. Insofar as subsidies were concerned, the Committee on Trade in Agriculture (in recommendations adopted on 15 November 1984) had identified two approaches which "should be elaborated in parallel": an approach based on improvements in the existing framework of rules and disciplines; and an approach based on a general prohibition subject to carefully defined exceptions, in conjunction with improvements in the existing rules and disciplines and their application. But, one had to ask, what were the existing rules and disciplines? This was why the US delegation saw the exercise proposed for this Committee as complementing, and in no way substituting for efforts in the Committee on Trade in Agriculture, the Preparatory Committee and elsewhere which were aimed at achieving an improved international framework for agricultural trade. He wanted to make it clear that those fora were fora for negotiations - while the Committee was talking about reaching a common understanding of existing rules.

113. The representative of Canada stressed the need to work in this Committee towards clarifying disciplines in the area of subsidies. Document SCM/53, although not perfect, deserved close examination and some of the issues raised could help to improve the application of the Agreement. The Committee had a right to discuss the matter of making the rules of the Agreement more effective and clear, including those relating to agriculture.

114. The representative of the EEC said that the position of his delegation on this subject was well known and had not changed. He recalled a statement made by the representative of the EEC in the Preparatory Committee regarding the conditions indispensible for the good conduct of future negotiations on trade in agriculture, in particular with respect to the global character of the negotiations, the specificity of agriculture and the negotiating framework. He considered that there was no direct link between this agenda item and the items dealing with dispute settlement. Some of the proposals contained in SCM/53 went beyond simple interpretation and modified existing rules, e.g. those relating to Article 9 of the Agreement. His delegation considered it inappropriate to engage in this Committee in a separate negotiating exercise that could be prejudicial to the global negotiations in agriculture. He noted that SCM/53 was included in a document submitted to the Committee on Trade in Agriculture (AG/W/9/Rev.2) and could be examined in that forum.

115. The observer for Hungary made a reservation on the contents of SCM/53. This paper was *inter alia* intended to clarify the interpretation of Article 10 of the Agreement and of Article XVI:3 of the General Agreement. However, the paper contained a particular concept which had no legal status under the General Agreement and the meaning of which was less clear and more controversial than the provisions which SCM/53 purported to interpret.

116. The representative of New Zealand said that there were three questions that could be raised with regard to this agenda item. The first question was whether the Committee had, under the Agreement, the competence to address the kind of issues raised in SCM/53. Referring to the powers granted to the

Committee in Article 16 and Article 19:7 of the Agreement, he stated that the reply to this first question had to be affirmative: there could be no doubt that the Committee had the competence to undertake an exercise aiming at the clarification of the existing provisions of the Agreement. A second and distinct question was whether anything else stood in the way of the Committee doing so; in this context an important issue was the rôle of the Committee on Trade in Agriculture. That Committee had its own task and was proceeding in its own way and this should in no way undermine the work which this Committee could carry out under its responsibilities, as provided for in the Agreement. The work of the Committee on Trade in Agriculture took place in the context of a general framework for the resolution of problems of trade in agriculture. This global approach could be distinguished from a more specific approach focussing on agriculture in relation to the provisions of the Agreement. These two approaches were compatible and there was therefore no conflict of jurisdiction between the two Committees. The third and most important question however was whether it was necessary that these issues be addressed by this Committee. In this regard he emphasized that, while there was a need to address issues relating to trade in agriculture within the comprehensive framework provided by the Committee on Trade in Agriculture, this did not imply that the Committee on Subsidies and Countervailing Measures had no responsibilities in this field. The application of the Agreement had not led to a real improvement concerning discipline on subsidization in agriculture and in this respect there was a clear need to restore the balance of rights and obligations underlying the Agreement. His delegation was therefore prepared to discuss SCM/53 in this Committee. He recalled that the proposals of SCM/53 relating to Articles 8 and 10 of the Agreement were of great interest to his delegation, while the section dealing with Article 9 had caused some concern. He noted that the proposals relating to Article 9 were not exclusively concerned with agricultural products and this constituted yet another reason why this Committee was an appropriate forum to discuss the paper. Finally, with regard to the new round of multilateral trade negotiations he said that it was very important to know where one stood before one engaged in such negotiations.

