

# GENERAL AGREEMENT ON

RESTRICTED

SCM/M/43

22 June 1989

## TARIFFS AND TRADE

Special Distribution

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### Committee on Subsidies and Countervailing Measures

#### MINUTES OF THE MEETING HELD ON 26 APRIL 1989

1. The Committee on Subsidies and Countervailing Measures ("the Committee") held a regular meeting on 26 April 1989.
2. The Committee adopted the following agenda:
  - A. Election of officers
  - B. Examination of countervailing<sup>1</sup> duty laws and/or regulations of signatories of the Agreement.
    - (i) New Zealand (SCM/1/Add.15/Rev.3, SCM/W/163, 168 and 171)
    - (ii) Australia (SCM/1/Add.18/Rev.1/Suppl.2 and SCM/W/161)
    - (iii) United States (SCM/1/Add.3/Rev.3)
    - (iv) Laws and/or regulations of other signatories
  - C. Notification of Subsidies under Article XVI:1 of the General Agreement (L/6111 and addenda, L/6297 and addenda, L/6450 and addenda; SCM/M/41 and SCM/W/162, 165, 166, 167, 170, 174 and 175)
  - D. Semi-annual reports of countervailing duty actions taken within the period 1 July-31 December 1988 (SCM/91 and addenda)
  - E. Reports on all preliminary or final countervailing duty actions (SCM/W/164 and 172 and Corr.1)
  - F. Canada - Imposition of countervailing duties on imports of Boneless Manufacturing Beef from the EEC - Report by the Panel (SCM/85)

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<sup>1</sup>The term "Agreement" means Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade.

- G. EEC subsidies on export of Wheat Flour (SCM/42) and EEC subsidies on export of Pasta Products (SCM/43) - Follow-up on consideration of Panel reports
- H. United States - Definition of industry concerning Wine and Grape Products - Follow up on consideration of the report by the Panel (SCM/71)
- I. Draft Guidelines on the Application of the Concept of Specificity (SCM/W/89)
- J. United States - Countervailing duty investigation of imports of Fresh Cut Flowers from various countries
- K. Other business

A. Election of officers

3. The Community elected Mr. Maamoun Abdel-Fattah (Egypt) as Chairman and elected Mr. Ilan Navé (Israel) as Vice-Chairman.

B. Examination of countervailing duty laws and/or regulations of signatories of the Agreement (SCM/1 and addenda)

4. Before the Committee began its examination of countervailing duty laws and/or regulations of signatories of the Agreement, the Chairman drew the Committee's attention to the fact that some delegations had submitted only very recently questions on laws and regulations of other signatories or replies to questions raised by other signatories. He urged all delegations to make every effort to submit written questions and replies on national legislation well in advance of the meetings of the Committee and in this connection he reminded the signatories that at its regular meeting held in October 1988 the Committee had agreed upon certain deadlines for the submission of questions and replies.

5. The Committee took note of the statement made by the Chairman.

- (i) New Zealand (Dumping and Countervailing Duties Act 1988, document SCM/1/Add.15/Rev.3)

6. The Committee had before it in document SCM/1/Add.15/Rev.3 the text of the Dumping and Countervailing Duties Act 1988. This Act had replaced Part VA of the Customs Act 1966 which had been examined by the Committee at its meeting in October 1988 (SCM/M/42, paragraphs 7-11). Written questions on Part VA of the Customs Act 1966 had been received from the delegations of the United States (SCM/W/163), the EEC (SCM/W/168) and Canada (SCM/W/171); the delegation of New Zealand had provided written answers to these questions in, respectively, documents SCM/W/177, 178 and 179. Recently, the Committee had received questions from Brazil on the

legislation of New Zealand<sup>1</sup> and additional questions from the United States.<sup>2</sup> The Chairman said that, since there were no substantive differences between Part VA of the Customs Act 1966 and the Dumping and Countervailing Duties Act 1988, the questions and answers which the Committee had received with respect to Part VA of the Customs Act 1966 were also relevant to the currently applicable countervailing duty legislation of New Zealand.

7. The representative of the EEC said that his delegation remained concerned about the lack of precision in some of the provisions of the countervailing duty legislation of New Zealand. While recognizing that not every aspect of a countervailing duty proceeding could be regulated in detail, he considered that certain provisions of the legislation of New Zealand created legal uncertainty. Referring to a question asked by the EEC on the definition of the term "like goods", he considered as unsatisfactory the reply given by New Zealand in document SCM/W/177 that decisions on what constituted "like goods" would be made on a case-by-case basis and said that further clarification was necessary as to the question of whether only physical characteristics or also economic indicators would be taken into account by the authorities of New Zealand in applying the concept of "like goods". A second issue on which he requested a further explanation concerned the treatment in the legislation of New Zealand of the reduction or remission of freight provided by non-governmental entities as subsidies; he asked whether this implied that the Government of New Zealand was of the view that benefits granted by private entities could be considered subsidies. If this was the case, he wondered how this position could be reconciled with the requirement that a subsidy could only be found to exist if there was a cost to the government and a benefit to a recipient. Finally, the representative of the EEC requested a fuller explanation of the circumstances under which the authorities of New Zealand could extend, under section 12(2) of the Dumping and Countervailing Duties Act 1988, the deadline for a preliminary determination.

