GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED
SCM/M/44
11 April 1990
Special Distribution

Committee on Subsidies and
Countervailing Measures

MINUTES OF THE MEETING HELD ON 26 AND 27 OCTOBER 1989

Chairman: Mr. Maamoun Abdel-Fattah (Egypt)

1. The Committee on Subsidies and Countervailing Measures ("the Committee") held a regular meeting on 26 and 27 October 1989.

2. The Committee adopted the following agenda:

A. Examination of countervailing duty laws and/or regulations of signatories of the agreement[1]

(i) New Zealand (SCM/1/Add.15/Rev.2, SCM/W/163, 168, 171, 177, 178, 184, 193, 201 and 202)

(ii) United States (SCM/1/Add.3/Rev.3 and Suppl.1, SCM/W/185, 186, 192, 196 and 197)

(iii) Brazil (SCM/1/Add.26/Suppl.2)

(iv) Korea (SCM/1/Add.13/Rev.2/Suppl.1)

(v) Turkey (SCM/1/Add.28)

(vi) Countervailing duty laws and/or regulations of other signatories

B. Notification of subsidies by signatories under Article XVI:1 of the General Agreement (L/6111 and addenda, L/6297 and addenda, L/6450 and addenda, SCM/M/41, SCM/M/43, SCM/W/162, 165, 166, 167, 170, 174, 175, 181, 188, 190, 191, 199 and 200)

C. Semi-Annual reports of countervailing duty actions taken within the period 1 January-30 June 1989 (SCM/93 and addenda)

[1]The term "Agreement" means Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade.

D. Reports on all preliminary or final countervailing duty actions (SCM/W/195, 198 and 203)

E. United States - Countervailing duties on non-rubber footwear from Brazil - Report by the Panel (SCM/94)

F. Canada - Imposition of countervailing duties on imports of boneless manufacturing beef from the EEC - Report by the Panel (SCM/85)

G. EEC - Subsidies on export of wheat flour and
EEC - Subsidies on export of pasta products - follow-up on consideration of Panel Reports (SCM/43 and 42)

H. United States - Definition of industry concerning wine and grape products - follow-up on consideration of the Report by the Panel (SCM/71)

I. Canada - Injury determination on grain corn from the United States - Request for conciliation by the United States

J. Draft guidelines on the application of the concept of specificity (SCM/W/89)

K. United States - Countervailing duty investigation of imports of fresh cut flowers from various countries

L. Other business

(i) Withdrawal from the Agreement by Spain

(ii) Initiation of countervailing duty investigations in the United States

(iii) Imposition of countervailing duties by the United States on imports of fresh, chilled or frozen pork from Canada

M. Annual review and report to the CONTRACTING PARTIES

A. Examination of countervailing duty laws and/or regulations of signatories of the Agreement

(i) New Zealand (Dumping and Countervailing Duties Act 1988, document SCM/1/Add.15/Rev.2)

3. The Chairman recalled that the Committee had continued its examination of the Dumping and Countervailing Duties Act 1988 at its meeting held on 26 April 1989 (SCM/M/43, paragraphs 6-11). Written questions had been submitted on this Act by the delegations of the United States (SCM/W/163 and 193), the EEC (SCM/W/168), Canada (SCM/W/171) and Brazil (SCM/W/184).

The delegation of New Zealand had responded to the questions by the United States in documents SCM/W/178 and 202 and had answered the questions raised by the EEC and Canada in, respectively, document SCM/W/177 and documents SCM/W/179 and 201. The Committee had not yet received written replies to the questions raised by the delegation of Brazil.

4. The representative of New Zealand said that his delegation had already provided detailed replies to many questions but was prepared to answer any further questions which delegations might want to raise on the countervailing duty legislation of New Zealand. With respect to the questions raised by the delegation of Brazil in document SCM/W/184, he said that, since these questions related to the provisions of the Dumping and Countervailing Duties Act 1988 on the application of anti-dumping duties, his delegation had answered these questions in the Committee on Anti-Dumping Practices. He further pointed out that the first two sentences of the reply given by his delegation in document SCM/W/202 should read as follows:

> "Where a firm which accounts for any proportion of domestic production imports the allegedly subsidized goods then it will be excluded from the domestic industry. It will not be so excluded if it imports like goods which are not allegedly subsidized."

5. The representative of Brazil said that he would appreciate it if the delegation of New Zealand could respond in writing to the questions asked by his delegation in document SCM/W/184.