117. The representative of Australia said that one should bear in mind that SCM/53 would not necessarily have to be the basis for the discussion of these issues in the Committee. This paper had been drafted with a view to arriving at a uniform interpretation and effective application of certain provisions of the Agreement, and this should remain the primary objective of the Committee. If some signatories considered that SCM/53 was not the proper basis for this interpretative exercise, the Committee could set this document aside and work on another basis. What really mattered was the intention to arrive at a clear interpretation of rights and obligations under the Agreement. If the Committee were unable to fulfill this task, it might be necessary to have specific negotiations on new rules on subsidies. With respect to the application of the Agreement in the present circumstances, he said that one should bear in mind that there were already legal precedents in previous panel reports concerning aspects of Article 10 of the Agreement and that there was also evidence of how Article XIV:4 of the General Agreement had been interpreted in the past. The fact that in one particular case a panel had been unable to draw conclusions in conformity with these legal precedents, did not affect the validity of these precedents.

118. The representative of Switzerland considered that this agenda item and the next three items were closely related and that the Committee should therefore not conclude this item before considering the next items. He recalled that SCM/53 had been prepared with a view to resolving two disputes. The document was helpful in that it identified existing problems of interpretation of the Agreement and suggested a way to resolve these problems. If one took the view that this paper could not help the Committee in resolving the two disputes in question, the consequence would be that the Committee had to postpone a discussion on these cases until after the completion of new negotiations. This was an unsatisfactory solution and he considered that the Committee should try to arrive at a decision on these cases on the basis of what was available.

119. The representative of Sweden, speaking on behalf of the Nordic countries, said that the Committee on Trade in Agriculture was the appropriate body to discuss all aspects of trade in agriculture in the context of a new round of trade negotiations. On the other hand the Committee on Subsidies and Countervailing Measures should continue its task of clarifying the existing rules within the normal framework of the Agreement.

120. The representative of Uruguay said that it was generally agreed that it was necessary to strengthen the rules of the Agreement. There was some frustration with the functioning of the Agreement, in particular in the dispute settlement area. This had led to retaliatory measures being applied outside the framework of the Agreement. There was therefore an urgent need to strengthen the dispute settlement process. With regard to SCM/53 he said that there was perhaps not sufficient equilibrium in this paper and that it might be appropriate to refer it to a group of experts in order to find a better balance between the positions of the various delegations.

121. The representative of Chile joined those who believed that it was possible to attempt to reinvigorate the Agreement. He recalled that the signatories of an international agreement were competent to interpret that agreement, and he supported any exercise in the Committee arriving at a uniform interpretation of the Agreement. Such an exercise could take place on the basis of SCM/53 or any other document which might be submitted. He stated that the issues raised in SCM/53 would also be further elaborated in the context of future trade negotiations.

## H. Report of the Panel on the EEC subsidies on export of wheat flour (SCM/42)

122. The Chairman recalled that this report had been submitted to the Committee on 21 March 1983. The Committee had discussed this report at the meetings of 22 April, 19 May, 9-10 June 1983 and 10 May 1984. At the meeting of 10 May 1984 the Chairman had submitted an informal proposal on how to resolve this matter (SCM/Spec/20) and requested the Committee to authorise him to continue his informal consultations and to report to the Committee at its next meeting (SCM/M/Spec/10). The informal consultations held by the previous Chairmen had not produced any satisfactory results and therefore the US delegation had requested that this item put on the agenda of this meeting.

123. The representative of the United States said that the reason why his delegation had requested that this report be put on the agenda was to remind this Committee of its dismal record in settling disputes brought before it and, as was clear from the discussions under the previous agenda item, that the Committee's failure to resolve disputes was due in large part to its failure to effectively apply the rules agreed as long ago as 1979. He also wanted to remind the Committee that despite this panel's failure to apply the rules of the Agreement to this dispute, his delegation had made repeated efforts - both in the Committee and bilaterally - to resolve this dispute. On 9 June 1983, it had tabled a proposal in document SCM/W/54 through which the Committee could have met its responsibilities under Article 18:9 and Article 13:4 of the Agreement. The Committee had not seen fit to act on the proposal by the United States. Subsequently no action had been taken by the Committee with respect to the Chairman's proposal in SCM/Spec/20. Still, to the Chairman's credit, he had not given up - nor had his successors. A long process of informal consultations had been undertaken by successive Chairmen, leading eventually to the proposals found in document SCM/53. Yet, even this attempt at resolving the dispute and the issues underlying the panel's failure to assist the Committee had come to naught. Compromise after compromise had failed and this Committee had let the United States down. The result of this failure was a giant step backward for GATT disciplines. It was a sorry state of affairs when one came to the conclusion that the rules of the Agreement did not work for subsidies - and possibly never would - so that the only way to safeguard one's trade interests was to join the subsidizers in their own game. Regrettably, this was what the United States had had to conclude.