8. The representative of the United States said that his delegation had prepared a few follow-up questions on the countervailing duty legislation of New Zealand<sup>2</sup>; he looked forward to receiving written replies from New Zealand to these questions in the near future.

9. The representative of Canada said that generally his delegation was satisfied with the answers provided by New Zealand in document SCM/W/179 to the questions raised by Canada but there were some points which required further clarification. Firstly, he noted that on the question of notification of foreign governments of the initiation of an investigation New Zealand had replied that "the Government or Governments of the country or countries of export will be advised, through their accredited representatives, so that they can avail themselves of the opportunity for

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<sup>1</sup> See document SCM/W/184

<sup>2</sup> See document SCM/W/193

consultations in accordance with Article 3:1 of the Subsidies Code." Since this procedure for notification to foreign governments did not appear explicitly in the text of the legislation, he asked whether New Zealand intended to codify this procedure in implementing regulations or administrative guidelines. Secondly, he referred to a statement on page 4 of document SCM/W/179 that "an administrative decision has been taken that the Minister will review the need for the continued imposition of a countervailing duty within two years" and asked what was the legal status of this decision.

10. The representative of New Zealand said that his delegation would provide written responses to the questions recently received from the delegations of Brazil and the United States. On the comments made by the representative of the EEC on the definition of the term "like goods", he said that the definition of this term in the countervailing duty legislation of New Zealand reflected the definition in the Agreement of the term "like product" in that "like goods" were considered other goods which were like imported goods in all respects or, in the absence of such goods, other goods which had characteristics closely resembling those other goods. In determining whether goods were "like", physical similarity as well as other characteristics would be considered. In response to the questions by the representative of the EEC on the treatment of freight subsidies, he said that it was the position of New Zealand that subsidies were support measures applied by governments and the provision on freight subsidies would be applied accordingly. On the question of the extension of the deadline for a preliminary determination, he said that his authorities would consider such an extension if there were good reasons to extend the deadline which would have to be examined in the context of the particular circumstances of each individual case. With respect to the question raised by the Canadian representative of the legal status of the procedure for notification to a foreign government of the initiation of an investigation, he said that this procedure was provided for explicitly in section 10(6) of the Dumping and Countervailing Duties Act 1988. Finally, he said that his authorities were not considering to publish regulations or guidelines to implement the decision which had been taken to review countervailing duties within two years.

11. The Committee took note of the statements made and agreed to revert at its next regular meeting to the Dumping and Countervailing Duties Act 1988. The Chairman invited delegations wishing to ask further questions on this Act to do so in writing through the secretariat by 7 July 1989 and requested the delegation of New Zealand to provide written responses by 1 September 1989.

- (ii) Australia (Anti-Dumping Authority Act 1988, Customs Legislation (Anti-Dumping) Amendment Act 1988, Customs Tariff (Anti-Dumping) Amendment Act 1988, document SCM/1/Add.18/Rev.1/Suppl.2)

12. The Chairman recalled that at its meeting held in October 1988 the Committee had started its examination of the provisions of the amended countervailing duty legislation of Australia (SCM/M/42, paragraphs 12-14).

Written questions on this amended legislation had been received from the delegation of the United States (SCM/W/161) and the delegation of Australia had replied to these questions in document SCM/W/180.

13. No further comments were made on the amended countervailing duty legislation of Australia. The Chairman said that the Committee had concluded its examination of this legislation.

(iii) United States (Tariff Act of 1930, as amended by the Omnibus Trade and Competitiveness Act of 1988 and the United States - Canada Free Trade Agreement Implementation Act 1988, document SCM/1/Add.3/Rev.3)

14. The Committee had before it in document SCM/1/Add.3/Rev.3 a consolidated version of the countervailing duty provisions of the Tariff Act of 1930, as amended by the Omnibus Trade and Competitiveness Act of 1988 and the United States - Canada Free Trade Agreement Implementation Act of 1988. The delegation of the EEC had submitted some questions in writing on the amendments to the countervailing duty law of the United States made by the Omnibus Trade and Competitiveness Act of 1988 (SCM/W/185) to which the United States had recently replied.<sup>1</sup> The Committee had also received very recently written questions from the delegation of Korea.<sup>2</sup>

15. The representative of the United States said that the Omnibus Trade and Competitiveness Act contained relatively few amendments to the countervailing duty law of the United States. These amendments were of a procedural nature or designed to clarify or codify the pre-existing practice of the relevant authorities of the United States.<sup>1</sup> His delegation had responded in writing to the questions asked by the EEC<sup>1</sup> and would as soon as possible reply to the questions raised by Korea.