6. The representative of Canada said that while there was no requirement in the Agreement for the adoption of a "sunset" clause, his authorities nevertheless hoped that New Zealand would consider the possible inclusion of such a clause in its legislation.

7. The representative of New Zealand said that his delegation would respond in writing to the questions asked by the delegation of Brazil.

8. 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 to do so in writing by 19 January 1990 and requested the delegation of New Zealand to respond to such possible questions by 26 March 1990.

(ii) United States

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

9. The Chairman recalled that the Committee had begun its consideration of the recent amendments to the countervailing duty provisions of the United States Tariff Act of 1930 at its regular meeting held in April 1989 (SCM/M/43, paragraphs 14-18). Written questions on these amendments had

been received from the delegations of the EEC (SCM/W/185), Korea (SCM/W/186), India (SCM/W/196) and Canada (SCM/W/197). The United States had provided answers to these questions in, respectively, documents SCM/W/192, 204, 205 and 206.

10. The representative of the United States said that the questions raised regarding the recent amendments to his country's countervailing duty law seemed to reflect the same concerns as those which had been expressed in the Committee on Anti-Dumping Practices. These questions seemed to some extent to be based on a misapprehension of the amendments. For example, the provision in section 1320 of the Omnibus Trade and Competitiveness Act of 1988 on downstream product monitoring would not lead to automatic initiation of investigations and the provisions in section 1321 of the Act would not be used for any other purpose than to prevent the circumvention of legitimately imposed countervailing duties. He noted that the delegations of Korea and India had expressed concerns regarding the possible use by the United States of its rights under Article 19 of the Agreement. His authorities considered that the questions raised by these delegations were of a purely hypothetical nature and that they would remain hypothetical as the United States expected all countries to abide by their commitments. With respect to other questions raised, he observed that it was generally difficult to provide specific answers to hypothetical questions on those provisions which had not yet been implemented. With respect to the question by the delegation of Canada on the provision in section 1313 of the Act concerning the calculation of subsidies on processed agricultural goods, the representative of the United States said that it appeared that this question presumed that an upstream subsidy analysis should be made, whereas section 1313 essentially laid down a test of the degree of value added and interdependency of demand which, if satisfied, demonstrated that an upstream subsidy analysis was not necessary. The implementation of this provision in the context of a countervailing duty investigation of imports of fresh, chilled and frozen pork from Canada had recently been the subject of consultations between Canada and the United States under Article XXIII of the General Agreement. The United States considered that the provision in section 1313 and its implementation were consistent with the Agreement and with the provisions of the General Agreement.

11. The representative of the EEC thanked the delegation of the United States for the replies which it had provided to the questions posed by the EEC. His delegation had studied these replies carefully and considered that some of the amendments to the countervailing duty legislation of the United States might be a cause of concern. The EEC was of the view that the issues addressed in these amendments should be dealt with in the negotiations in the context of the Uruguay Round. He noted that in a number of cases the United States had indicated in its replies that a particular provision of the Omnibus Trade and Competitiveness Act of 1988 merely codified the existing practice of the United States Department of Commerce. He believed that the consistency of a particular provision with the past practice of the Department of Commerce could not be

dispositive of whether that provision was consistent with the obligations of the United States under the Agreement. He also reiterated the concerns of his delegation regarding the application by the United States of the concept of de facto specificity. He appreciated that none of the factors mentioned by the United States in document SCM/W/192 as elements which were considered by the Department of Commerce in deciding on whether a domestic programme was specific could be characterized as a prevailing criterion in all cases. However, his delegation was in particular concerned about the possibility that the number of beneficiaries who actually used a programme could in certain cases be a decisive factor.

12. The representative of Korea thanked the delegation for the written replies provided by the United States to the questions raised by his delegation. He reserved his delegation's right to revert to these replies at a later date.

13. The representative of Canada said that many issues raised by his delegation regarding the countervailing duty provisions of the Omnibus Trade and Competitiveness Act of 1988 were similar to the issues raised by his delegation with respect to the anti-dumping provisions of the Act. However, there were a number of questions which were specific to the countervailing duty provisions of the Act. In this respect, he mentioned in particular the provision in section 1313 of the Act on the calculation of subsidies in cases involving processed agricultural products. As had been mentioned by the representative of the United States, the implementation of this provision in a recent case concerning imports of pork from Canada had been the subject of bilateral consultations between the United States and Canada. He reserved his delegation's right to make further comments on the legislation of the United States at a later date.