124. The representative of the EEC said that the fact that the Panel had not condemned the EEC did not mean that the report was a bad one. On the contrary, his delegation considered that it was a good report which duly reflected the complexity of the existing problems. The EEC was ready to adopt this report and he wanted to know whether the United States would also be ready to do so.

125. The representative of the United States said that as the Panel had come to no conclusion as to the conformity with the rules of the Agreement of the subsidies granted by the EEC, his delegation saw no point in adopting its report.

126. The representative of the EEC reiterated that the Panel had not found that the EEC had violated its obligations under the Agreement. He noted that it was the United States which was blocking the adoption of the report by the Panel.

127. The representative of Japan said that the question of how to deal with the report constituted a very important task for the Committee.

128. The representative of Australia said that there were many ways to address this issue. One was to reflect whether the Panel had addressed the right issues. For example, a fundamental question was whether wheat flour was a primary product or a non-primary one. Depending on the answer to that question the report might be set aside and the Committee would have to re-examine the matter in the light of different obligations, namely those of Article 9. He further wished to know what would be the EEC's understanding of its obligations regarding restraints in the use of export subsidies if the Committee adopted the report.

129. The representative of the EEC said that the question of whether wheat flour was a primary or a non-primary product had already been resolved by the Panel examining a complaint by Australia against France in 1958. He noted that, at that time, Australia had not contested the panel's understanding that wheat flour was a primary product. As to the question regarding EEC obligations, he said that despite the blockage of the panel report by the United States, the EEC had taken into account its recommendations and had modified its system of export refunds to strictly reflect only the difference between domestic and world market prices of wheat. He also noted that these exports had been adversely affected by subsidized exports of wheat flour from the United States.

130. The representative of Australia said that the situation had changed since 1958. At that time very few countries had milling facilities and most countries bought wheat flour instead of wheat. At present most countries had milling industries and the question arose whether it was still right to consider wheat flour as a primary product.

131. The representative of New Zealand considered as key questions the nature of issues addressed in the report and the outstanding status of the report. He noted that the dispute settlement procedures regarding subsidies relating to agriculture did not work and this should be of major concern to this Committee. The Committee had to find ways to make the Agreement work. As to the contents of the report, he noted that the panel had found that it was unable to conclude as to whether or not the subsidies granted by the EEC had resulted in the EEC having a more than an equitable share. This conclusion did not contribute to advancing reliable disciplines. The Committee itself should, therefore, address issues raised in the report with a view to strengthening disciplines over the use of subsidies.

132. The representative of Canada said that on previous occasions his delegation had already expressed its disappointment that the panel had not been able to reach a finding as to what constituted a more than equitable share. The report therefore called on the Committee to examine how the provisions of Article 10 of the Agreement could be clarified.

133. The representative of the United Kingdom speaking on behalf of Hong Kong considered that the non-adoption of the wheat flour and pasta products reports reflected the lack of effectiveness of the dispute settlement mechanism in the GATT. In this context he referred to the proposals made elsewhere by his delegation to strengthen the GATT dispute settlement procedures.

134. The representative of Switzerland noted that there were at least two very pertinent conclusions in the panel's report which should permit the Committee to finally adopt the report. It seemed that the first one, contained in paragraph 5.7 of SCM/42, had already been followed. The other one was contained in paragraph 5.9 and it was up to the Committee to address this issue and try to improve the Agreement.

135. The representative of Finland, speaking on behalf of the Nordic countries, expressed his regret that the panel had been unable to present clear conclusions but he considered that this was due to the lack of precise definitions.

136. The representative of Australia, referring to the first US statement, said that competitive subsidization would not help to stabilize the world market. Although he understood the reasons that might lead the United States to embark on such a policy, he could not accept the principle that competitive subsidization was the right response to subsidization by another country.

137. The representative of Uruguay expressed his concern about the implications resulting from the panel report. The panel had not found nullification or impairment because there was not sufficient clarity in the Agreement. For the same reason it had been unable to pronounce itself on "more than an equitable share". Its conclusion was that it was necessary to clarify what was meant by those provisions. This is why, with or without this report, signatories had to make efforts with a view to improving the functioning of the Agreement and arriving at its uniform interpretation and effective application. It would be deplorable if the Committee could not resolve the dispute settlement issues and if the only remedies available were unilaterally decided reprisals.