16. The representative of Canada said that his delegation would in the near future submit some questions in written form on the recent amendments to the legislation of the United States. These questions involved section 1313 of the Omnibus Act (calculation of subsidies on processed agricultural products), section 1320 (downstream product maintaining), section 1321 (prevention of circumvention of countervailing duties), section 1328 (material injury), section 1330 (cumulative injury assessment) and section 1333 (correction of ministerial error). He hoped that the United States delegation would reply to these questions before the next regular meeting of the Committee.

17. The representative of the EEC said that his delegation needed more time to study the replies given by the United States to the questions raised by the EEC in document SCM/W/185. By way of preliminary comment he

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<sup>1</sup> See document SCM/W/192

<sup>2</sup> See document SCM/W/186

said that he was not reassured by the reply given by the United States in document SCM/W/192 that the new section 751 (5)(B) of the Tariff Act merely codified the past practice of the Department of Commerce regarding the application of the specificity principle and in this connection he recalled that on earlier occasions his delegation had expressed its doubts on the way in which the Department had arrived at a finding of de facto specificity in a countervailing duty investigation of imports of fresh cut flowers from the Netherlands.

18. The Committee took note of the statements made and agreed to revert to the amended countervailing duty legislation of the United States at its next regular meeting. The Chairman requested delegations wishing to ask questions on the legislation of the United States to do so in writing through the secretariat by 7 July 1989 and requested the delegation of the United States to reply in writing to any questions by 1 September 1989. The Chairman also drew the attention of the Committee to document SCM/1/Add.3/Rev.3/Suppl.1 which contained the text of revised countervailing duty regulations of the United States. The Committee would begin its discussions of these revised regulations at its next regular meeting.

(iv) Laws and/or regulations of other signatories

19. No comments were made under this agenda item.

C. Notification of Subsidies under Article XVI:1 of the General Agreement (L/6111 and addenda, L/6297 and addenda, L/6450 and addenda and SCM/M/41)

20. The Chairman recalled that on 27 October 1988 the Committee had held a special meeting to discuss notifications of subsidies under Article XVI:1 of the General Agreement (SCM/M/41). The Committee had agreed to revert to this matter at its next regular meeting. A number of signatories had not been present at the special meeting in October 1988 and in some cases delegations had requested further information on measures notified by signatories.

Australia

21. The Chairman said that in document SCM/W/162 the delegation of the United States had raised a number of questions on the programmes notified by Australia in document L/6111/Add.14; replies to these questions received from the delegation of Australia had been circulated in document SCM/W/166.

22. No further comments were made on the notification by Australia.

Austria

23. The Chairman said that the delegation of the United States had asked some questions in document SCM/W/162 on the full notification of subsidies by Austria (L/6111/Add.16).

24. The representative of Austria replied as follows to the question put by the United States in SCM/W/162 why Austria had not included in its notification export financing offered by the Osterreichische Kontrollbank Aktiengesellschaft (OKB) and export assistance offered by the Austrian Federal Economic Chamber. Regarding the assistance offered by the Austrian Federal Economic Chamber, he said that this body had important responsibilities for the administration of the Austrian foreign trade assistance system. The Chamber was charged with the promotion of the professional interests of its members. The financial resources of the Chamber were provided by Austrian exporting firms and were mainly used to maintain a network of 89 foreign trade offices throughout the world. Through this network a wide range of services was offered to Austrian importers and exporters. These services mainly involved advice and information activities and the Chamber used only a minor fraction of its financial resources for direct financial export assistance to a very limited number of industries. Direct contributions were made to the financing of participation by Austrian enterprises in fairs and exhibitions, market research and publication of catalogues in foreign languages. These contributions amounted to 31.56 million US dollars in 1987 and 26.18 million US dollars in 1988. In the past direct financial assistance had also been granted for research and development expenses of exporting firms but since 1986 no assistance had been granted for this type of expenses. Regarding the export finance facilities offered by the OKB, the representative of Austria said that this institution provided export financing to Austrian exporters on the basis of guarantees issued by the Government of Austria in the context of an export insurance system. OKB charged interest rates which reflected a positive spread over the costs of funds used so that the system was self-supporting. This explained why these facilities had not been included in the Austrian notification of subsidies. Furthermore, even if these facilities were regarded as subsidies under Article XVI:1 of the General Agreement, they were in full conformity with item (k) of the Illustrative List of Export Subsidies annexed to the Agreement because they were in accordance with the OECD Agreement on Guidelines for Officially Supported Export Credits.

25. The representative of the United States wanted to study in detail the replies given by Austria and requested that the Committee revert to this matter at its next regular meeting.

26. The Committee took note of the statements made and agreed to revert to the notification by Austria at its next regular meeting.

#### Brazil

27. The Chairman said that the delegation of the United States had raised some questions in document SCM/W/162 regarding the notification of subsidies by Brazil in document L/6111/Add.6. So far the Committee had not received written replies from Brazil to these questions.