14. The representative of the United States said that he had taken note of the comments made by the representatives of the EEC, Korea and Canada.

15. The Committee took note of the statements made and agreed to revert to the recent amendments to the countervailing duty legislation of the United States at its next regular meeting. The Chairman invited delegations wishing to raise further questions in writing on these amendments to do so by 19 January 1990 and requested the delegation of the United States to respond to any additional questions by 26 March 1990.

B. Revised countervailing duty regulations of the Department of Commerce (SCM/1/Add.3/Rev.3/Suppl.1)

16. The Committee had before it in document SCM/1/Add.3/Rev.3/Suppl.1 the text of revised countervailing duty regulations of the United States Department of Commerce which had been published in the Federal Register of the United States on 27 December 1988. The representative of the United States explained that these revised regulations were of a procedural nature and did not reflect the legislative amendments made by the Omnibus Trade and Competitiveness Act of 1988.

17. The representative of Canada asked a number of questions on proposed revised countervailing duty regulations of the Department of Commerce published on 31 May 1989. These questions related to the criteria proposed for determining the specificity of domestic programmes, the conditions under which the provision of goods or services by a government could be considered to take place at preferential rates and the proposed rule on the calculation of subsidies on processed agricultural products. His delegation would provide these questions in writing at a later date.

18. The representative of the United States said that the questions raised by the representative of Canada related not to the revised procedural regulations which had been notified to the Committee by the United States but to draft revised regulations published in May 1989. These draft revised regulations had not yet been adopted in a final form.

19. The representative of Chile noted that earlier at the meeting the representative of the United States had made a distinction between legislation as such and its implementation in practice. He asked whether this meant that the United States recognized that the provisions of the Omnibus Trade and Competitiveness Act might be in conflict with the international obligations of the United States and whether, if such a conflict existed, the international obligations of the United States would in practice prevail over the provisions of the domestic law of the United States.

20. The representative of the United States said that it was not the practice of the United States to incorporate provisions of the General Agreement or of agreements negotiated in the context of the GATT ad verbatim into United States domestic law. The United States enacted implementing legislation which, while not copying ad verbatim the GATT instrument in question, would be fully consistent with the obligations of the United States under that instrument. If it should appear to any signatory of the Agreement that elements of the domestic legislation of the United States were inconsistent with provisions of the Agreement, such signatory could have recourse to the dispute settlement mechanism of the Agreement.

21. The representative of Chile asked whether in a case in which it was found in a dispute settlement proceeding that provisions of the domestic legislation of the United States were inconsistent with the Agreement such a finding would result in amendments to the legislation.

22. The representative of the United States said that once a panel report had been adopted by the relevant body it became an international obligation of the United States. In all cases in which the United States had faced such a situation it had consistently acknowledged its obligation to take the appropriate remedial measures.

23. The Committee took note of the statements made and agreed to revert to the revised countervailing duty regulations of the United States Department of Commerce at its next regular meeting. The Chairman invited delegations wishing to raise questions in writing on these regulations to do so by 19 January 1990 and he requested the delegation of the United States to provide written replies to such questions by 26 March 1990.

(iii) Brazil (Customs Policy Resolution No. 00-1582, document SCM/1/Add.26/Suppl.2)

24. The Chairman said that the Committee had before it in document SCM/1/Add.26/Suppl.2 the text of Customs Policy Resolution No. 00-1582, which amended certain provisions of Customs Policy Resolution No. 00-1227; this latter Resolution laid down rules for the conduct of countervailing duty investigations in Brazil and had been examined by the Committee on previous occasions.

25. The representative of Brazil said that Customs Policy Resolution No. 00-1582, adopted on 3 March 1989, amended Articles 3, 12, 27, 32, 35, 36 and 50 of Customs Policy Resolution No. 00-1227. The most important change concerned the provisions in Article 3 regarding the application of provisional measures. As amended, this Article now provided for the authority of the Customs Policy Commission to require as a provisional measure that a security be made equivalent to the value provisionally estimated of the countervailing duty in the form of a cash deposit or in the form of a bond. Article 12 of Customs Policy Resolution No. 00-1227 had been amended to specify with greater detail the nature of the information to be included in a notice of initiation of a countervailing duty investigation. Article 50 of Customs Policy Resolution No. 00-1227 had been amended to reduce the number of copies of documents which had to be provided by interested parties to the Customs Policy Commission.

26. No comments were made on Customs Policy Resolution No. 00-1582. The Chairman said that the Committee had concluded its examination of this Resolution.