138. The representative of India said that there had been adequate efforts to address the complex issues raised in the panel's report. Those efforts were reflected in SCM/53. What had happened in this case illustrated how the decision-making process in GATT could be frustrated by lack of political will on the part of one of the major trade partners. This was a very regrettable situation but it certainly was not due to the lack of sincere efforts by some members of the Committee to seek an appropriate solution. One should not, therefore, try to attribute the existing problems to those who were not responsible for them.

139. The representative of New Zealand wondered whether the difficulties which had arisen regarding "more than an equitable share" cast doubt on the inherent conceptual status of the provision in Article 10:2 of the Agreement or resulted from differenting interpretations of this provision.

I. European Economic Community - Subsidies on export of pasta products - Report by the Panel (SCM/43)

140. The Chairman recalled that on 19 May 1983 the Panel on the subsidies granted by the EEC on export of pasta products had submitted its report to the Committee. The Committee had discussed this report at its meetings held on 9-10 June 1983 and on 10 May 1984. At the meeting of 10 May 1984 the Chairman had submitted an informal proposal on how to resolve this dispute (SCM/Spec/20) and had requested the Committee to authorize him to continue his informal consultations and to report to the Committee at its next meeting (SCM/M/Spec/10). As the informal consultations held by the previous chairmen had not produced any satisfactory results, the delegation of the United States had requested that this item be reintroduced on the agenda of the Committee for this meeting.

141. The representative of the United States said that the attempts to resolve this dispute, and the failures to do so, roughly parallelled th record in the wheat flour dispute. However, there was one important difference which was that in this case the Committee had been unable to assist the United States in resolving its dispute with the EEC despite the fact that the Panel established by the Committee had drawn clear conclusions.

The conclusions of the Panel were the conclusions of the majority of the Panel members and they were correct. The Community, however, had interpreted Article 9 of the Agreement in a manner reflected in the opinion of the dissenting panelist. Under this interpretation the Community would limit its export restitutions on pasta products to the same level of restitutions which were or would be paid on the export of the durum wheat component of pasta. However, the restitution rates for durum wheat and pasta currently in effect showed that the restitution on pasta was much larger than it should have been if it had been limited to the durum wheat incorporated in pasta. Therefore, not only was the EEC not respecting Article 9 as interpreted by the majority of the Panel, it was also acting contrary to its own interpretation of this Article. He concluded by saying that the lack of progress towards resolution of this dispute was one of the reasons why the argument had been made in the United States that the GATT dispute settlement procedures were worthless or inadequate and an appropriate subject for discussion in the new Round.

142. The representative of the EEC said that a fundamental difference between the report by the Panel on Wheat Flour and the report by the Panel on Pasta was that in the latter case the Panel had rendered a divided opinion, in particular as regards the essential questions. This divergence of opinions within the Panel also existed in the Committee and was an illustration of the difficulties of interpretation raised by Article 9 of the Agreement. He denied that, as had been alleged by the representative of the United States, the restitutions granted by the Community on export of pasta were not limited to the durum wheat incorporated in pasta and, therefore, inconsistent with the Community's interpretation of its obligations under Article 9. In this regard he pointed out that, while the maximum rate of restitution on on durum wheat was determined by the difference between the internal Community price and the world market price of durum wheat, the Commission had the discretion to set the actual rate of restitution at a level below this maximum. In particular in periods during which the Community had a deficit in durum wheat, the actual rate of restitution would be less than the maximum. The restitution on durum wheat incorporated in pasta was calculated with reference to the maximum rate; what really mattered was that this restitution was limited to the objective difference between the internal Community price and the world market price of durum wheat. As to the method of calculation of this difference he stated that as there was no single and uniform world market price for durum wheat, the Community's calculations were based on the import price, properly adjusted. Finally, he emphasized that the Community had substantially modified its export restitution régime to take into account the views expressed in the opinion of the dissenting panelist.

143. The representative of Australia said that the discussions on this agenda item and the two previous items underlined the necessity of a uniform interpretation of the Agreement. The Committee should be aware that, in the absence of such a uniform interpretation, one signatory might be tempted to unilaterally upset the balance of rights and obligations underlying the Agreement before the start of a new round of trade negotiations. In this connection he referred in particular to the conditions of application by the United States of the injury test in respect of subsidized dutiable imports.