28. The representative of Brazil said that his delegation had recently provided to the delegation of the United States written answers to the questions asked by the United States in document SCM/W/162 and he requested that the secretariat circulate these answers in a Committee document.<sup>1</sup>

29. The representative of the United States said that his delegation wished to study the replies given by Brazil and he requested that the Committee revert to the Brazilian notification at its next regular meeting.

30. The Committee took note of the statements made and agreed to revert to the notification of subsidies by Brazil at its next regular meeting.

#### Canada

31. The Chairman said that the delegations of the United States and Australia had submitted written questions on the full notification by Canada (document L/6111/Add.5) which had been circulated in, respectively, document SCM/W/162 and 165. The delegation of Canada had responded to these questions in, respectively, SCM/W/182 and SCM/W/183.

32. The representative of Australia said that his delegation had requested Canada to provide information on the costs and effects of a Federal/Provincial Mineral Agreement mentioned on page 48 of document L/6111/Add.5. In its response (SCM/W/183, page 3) Canada had stated that "this question raises the important issue of the scope of the notification requirements under Article XVI:1 of the GATT" and that "The Canadian notification deals with federal programmes." His authorities were of the view that, since this Agreement involved finance provided by the Canadian federal authorities, it was a subsidy notifiable under Article XVI:1 of the General Agreement.

33. The Committee took note of the statement made by the representative of Australia.

#### Chile (L/6111/Add.9)

34. The Chairman said that, since the representative of Chile had not been present at the special meeting of the Committee held in October 1988, the Committee had agreed to revert to the Chilean notification at its next regular meeting.

35. No comments were made on this notification.

#### EEC (L/6111/Add.19)

36. The Chairman said that the delegations of Australia and the United States had submitted written questions on the full notification by the EEC (L/6111/Add.19). These questions had been circulated in,

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<sup>1</sup>See document SCM/W/194

respectively, SCM/W/165 and 162. Replies from the EEC to these questions had recently been circulated in document SCM/W/181.

37. The representative of Australia wished to have more time to study the replies given by the EEC and requested that the Committee revert to the notification by the EEC at its next regular meeting.

38. The Committee took note of the statement made by the representative of Australia and agreed to revert to the EEC notification at its next regular meeting.

Egypt (L/6111/Add.24)

39. The Chairman said that a full notification of subsidies had been received from the delegation of Egypt in July 1988 (L/6111/Add.24). Since the representative of Egypt had not been present at the special meeting held in October 1988, the Committee had decided to revert to this notification at its next regular meeting.

40. No comments were made on this notification.

Finland (L/6111/Add.2)

41. The Chairman said that the delegation of the United States had asked a question on the notification by Finland (L/6111/Add.2) in document SCM/W/162. The delegation of Finland had replied to this question in document SCM/W/167.

42. No further comments were made on the notification by Finland.

India (L/6111/Add.4)

43. The Chairman said that document SCM/W/162 contained questions asked by the United States on the full notification of subsidies by India (L/6111/Add.4). Since the representative of India had not been present at the special meeting in October 1988, the Committee had decided to revert to this notification at its next regular meeting.

44. The representative of the United States urged the delegation of India to reply as soon as possible to the questions raised by his delegation in SCM/W/162. He added that the United States would in the near future submit further questions on certain export subsidies granted by the Indian Government. His authorities were concerned that some of the export subsidies granted by India were not in conformity with the commitment made by India under Article 14:5 of the Agreement.

45. The representative of Australia noted that in paragraph (ii) of document L/6450/Add.3 mention was made of the fact that the Government of India permitted domestic companies and non-corporate tax payers resident in India to claim tax deductions for the whole of the income derived by the

assessee from export of goods or merchandise. His authorities would be interested in the views of India on the conformity of this practice with Article 9 of the Agreement, in particular in the light of item (e) of the Illustrative List of Export Subsidies.

46. The representative of India said that his delegation would respond at the next meeting of the Committee to all questions raised on the Indian notification of subsidies.

47. The Committee took note of the statements made.

Indonesia (L/6111/Add.25)

48. The Chairman said that the full notification of subsidies by the delegation of Indonesia had been circulated in document L/6111/Add.25 in November 1988.

49. No comments were made on this notification.

Israel (L/6111/Add.23)

50. The Chairman said that in document SCM/W/162 the delegation of the United States had raised some questions regarding the full notification of subsidies by Israel (L/6111/Add.23).

51. The representative of the United States requested the Chairman to use his good offices to encourage the delegation of Israel to reply as soon as possible to the questions raised by the United States.

52. The Committee took note of the statement made by the representative of the United States and agreed to revert to the notification by Israel at its next regular meeting.

Japan (L/6111/Add.22)

53. The Chairman said that written questions on the full notification of subsidies by Japan (L/6111/Add.22) had been received from the United States (SCM/W/162) and Australia (SCM/W/165). The delegation of Japan had responded to these questions in documents SCM/W/175 and 174.

54. The representative of the United States said that his authorities were still studying the replies given by the delegation of Japan in document SCM/W/175 and he requested that the Committee revert to this matter at its next regular meeting.