(iv) Korea (Amendments to the Presidential Decree implementing the countervailing duty provisions of the Korean Customs Act, document SCM/1/Add.13/Rev.2/Suppl.1)

27. The Committee had before it in document SCM/1/Add.13/Rev.2/Suppl.1 a notification from the delegation of Korea regarding recent amendments to the Presidential Decree implementing the countervailing duty provisions of the Korean Customs Act. The Chairman recalled that at its regular meeting held in May 1988 the Committee had taken note of a statement by the representative of Korea that his Government was considering possible changes to its countervailing duty legislation on some of the issues on which questions had been raised in the Committee.

28. The representative of Korea said that the amendments to the Presidential Decree had entered into force on 1 January 1989. The purpose of these amendments was to make the legislation more consistent with the Agreement and to clarify various aspects of a technical nature. As a result of the amendments, the persons who could act as petitioners were now limited to domestic producers of like products or associations the members of which produced like products. Consequently, labour unions and wholesalers could no longer request the opening of an investigation. The duration of countervailing duties had been limited to a period of three years as a result of the introduction of a "sunset" clause. Certain changes had also been made regarding the provisions for the conduct of administrative reviews. Finally, the amendments provided for specific time limits for the consideration of the sufficiency of petitions and for the duration of investigations.

29. The representative of Australia said that his delegation would submit written questions on the amendments to the Presidential Decree. He noted that while Article 4:4 of the Presidential Decree, as amended, limited the petitioners to producers of a like product and associations composed of such producers, it also provided for the possibility that the Minister of Finance could allow "any other natural or legal person or association" as a petitioner. He requested the representative of Korea to explain under which circumstances the Minister of Finance would recognize persons other than domestic producers of like product as petitioners.

30. The representative of the EEC said that his delegation would study the amendments to the Presidential Decree in greater detail and revert to this Decree at a later stage. Regarding the amendments made to Article 4:4 of the decree, he associated himself with the remark made by the representative of Australia. It seemed to him that the wording of this provision, as amended, further broadened the category of persons who could act as petitioners.

31. The representative of Korea said that his delegation would provide replies in writing to the comments made by the representatives of Australia and the EEC. By way of preliminary response, he said that Article 4:4(2) of the amended Presidential Decree provided that countervailing duty petitions could be filed by "a domestic producer of a like product, an association whose members produce a like product, or any other natural or legal person or association allowed as a petitioner by the Minister of Finance". So far, the Minister of Finance had not decided to grant any other persons that domestic producers or association of domestic producers the status of petitioners. This provision would be implemented in a manner consistent with the requirements of the Agreement.

32. The Committee took note of the statements made and agreed to revert to the amendments to the Presidential decree at its next regular meeting. The Chairman requested delegations wishing to ask questions to do so in writing by 19 January 1990 and he requested the delegation of Korea to respond to such questions by 26 March 1990.

(v) Turkey (Law on the prevention of unfair competition in importation, document SCM/1/Add.28)

33. The Committee had before it in document SCM/1/Add.28 the text of the recently adopted Turkish law on the prevention of unfair competition in importation.

34. The representative of Turkey said that the document before the Committee contained an unofficial translation of the law on the prevention of unfair competition on importation which had been enacted on 14 June 1989 and not, as indicated on the second page of the English version of document SCM/1/Add.28, on 16 June 1989. The law had entered into force on 1 October 1989 after it had been published in the official Turkish gazette on 1 July 1989. It provided for the establishment of a Board to decide on the necessary procedures to protect the domestic industry against unfair competition in the form of dumped and subsidized imports. The General Directorate of Importation of the Prime Ministry Undersecretariat of Foreign Trade and Treasury had been mandated to examine all petitions. After conducting a preliminary examination of such petitions, this General Directorate had to make a recommendation to the Board on whether the opening of an investigation was appropriate. A regulation relating to the rules and procedures for the examination of petitions had been prepared by the General Directorate and had also entered into force. The Board administering the law was composed of representatives of relevant Ministries and other governmental bodies and was chaired by the General Director or Deputy General Director of Importation. The Board was authorized to decide on the initiation and suspension of investigations, to propose to the Ministry the application of provisional measures, to determine the amount of subsidization, to submit to the Minister all final decisions to be taken and to adopt necessary measures in case of non-compliance with undertakings.

35. The Committee took note of the statement made by the representative of Turkey and agreed to revert to the countervailing duty legislation of Turkey at its next regular meeting. The Chairman invited delegations wishing to ask questions on the legislation of Turkey to do so in writing by 19 January 1990 and he requested the delegation of Turkey to respond to such questions by 26 March 1990.