144. The representative of Uruguay seconded the statement made by the representative of Australia.

145. The representative of Switzerland said that the Panel report on pasta was not as clear as the delegate of the United States had alleged. The report was divided and reflected the lack of a common interpretation of the Agreement. In the absence of progress on the report and on SCM/53 the only way a solution to this problem could be found was to negotiate.

146. The representative of Japan said that SCM/53 was a good basis for the Committee's considerations as to how to resolve the disputes on wheat flour and pasta.

147. The representative of the United States said that the his Government had the political will to arrive at a common interpretation of the Agreement. However, such a common interpretation should be agreed upon before the start of a new round of trade negotiations.

148. The representative of the EEC reiterated that the Community had made substantial efforts to resolve the two disputes. He also reiterated the views of the Community with regard to document SCM/53 and the appropriate framework in which the issues addressed in this paper should be examined.

149. The representative of Finland, speaking on behalf of the Nordic countries, shared the views expressed by the representative of Switzerland regarding the need for negotiations. The interpretation of the Agreement as reflected in the majority's view in the pasta report extended the obligations of the Agreement to an area that had not been discussed during the negotiation of the Agreement. Such an extension of the scope of the obligations of the Agreement was a matter that should be dealt with in the context of new negotiations. With regard to the functioning of the dispute settlement mechanism, he said that the problem was the lack of clarity of the rules and that the best way to strengthen the dispute settlement mechanism was to start negotiating with a view to clarifying the rules.

150. The representative of New Zealand welcomed the fact that the EEC was willing to negotiate a comprehensive solution to the problems of trade in agriculture in the framework of the Committee on Trade in Agriculture. However, he stressed that the Committee on Subsidies and Countervailing Measures remained responsible for the interpretation and application of the Agreement.

## J. United States - Definition of Industry concerning Wine and Grape Products - Report by the Panel (SCM/71)

151. The Chairman recalled that on 23 January 1985 the EEC had requested the Committee to establish a panel to examine a dispute between the EEC and the United States regarding amendments to the definition of industry in the United States Trade and Tariff Act of 1984 with respect to wine and grape products (SCM/60). On 15 February 1985 the Committee had agreed to establish a panel and had authorized the Chairman to decide, in consultation with interested delegations, on its composition and terms of reference (SCM/M/25, paragraph 17). At the meeting of the Committee held on 4 October 1985 the Chairman had informed the Committee of the composition of the Panel and decided on its terms of reference (SCM/M/29, paragraph 21). The Panel had met with the two parties on 19 November 1985 and 20 January 1986. In addition, the Panel had met on 21 January and on 25-26 February 1986. The two parties had received the conclusions of the

Panel on 26 February 1986 and had been given until 19 March 1986 to find a mutually satisfactory solution to their dispute. As no such solution had been reached, the Panel had submitted its report to the Committee on 24 March 1986 (SCM/71).

152. Ambassador D. Salim introduced the report on behalf of the Panel. He said that in its work the Panel had strictly followed its terms of reference and concentrated exclusively on the question of the conformity with the Agreement of the United States law in question. The Panel had been aware of the understanding of the Chairman of the Committee that it should take into account any actual implementation of this law, and it had done so, as reflected in paragraph 4.1 of the conclusions. The full conclusions of the Panel were set forth in paragraphs 4.1 to 4.6 of the report. He drew attention to the final paragraph, in which the Panel had concluded that "Section 771(4)(a) of the Tariff Act of 1930 as amended by the US Trade and Tariff Act of 1984, was inconsistent with the definition of 'domestic industry' contained in Article 6:5 of the Code. Consequently, the Panel concluded that the United States had not acted in conformity with its obligations under Article 19:5 of the Code".

153. The representative of the EEC requested that the Committee adopt the report by the Panel. Although there was no general obligation for the Committee to adopt panel reports, in this particular case adoption of the report was appropriate as the report contained clear and unanimous findings on a point of law.

154. The representative of the United States said that the dispute concerning the definition of industry in the case of wine and grape products was the third dispute that had been brough before the Committee under its dispute settlement provisions. The previous two cases had remained unresolved. He said that the lack of resolution of the dispute on pasta was particularly troubling as in that case the Panel had correctly found that the rule of Article 9 of the Agreement was clear; the report was the simple application of a clear-cut rule. Nevertheless, nearly three years later the report had still not been adopted, due to the attitude taken by the EEC. In this context he pointed to the importance his Government attached to a strong and effective dispute settlement mechanism.