55. The representative of Australia recalled that at the special meeting of the Committee held in October 1988 his delegation had made some comments on measures taken by the Japanese Government in the coal sector (SCM/M/41, paragraph 80). The Australian authorities commended the progress made by Japan in restructuring its coal policy, in particular in the context of the

Eighth Coal Policy Plan. They also appreciated the assurance given by Japan in document SCM/W/174 that the measures provided for in this Plan were not intended to maintain or increase coal production. Nevertheless, his delegation considered it important to draw the Committee's attention to certain aspects of the Japanese measures in the coal sector as reported by the International Energy Agency (IEA) in its publication Coal Prospects and Policies in IEA Countries (1988). In this publication the IEA had noted that assistance by the Japanese Government to current coal production through direct financial aid and price support was at the highest ever level (both in yen and in US dollars) in fiscal year 1987, the first year of operation of the Eighth Coal Policy Plan. This assistance also exceeded by 81 per cent the total assistance for mine closures, regional development, worker retraining programmes, and coal-related research and development activities to which Japan's answer related. The largest component of the assistance to current coal production (73 per cent) was granted for price support on sales of coal to electricity producers and non-ferrous industries. These producers and industries consumed steaming coal, the domestic production of which had been planned to be reduced under the Eighth Coal Policy Plan at a much slower rate than the production of metallurgical coal. The Australian authorities were unaware of the likely level of total price support at the end of the implementation of the Eighth Coal Policy Plan and of Japan's longer-term coal policy following the end of this Plan in fiscal year 1991. They considered that the assistance provided by the Japanese Government to current coal production, in particular the price support for steaming coal, adversely affected market access for some 8-10 million tons of imports of steaming coal per year. Many of the Japanese measures constituted subsidies within the meaning of Article XVI:1 of the General Agreement and should therefore be included by Japan in its notifications made under this provision.

56. The representative of Japan said that, as explained at the special meeting of the Committee and in the replies given by his delegation in SCM/W/174, his authorities considered that the measures taken by Japan with respect to the coal industry were not subsidies within the meaning of Article XVI:1 of the General Agreement. He would convey to his authorities the comments made by the representative of Australia.

57. The Committee took note of the statements made and agreed to revert to the notification of subsidies by Japan at its next regular meeting.

Korea (L/6111/Add.12)

58. The Chairman said that in documents SCM/W/162 and 165 the delegations of the United States and Australia had raised some questions regarding the notification of subsidies by Korea (L/6111/Add.12). Replies to these questions by the delegation of Korea had been circulated recently in, respectively, documents SCM/W/188 and 187.

59. The representatives of the United States and Australia said that, in view of the recent circulation of the replies by Korea, they wished to have the opportunity to revert to the Korean notification at the next regular meeting of the Committee.

60. The Committee took note of the statements made and agreed to revert to the Korean notification at its next regular meeting.

New Zealand (L/6111/Add.20)

61. The Chairman said that a written question on the notification by New Zealand (L/6111/Add.20) had been submitted by the United States (SCM/W/162). The delegation of New Zealand had replied to this question in document SCM/W/174.

62. No comments were made on the notification by New Zealand.

Pakistan

63. The Chairman said that Pakistan had not, since 1984, submitted any notification of subsidies under Article XVI:1 of the General Agreement. The representative of Pakistan was not present at the meeting.

The Philippines (L/6111/Add.18)

64. The Chairman recalled that because the representative of the Philippines had not been present at the special meeting in October 1988, the Committee had agreed to revert at its next meeting to the full notification of the Philippines (L/6111/Add.18)

65. No comments were made on this notification.

Sweden (L/6111/Add.15)

66. The Chairman said that the United States had submitted some questions in document SCM/W/162 on the full notification received from the delegation of Sweden (L/6111/Add.15). Replies by Sweden to these questions had been circulated recently in document SCM/W/190.

67. The representative of the United States said that his delegation had not had sufficient time to study the replies given by Sweden and requested that the Committee revert to the Swedish notification at its next meeting.

68. The Committee took note of the statement made by the representative of the United States and agreed to revert at its next regular meeting to the notification by Sweden.

Switzerland (L/6111/Add.13)

69. The Chairman recalled that the representative of Switzerland had not been present at the special meeting in October 1988 and that the Committee had therefore agreed to revert to the notification by Switzerland at its next meeting.

70. No comments were made on this notification.

Turkey (L/6111/Add.7)

71. The Chairman said that the representative of Turkey had not been present at the special meeting in October 1988 and that the Committee had agreed to revert to the Turkish notification at its next meeting. In document SCM/W/162 the delegation of the United States had raised a question on this notification.

72. The representative of the United States urged the delegation of Turkey to reply as soon as possible to the question put by the United States in document SCM/W/162. While his authorities welcomed recent steps by Turkey to phase out certain export subsidy programmes, they remained deeply concerned about the renewal of the Price Support Stabilization Programme which had originally been scheduled to expire at 31 December 1987.