(vi) Countervailing duty laws and/or regulations of other signatories

36. The representative of the United States asked whether it was correct that Israel was considering the adoption of a countervailing duty law.

37. The representative of Israel said that the Israeli Knesset was considering a comprehensive draft law which combined various existing legislative provisions and some new provisions. The draft law contained improvements to the existing law on the application of anti-dumping duties and provided for the possibility of applying countervailing duty measures. The draft law was presently being discussed in the Knesset and it was not

possible to indicate when the draft law would be enacted. He assured the members of the Committee that his Government would make all efforts to ensure the consistency of the new legislation with the obligations of Israel under the Agreement. He noted in this respect that the preamble of the proposed legislation explicitly stated that this draft legislation was intended to be compatible with relevant international agreements to which Israel was a Party.

38. The representative of Australia said that, following recent recommendations by the Australian Anti-Dumping Authority, amendments would be made in the near future to the countervailing duty legislation of Australia. His delegation would notify these amendments to the Committee.

39. The Committee took note of the statements made and agreed to keep on its agenda the item "countervailing duty laws and/or regulations of other signatories".

B. Notification of subsidies by signatories under Article XVI:1 of the General Agreement (L/6111 and addenda, L/6297 and addenda, L/6450 and addenda. SCM/M/41 and 43, SCM/W/162, 165, 166, 167, 170, 174, 175, 181, 188, 190, 191, 200 and 209)

40. The Chairman recalled that the Committee had held a special meeting on 27 October 1988 to examine notifications of subsidies by signatories under Article XVI:1 of the General Agreement (SCM/M/41). The Committee had continued this examination at its regular meeting held on 26 April 1989 (SCM/M/43), paragraphs 20-80). In light of questions raised, the Committee had agreed to revert to a number of these notifications.

Austria (L/6111/Add.16)

41. The Chairman recalled that at the meeting in April the representative of Austria had replied orally to questions asked by the United States in document SCM/W/162 (SCM/M/43, paragraph 24).

42. The representative of the United States thanked the delegation of Austria for the replies given and said that his delegation had no further question on the notification by Austria.

Brazil (L/6111/Add.6)

43. The Chairman said that the delegation of the United States had asked questions in document SCM/W/162 on the notification of subsidies by Brazil (L/6111/Add.6). The delegation of Brazil had responded to these questions in document SCM/W/194.

44. No further comments were made on the notification of subsidies by Brazil.

EEC (L/6111/Add.19)

45. The Chairman recalled that in documents SCM/W/162 and SCM/W/165 the delegations of the United States and Australia had asked questions on the notification of the EEC (L/6111/Add.19). The EEC had responded to these questions in document SCM/W/181.

46. The representative of Australia said that her authorities did not share the views of the EEC regarding the scope of the obligation to notify subsidies under Article XVI:1 of the General Agreement. She asked whether the EEC was now in a position to provide an assessment of the effect of the stabilizing mechanisms on the production of cereals (SCM/W/181, page 2). She also considered that the EEC had not adequately responded to the questions raised by her delegation in document SCM/W/165 regarding subsidies on the production of coal. Regarding the answer given by the EEC on subsidies granted with respect to non-ferrous metals, she expressed the view that this type of subsidies clearly could have an effect on trade even if such subsidies fell within the scope of Article 11 of the Agreement. She noted in this respect that under Article 7 of the Agreement the EEC had an obligation to provide information on these subsidies if so requested by another signatory.

47. The EEC said that his delegation believed that it had replied in an exhaustive manner to the questions raised by Australia. If and when further information would be available on the effect of the stabilizing mechanisms on the production of cereals, his delegation would make that information available to the Committe He noted that his delegation and the Australian delegation disagreed on the scope of the obligation of Article XVI:1 of the General Agreement and on the effects of the assistance provided to the production of coal and non-ferrous metals.

48. The Community took note of the statements made and agreed to revert to the notification of subsidies by the EEC at its next regular meeting.

India (L/6111/Add.4)

49. The Chairman noted that written questions on the notification by India in document L/6111/Add.4 had been asked by the United States (document SCM/W/162) and by Australia (document SCM/W/199). The delegation of India had recently replied to these questions in document SCM/W/209.

50. The representative of the United States thanked the delegation of India for the replies provided in document SCM/W/209. His authorities needed some time to study these responses, not only in light of the information provided but also in light of the conclusions drawn in this document.