155. With regard to the Wine Panel Report the representative of the United States said that his Government could not at this time agree to the adoption of the report. There was a situation in which one signatory refused to be bound by panel decisions whenever it deemed those decisions to be inconvenient and it would be unfair and unequitable if this Panel report would become the first to be adopted by the Committee. After the EEC had indicated that it was ready to agree to the adoption of the report on pasta, it would be time to revisit the report on wine. However, his delegation wanted to approach the Panel Report on Wine in a constructive manner. Unlike the Panel Reports on Wheat Flour and on Pasta, the Report on Wine dealt with a law of no practical commercial consequence: no countervailing duties had ever been imposed and the complaint filed by the domestic wine industry in the United States had been rejected by the United States International Trade Commission at a preliminary stage. This decision had been appealed but the prospects were doubtful at best. Furthermore, the law was due to expire in September 1986 and at that time there could be no question that the United States legislation would be in conformity with the

Agreement. Finally, he considered that it would be useful to give some further consideration to the issues raised by the Wine Panel Report. His delegation believed that the assessment of the impact of subsidized imports on an industry raised particular problems for certain products in the agricultural area and that this issue deserved close study in the Committee.

156. The representative of the EEC, noting that the delegate of the United States had referred to the importance of the rule of law in international trade, recalled that the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance contained a clear rule that disputes should not be linked. Secondly, with regard to the status of the two previous panel reports he said that in the view of the Community it was the United States which was preventing adoption of the Wheat Flour Report. Thirdly, he could not accept the US argument that the Committee could postpone a decision on the Wine Panel Report. The Panel itself had confirmed that the law in question had in fact already been applied. By not adopting the Report the United States wanted the Committee to accept a situation of basic uncertainty. It was not clear at present whether the law would be extended in one form or another but even if it would expire in September 1986 it would continue to apply to petitions filed before the date of expiration.

157. The representative of Japan agreed with the conclusions of the Wine Panel and supported adoption of the Report.

158. The representatives of Finland, speaking on behalf of the Nordic countries, Yugoslavia, Uruguay, Switzerland, Austria, the United Kingdom speaking on behalf of Hong Kong, and India said that they supported the adoption of the Wine Panel Report and expressed their concern that the United States had linked the adoption of this report to the adoption of the report by the Panel on Pasta.

159. The representative of Canada supported the suggestion made by the representative of the United States to examine the issues raised but not fully addressed by the Wine Panel Report with regard to certain agricultural products; he indicated that this could take place in the Committee or in an ad hoc body.

160. The representative of the EEC said that, while there may be merit in looking at the issue raised by Canada, this was not the subject matter of the current dispute and, consequently, this should not stand in the way of the Committee adopting the Wine Panel Report.

161. The Chairman suggested that a working party be established with the aim to examine all issues that had arisen concerning the application of the Agreement and the functioning of its dispute settlement mechanism.

162. Several delegations expressed their support for the Chairman's proposal. However, some other delegations could not agree with this proposal.

163. The representative of the EEC noted that the adoption of the Wine Panel Report had been blocked by the United States and that all delegations which had spoken, except one, had endorsed the conclusions by the Panel and regretted the linkage made by the United States. He concluded that the

Panel Report should remain on the agenda of the Committee and reserved the right to request a special meeting of the Committee on this issue if developments so required.

164. The Committee took note of the statement made by the representative of the EEC.

165. The Chairman stated that the Committee would revert to the three panel reports at its next regular meeting.

K. Working Party to examine obstacles which contracting parties facr in accepting the Agreement - action by the CONTRACTING PARTIES taken on 26 November 1985 (L/5930)

166. The Chairman recalled that on 26 November 1985 the CONTRACTING PARTIES had addressed an invitation to the Committee to establish a Working Party with the task to examine obstacles which contracting parties faced in accepting the Agreement. The membership of this Working Party would be open not only to signatories of the Agreement but also to other contracting parties having expressed an interest in acceding to the Agreement.

167. The Committee decided to establish the Working Party. The Chairman said he would consult with interested delegations concerning the date of the first meeting of the Working Party.

Date of the next regular meeting

168. The Chairman said that, in accordance with the decision taken by the Committee at its meeting in April 1981, the next regular meeting of the Committee would take place in the week of 27 October 1986.