73. The Committee took note of the statement made by the representative of the United States and agreed to revert at its next meeting to the notification by Turkey.

Uruguay (L/6111/Add.8)

74. The Chairman recalled that the representative of Uruguay had not been present at the special meeting in October 1988 and that the Committee had agreed to revert to the notification by Uruguay (L/6111/Add.8) at its next meeting.

75. No comments were made on the notification by Uruguay.

United States (L/6111/Add.17)

76. The Chairman said that the delegation of Australia had raised some questions on the notification by the United States (L/6111/Add.17) in document SCM/W/165. Written replies to these questions had been received very recently from the delegation of the United States (SCM/W/191).

77. The representative of Australia wished to have more time to examine the replies given by the United States in document SCM/W/191 and requested that the Committee revert to this matter at its next meeting.

78. The Committee took note of the statement by the representative of Australia and agreed to revert to the notification by the United States at its next regular meeting.

79. The Chairman regretted that so far only a limited number of signatories had submitted their updating notifications due in 1989 and he urged the signatories to submit such notifications without further delay.

80. The representatives of the EEC and Canada echoed the comments made by the Chairman regarding the need for a prompt submission of updating notifications.

D. Semi-annual reports of countervailing duty actions taken within the period 1 July-31 December 1988 (SCM/91 and addenda)

81. The Chairman said that an invitation to submit semi-annual reports under Article 2:16 of the Agreement had been circulated in SCM/91. The following signatories had replied that during this period they had not taken any countervailing duty actions: Brazil, Chile, EEC, Egypt, Finland, Hong Kong, India, Israel, Japan, Korea, Norway, Pakistan, Philippines, Sweden, Turkey and Yugoslavia. No reports had been received from Austria, Indonesia, Spain, Switzerland and Uruguay. The Chairman urged these signatories to submit their reports without further delay.

82. The Committee examined the semi-annual reports of those signatories who had taken countervailing duty actions during this period in the order in which these reports had been circulated.

Australia (SCM/91/Add.3)

83. No comments were made on this report.

New Zealand (SCM/91/Add.4)

84. No comments were made on this report.

Canada (SCM/91/Add.5)

85. The representative of the United States expressed his delegation's concerns regarding the countervailing duty on grain corn imported from the United States. In this connection he mentioned in particular a recent judgement of the Canadian Court of Appeals which seemed to imply that in the Court's view the mere existence of a subsidy could cause injury to a domestic industry in another country, irrespective of whether there were subsidized imports into that country. If this was a correct interpretation of the Court's judgement, this judgement would be in clear contradiction with the obligations of signatories under the Agreement.

86. The Committee took note of the statement made by representative of the United States.

United States (SCM/91/Add.6)

87. No comments were made on this report.

E. Reports on all preliminary or final countervailing duty actions (SCM/W/164 and 172)

88. The Chairman said that reports under these procedures had been received from the delegations of Canada and the United States. No comments were made on these reports.

F. Canada - Imposition of countervailing duties on imports of Boneless Manufacturing Beef from the EEC - Report by the Panel (SCM/85)

89. The Chairman recalled that since October 1987 the Report of this Panel had been the subject of discussions in the Committee at three regular and three special meetings.

90. The representative of the EEC requested the representative of Canada to indicate the current position of his authorities with respect to this Panel Report.

91. The representative of Canada said that his delegation had already explained on several occasions the concerns of the Canadian authorities regarding the implications of the Report. The Panel had concluded that Canadian cattlemen did not have standing to request the imposition of countervailing duties on boneless manufacturing beef. The responsible Canadian Ministers had recently undertaken an examination of the Report and its implications. His authorities considered that the situation created by this Report was untenable. The Canadian Import Tribunal had found that subsidies granted by the EEC, and in particular export subsidies, were a cause of a threat of injury to Canadian cattlemen. The Agreement was intended to provide protection to domestic producers suffering injury as a result of imports of subsidised products. If the opinion adopted by the Panel regarding the lack of standing of Canadian cattlemen were to be accepted, an alternative method had to be found in the Agreement to ensure the right of the Canadian cattlemen to protection against injurious subsidised imports. In past discussions in the Committee his delegation had expressed the view that the implication of the Panel's reasoning seemed to be that there appeared to be a clear imbalance in the rights and obligations of signatories of the Agreement. His delegation had also indicated one possible logical extension of the reasoning of the Panel regarding the definition of the term "domestic industry:" manufacturing beef was a non-primary product and, consequently, the export subsidies granted by the EEC were prohibited under the Agreement. To deny this logical extension of the Panel's reasoning, while at the same time arguing in favour of acceptance of the Panel's conclusion on the issue of standing, would effectively deny Canadian cattlemen the protection to which they were entitled in an equitable system of rules on subsidies and countervailing measures. His authorities could not accept that a situation in which Canadian producers had to face the threat of a direct and prejudicial impact of subsidised imports of beef, without any effective recourse, was in any way equitable and in accordance with the intentions of the drafters of the Agreement. The Canadian authorities therefore remained seriously concerned about the Report and they continued to believe that it was necessary to effectively address their concerns in the Committee.