51. The representative of Australia said that the position of her delegation was the same as that of the United States.

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

Israel (L/6111/Add.23)

53. The Chairman recalled that the delegation of the United States had submitted written questions in document SCM/W/162 on the Israeli notification in document L/6111/Add.23. The delegation of Israel had responded to these questions in document SCM/W/200.

54. The representative of the United States thanked the delegation of Israel for the replies given to the questions asked by his delegation. With respect to the answer given by Israel regarding the exchange rate insurance scheme administered by the Israeli Foreign Trade Risk Insurance Corporation, he said that his delegation did not share the view of Israel that this programme did not constitute a subsidy. However, his authorities were encouraged by the fact that Israel was taking steps to bring this programme into a self-financing status.

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

Japan (L/6111/Add.22)

56. The Chairman recalled that written questions on the notification by Japan had been submitted by the United States in document SCM/W/162 and by Australia in document SCM/W/165. The delegation of Japan had responded to these questions in, respectively, documents SCM/W/174 and SCM/W/175. At the request of the delegations of the United States and Australia the Committee had agreed to revert to these notifications.

57. The representative of Australia recalled that at the regular meeting of the Committee in April 1989 her delegation had made a statement on subsidies on coal production provided by Japan and had requested Japan to include these subsidies in future notifications under Article XVI:1 of the General Agreement (SCM/M/43, paragraph 55). Her delegation would continue to raise this matter in the Committee; her authorities had had bilateral consultations on this matter with Japan and they also intended to pursue this matter in the context of the Uruguay Round.

58. The representative of the United States said that his delegation had no further questions on the notification by Japan.

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

Korea (L/6111/Add.12)

60. The Chairman recalled that in documents SCM/W/162 and SCM/W/165 the delegations of the United States and Australia had raised questions regarding the notification of subsidies by Korea (L/6111/Add.12). The

delegation of Korea had replied to these questions in, respectively, documents SCM/W/188 and SCM/W/187.

61. The representative of Australia said that her delegation could not accept the responses given by Korea in document SCM/W/187 on the Foodgrain Procurement Programme, in particular with regard to the rice procurement programme. Her authorities considered that this programme had a significant impact on international trade; she noted that the volume of rice covered by this programme represented 14.3 per cent of domestic production. Furthermore, the rice was procured at prices in excess of world market prices. Therefore, this programme must result in the maintaining of domestic production levels and in the depression of imports. On the response given by Korea on the measures taken with respect to garlic and red peppers, she noted that the purchase price under the Agricultural Price Stabilization Programme was 16 per cent above the world market price level and not, as indicated by Korea, 0.5 per cent.

62. The representative of Korea considered that the EEC had made a very pertinent point regarding the scope of the notification obligation under Article XVI:1 of the General Agreement. While his delegation continued to believe that the rice procurement programme and the measures taken with respect to garlic and red peppers had no significant effect on trade, he would convey to his authorities the views expressed by the representative of Australia.

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

Pakistan

64. The Chairman noted that since 1984 the delegation of Pakistan had not made any notifications of subsidies. As the representative of Pakistan was not present at this meeting, the Committee agreed to revert to this matter at its next regular meeting.

Sweden (L/6111/Add.15)

65. The Chairman recalled that in document SCM/W/162 the delegation of the United States had raised questions regarding the notification of subsidies by Sweden (L/6111/Add.15) and that the delegation of Sweden had replied to these questions in document SCM/W/190.

66. No comments were made on the notification by Sweden.

Turkey (L/6111/Add.7)

67. The Chairman recalled that at the regular meeting in April 1989 the representative of the United States had requested the delegation of Turkey to reply promptly to the questions posed by the United States in document SCM/W/162. The Committee had, however, not received such replies.

68. The representative of Turkey noted that the delegation of the United States had asked in document SCM/W/162 why Turkey had not notified payments to exporters made under the Price Support Stabilization Fund (PSSF). In addition, the United States had asked why this programme, which was scheduled to be terminated on 31 December 1987, had not yet been terminated. Finally, the United States had asked when this programme would be terminated. He believed that ample information on the PSSF had been provided by his authorities in documents L/6111/Add.7 and L/6450/Add.2. These documents also contained information regarding the implementation, effects of and changes in other subsidy practices of Turkey. He explained that the PSSF had entered into force at the end of 1986 and was applied to encourage exports of a limited number of items. This programme was of a temporary nature and because of legislative reasons had to be reviewed annually. It was envisaged that it would be replaced by export credit and insurance schemes, once these schemes had become fully operational. No definite export date had been set for his programme as had been suggested by the representative of the United States.