92. The representative of the EEC said that it was now clear what were the intentions of the Canadian authorities with respect to the Report. Canada was opposed to the adoption of the Report. He recalled that since July 1986 Canada had been applying countervailing duties on imports of

boneless manufacturing beef from the EEC, based on a finding of threat of injury. The imposition of these duties had led to a complete blockage of imports into Canada of imports of beef from the EEC. In October 1986 the EEC had invoked the dispute settlement provision of the Agreement because it had been of the view that the complaint which had led to the opening of the investigation should have been considered inadmissible by the Canadian authorities. In September 1987, already more than a year after the entry into force of the countervailing duties, the Panel established by the Committee in this dispute had submitted its Report to the Committee. The Panel had analysed the disputed issues in a rigorous manner and had come to clear, precise and unanimous conclusions. The Panel had concluded that the countervailing duties imposed by Canada were not in conformity with the Agreement and it had recommended that Canada revoke these duties. Since then the Canadian delegation had invoked various reasons why it was not in a position to state its definitive views on the Report. Canada had also expressed the view, which it had reiterated at this meeting, that if Canadian cattlemen could not be considered as part of the domestic industry producing boneless manufacturing beef, one should conclude that boneless manufacturing beef exported by the EEC was subject to the provisions of Article 9 of the Agreement. The representatives of the EEC noted that this argument had not been presented by Canada in the proceedings before the Panel. There was a very good reason explaining why Canada had not raised this point before the Panel: the dispute before the Panel involved the obligations of signatories under Part I of the Agreement. The issue of the nature of a subsidy under Part II was not pertinent to the question of the obligations of signatories with respect to countervailing duty actions under Part I of the Agreement. He also reiterated his delegation's view that the fact that negotiations were taking place in the Uruguay Round could not constitute an excuse for signatories not to respect their existing obligations under the Agreement. His delegation had attempted through bilateral contacts with Canada to find a solution to this dispute but these attempts had not led to any result. He concluded his statement by saying that the Canadian attitude in this case did not augur well for the future functioning of the GATT dispute settlement mechanism.

93. The representative of the United States said that this delegation shared many of the concerns expressed by the Canadian delegation regarding the Report by the Panel. His delegation considered that the Panel's approach to the issue of the definition of the term "domestic industry" was questionable. Furthermore, the Report raised very serious questions as to the equity of the rights and obligations of the Agreement as interpreted by the Panel. His delegation therefore shared the reservations expressed by Canada with regard to the Report.

94. The representative of Australia said that the views of his delegation had been expressed on many occasions and were well known to the signatories. In the view of his delegation the adoption of the Report would change the balance of rights and obligations under the Agreement. The Report was flawed and its implications for a wide range of commodities underlined the weakness of the Panel's reasoning. As regards the point

raised by Canada on the implications of the fact that boneless manufacturing beef was a non-primary product, he said that his delegation had raised this issue in the proceedings before the Panel but the Panel had decided not to address this issue. The failure of the Panel to consider this issue pointed to a flaw in the Panel's reasoning because of the conclusions to which it had led.

95. The representative of Finland, speaking on behalf of the Nordic countries, shared the concerns expressed by the EEC. In reply to the statement by the representative of Canada that the Agreement was intended to provide effective protection of domestic industries against the effects of subsidised imports, he said that the Agreement provided for fully adequate protection of domestic industries through the application of countervailing duties. The objectives of the Agreement included a disciplined use of countervailing measures. The Panel had come to clear conclusions and it was regrettable that the Committee was not in a position to adopt the Panel's Report.

96. The delegation of New Zealand limited his comments to the following points. Firstly, he shared the concerns expressed by the Canadian delegation on the imbalance of the rights and obligations under the Agreement which would result from the adoption of the Report. Secondly, he believed that the Report underlined the importance of a clear definition of what constituted a primary product.

97. The representative of Chile said that panel reports should, as a matter of principle, be adopted. This was the only way in which dispute settlement in GATT could be improved. His delegation therefore shared the view of the EEC that the Panel Report on boneless manufacturing should be adopted. If signatories were of the view that certain changes were necessary to the provisions of the Agreement, they should raise this in the Uruguay Round.

98. The representative of the United States asked how the authorities of the Nordic countries would react if, following a hypothetical elimination of import quotas applied by these countries on various agricultural products, including fruits and vegetables, there were imports of subsidised products which competed with domestically produced products.

99. The representative of Switzerland said that his delegation fully supported the view expressed by the representative of Chile. The efficient operation of a dispute settlement procedures in GATT required that panel reports be adopted promptly.

100. The representative of Finland said that the question of market access, including the issue of quantitative import restrictions, was one of the most important issues under consideration in the Uruguay Round negotiations on agriculture. It was therefore surprising that the representative of the United States had asked a question relating to this issue in this Committee. Furthermore, the question was of a purely hypothetical

nature. Finally, he noted that while various countries, including the United States, were granting different types of subsidies in the agricultural sector, the Nordic countries had never taken any countervailing duty action in this sector.

101. The representative of the United States agreed that his question was purely hypothetical.

102. The Chairman regretted that the Committee was not in a position to adopt the Panel Report on boneless manufacturing beef. The Committee would revert to this report at its next regular meeting; in the meantime he would consider whether it was useful to have informal consultations with interested delegations on this matter.

G. EEC subsidies on Wheat Flour (SCM/42) and EEC subsidies on Pasta Products (SCM/43) - follow-up on consideration of Panel Reports

103. The Chairman associated himself with a remark made by his predecessor that the problems which had arisen in the Committee regarding these two Panel Reports had resulted in a blockage of the dispute settlement process in the Committee.

104. The representative of the United States said that the views of his delegation on these two Reports had not changed.

105. The Committee took note of the statements made and agreed to revert to these two Reports at its next regular meeting.

H. United States - Definition of Industry Concerning Wine and Grape Products - follow-up on consideration of the Panel's Report (SCM/71)

106. The Chairman said that, while the problems which had arisen in the Committee with respect to this Report were of a somewhat different nature than the problems which had arisen in connection with the Reports on wheat flour and pasta, the Committee had still not been able to adopt this Report.

107. No comments were made on this Report.

108. The Chairman then made some remarks on all Panel Reports which had not yet been adopted by the Committee. The problems which explained that these Reports were still unadopted were serious and resulted from divergent interpretations of fundamental obligations under the Agreement. However, this could not be an excuse for inaction by the Committee. He noted that his predecessors had on various occasions made unsuccessful attempts to convince interested signatories to assume their obligations under the Agreement. However, in the light of the spirit of the recently improved GATT dispute settlement procedures he believed that it was appropriate to have further informal consultations with all interested delegations on the four Reports. He hoped that at the meeting in October 1989 he would be in a position to present concrete proposals to the Committee.

109. The Committee took note of the statement made by the Chairman.

I. Draft Guidelines on the Application of the Concept of Specificity  
(SCM/W/89)

110. The Chairman recalled that, at its meeting held on 31 May 1988, the Committee had expressed its desire that the principles laid down in these Draft Guidelines be applied by all signatories. At the meeting of 26 October 1988 the representative of the United States had stated that his authorities were reflecting upon the Draft Guidelines in the light of the Omnibus Trade and Competitiveness Act of 1988 (SCM/M/42, paragraph 58).

111. The representative of the United States regretted that his delegation was still not in a position to agree to a formal adoption of the Draft Guidelines; however, the United States applied the Draft Guidelines in practice. The Omnibus Trade and Competitiveness Act of 1988 contained a provision on the specificity concept which was fully consistent with the letter and spirit of the Draft Guidelines. He would consult with his authorities on the possible adoption of these Draft Guidelines.

112. The representative of Chile said that his authorities had instructed him to make a reservation regarding the view expressed by the Committee at a previous meeting that it was desirable that all signatories apply the Draft Guidelines in their countervailing duty practices.

113. The Committee took note of the statements made and agreed to revert to the Draft Guidelines at its next regular meeting.

J. United States - Countervailing duty investigations of imports of Fresh Cut Flowers from various countries

114. The Chairman said that at its last meeting the Committee had continued its discussion of this matter (SCM/M/42, paragraphs 60-63). At that meeting the representative of the United States had promised to provide to the Committee at its next meeting some information regarding a pending administrative review of the countervailing duty order on fresh cut flowers.

115. The representative of the United States regretted that the preliminary results of the administrative review of the countervailing duty order on fresh cut flowers had not yet been finalized; he expected that this would happen in the very near future. He hoped to be able to provide more detailed information on this matter at the next regular meeting of the Committee.

116. The representative of the EEC reiterated his delegation's concerns about the application of the concept of de facto specificity by the United States in the original investigation of fresh cut flowers from the Netherlands. His delegation would take this case into account when studying the explanation by the United States in document SCM/W/192 on the definition of specificity in the Omnibus Trade and Competitiveness Act of 1988.

117. The representative of Chile recalled that at previous meetings of the Committee his delegation had raised objections to the fact that the USITC had in this case made an evaluation of injury on a cumulative basis. He reserved his delegation's rights with regard to this matter.

118. The Committee took note of the statements made and agreed to revert to this matter at its next regular meeting.

K. Other business

119. The observer for Mexico said that when Mexico acceded to the General Agreement it had indicated its intention to initiate negotiations for accession to the Agreement as a developing country.<sup>1</sup> His authorities continued to be interested in the acceptance of the Agreement and they closely followed the activities of the Committee.

120. The Committee took note of the statement made by the observer for Mexico.

Date of the next meeting

121. The Chairman said that, in accordance with the decision taken by the Committee at its meeting in April 1981 (SCM/M/6, paragraph 36), the next regular meeting of the Committee would take place in the week of 23 October 1989.

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<sup>1</sup>See BISD 33S/81