69. The representative of Turkey further pointed out that the necessity of the PSSF was explained by the trade and development needs of Turkey as a developing country. The programme had been duly notified to the CONTRACTING PARTIES and, as announced in the 1989 Government Annual Programme, would be terminated as soon as the export credit and insurance schemes had entered into force. He also recalled that, when Turkey had accepted the Agreement, it had made a declaration under Article 14:5 of the agreement in which it had made a commitment to reduce or eliminate export subsidies whenever the use of such subsidies was inconsistent with its competitive or development needs. Pursuant to this commitment, Turkey had totally eliminated the tax rebate programme and the Resource Utilization Support Fund payments.

70. The representative of the United States thanked the representative of Turkey for the information which he had provided. His delegation had listened carefully to the statement that the PSSF would be terminated when the export credit and insurance schemes would enter into force and he expressed the hope that this would take place as soon as possible.

71. The Committee took note of the statements made.

United States (L/6111/Add.17)

72. The Chairman noted that in document SCM/W/165 the delegation of Australia had formulated some questions regarding the notification of subsidies by the United States (L/6111/Add.17). The delegation of the United States had responded to these questions in document SCM/W/191.

73. The representative of Australia said that the replies in document SCM/W/191 still caused concerns to her delegation, in particular with respect to the measures applied by the United States on sugar. She requested that the Committee revert to this notification by the United States at its next meeting.

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

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75. The Chairman expressed his concern about the fact that only a limited number of signatories had submitted updating notifications due in 1989. So far, such notifications had been received from the delegations of Brazil, Chile, Finland, Hong Kong, India, Japan, New Zealand, Sweden, Switzerland and Turkey and the EEC. He reminded delegations that they were expected to submit new full notifications in 1990 and he urged all signatories to submit these notifications promptly.

76. The representative of Indonesia informed the Committee of recent measures taken by his authorities regarding the gradual elimination of export subsidies and other government assistance measures. Under Decision No. 22/9/KEP/DIR of the Board of Directors of the Bank of Indonesia the subsidy level under the Export Credit Facility had been reduced through an increase of interest rates for transactions involving primary goods from 9 to 14 per cent and an increase of interest rates for transactions involving non-primary goods from 11.5 to 14.5 per cent. By taking this decision the Indonesian authorities had adjusted the cumulative reduction of the level of interest rates applicable to export credits to 90 per cent. This was in conformity with the commitment made by Indonesia to eliminate gradually the export subsidy elements of short-term export financing; according to the time-table set out in this commitment the cumulative reduction of these elements should reach 90 per cent in April 1989.

77. With regard to the government assistance programme for rice production, the representative of Indonesia said that his Government had also reduced the amount of fertilizer subsidies as of 1 April 1989 with the exception of the subsidies applicable to TSP which had been raised to about 15 per cent. As of that date, the government assistance applicable to fertilizers such as urea had been reduced by 16 per cent while for ZA and MOP the subsidies had been reduced by, respectively, 6, 5 and 14.5 per cent. Further reductions of these subsidies had taken place in October 1989.[1]

78. The Committee took note of the statement made by the representative of Indonesia.

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[1] See also document L/6450/Add.14.

C. Semi-annual reports of countervailing duty actions taken within the period 1 January-30 June 1989 (SCM/93 and addenda)

79. The Chairman said that an invitation to submit semi-annual reports under Article 2:16 of the Agreement had been circulated in document SCM/93. The following signatories had informed the Committee that during this period they had not taken any countervailing duty actions: Austria, Brazil, Chile, Egypt, Finland, Hong Kong, India, Indonesia, Israel, Japan, Korea, New Zealand, Sweden, Switzerland, Turkey and Yugoslavia (SCM/93/Add.1). No reports had been received from Australia, the EEC, Norway, Pakistan, the Philippines and Uruguay. The Chairman urged these signatories to submit their reports without further delay.

80. The representative of Australia said that his delegation had recently submitted a semi-annual report on countervailing duty actions taken during the first six months of 1989 (document SCM/93/Add.4). Two proceedings had been opened during this period concerning imports from Greece and Israel.

81. The representatives of the EEC and Norway informed the Committee that their authorities had taken no countervailing duty actions during the period 1 January-30 June 1989.

82. The Chairman said that countervailing duty actions taken during the period under review had been notified by Canada (SCM/93/Add.2) and by the United States (SCM/93/Add.3).

83. No comments were made on these two reports. The Committee agreed to revert to the semi-annual report of Australia at its next regular meeting.

D. Reports on all preliminary or final countervailing duty actions (SCM/W/195, 198 and 203)

84. The Chairman said that notices of countervailing duty actions had been received from the delegations of Australia, Canada and the United States.

85. No comments were made on these notices.

E. United States - Countervailing duties on Non-Rubber Footwear from Brazil - Report by the Panel (SCM/94)

86. The Committee had before it in document SCM/94 the Report by the Panel established by the Committee in the dispute between Brazil and the United States on the collection of countervailing duties by the United States on imports of non-rubber footwear from Brazil. The Chairman recalled that the dispute which had led to the establishment of this Panel had been referred to the Committee by Brazil in June 1987 (document SCM/87). The Committee had discussed this matter at its meetings of 27 October 1987 and 31 May 1988 and a conciliation meeting had taken place on 14 July 1988. At a special meeting held on 6 October 1988 the Committee had agreed to establish a panel in this dispute (SCM/M/40 and Add.1). On 4 October 1989 the Panel had submitted its Report to the Committee.

87. The Chairman of the Panel, Mr. Luzius Wasescha, said that the final conclusion of the Report was contained in paragraph 4.14 of the Report. Although this conclusion was brief, it had been arrived at after a very intensive process of discussions and analytical work and only a detailed analysis and full understanding of the whole section containing the findings and conclusions would allow an appreciation of the Panel's reasoning. He then proceeded to outline the elements of the Panel's analysis. The Panel had found that the Agreement did not contain any Article dealing specifically with the question of countervailing duties in force at the time when the Agreement entered into force. However, Article VI:6(a) of the General Agreement was applicable to such countervailing duties through the Agreement. Under Article VI of the General Agreement no contracting party shall levy any countervailing duty unless it determines that the effect of the subsidization is such as to cause material injury. A detailed analysis of the manner in which this provision had been applied (after a valid decision to apply a countervailing duty had been taken) had shown that countervailing duties, once imposed, had to be reviewed if the circumstances underlying their imposition had changed. This obligation could be satisfied if the importing signatory provided a procedure under which the other signatory, whose imports were subject to a valid decision to impose countervailing duties (in this case the pre-existing decisions), had the right to an injury examination as of the date of the entry into force of the Agreement. Consequently, if a signatory provided for a procedure under which other signatories whose exports to that signatory were subject to countervailing duties could request an injury determination as of the date of entry into force of the Agreement and if such an injury determination would apply as of the date of the request, such a signatory would thereby meet its obligations under Article VI:6(a) of the General Agreement.

88. Mr. Wasescha further explained that the Panel had considered that under such a procedure the decision to request an injury determination and the timing of such a request had to be left fully to the discretion of the exporting signatory affected. In particular, it had to be free to choose the same date as the date of the entry into force of the Agreement but such a signatory could also choose a date of even ten years later. This discretion illustrated the importance of the timing of a request for an injury determination. Indeed, if such a request were made ten years after the entry into force of the Agreement it would have been hardly conceivable that a possible negative injury determination would have to be applied retroactively as of the date of the entry into force of the Agreement and that all duties collected during this period of ten years would have to be reimbursed. He concluded by saying that the Panel considered that, by submitting its Report, in accordance with Article 18:8 of the Agreement, it had fulfilled its mandate.

89. The representative of the United States said that his delegation strongly advocated the adoption of the Report by the Panel. The essence of the Report was sound and well-reasoned. The Report was convincing and he hoped that it could be adopted in the near future.

90. The representative of Brazil requested that the Committee postpone its consideration of the Panel Report until its next meeting. His authorities considered that there were serious legal errors and omissions in the Report which could have implications of a far reaching nature. The Committee should carefully consider these issues before acting upon the Report. The actions taken by the United States which had led to this dispute raised serious questions regarding the denial by the United States of Most-Favoured-Nation treatment to Brazil. While the Report had acknowledged this issue, it had not addressed it. The United States had implemented its obligations under the Agreement and the General Agreement in the manner advocated by Brazil in this dispute in a number of cases concerning countervailing duties on imports from other countries. It had, however, not implemented its international obligations in this manner in the particular case which had been before this Panel. Events subsequent to the submission of the Report by the Panel confirmed the existence of a serious problem of denial of Most-Favoured-Nation treatment to Brazil. In this respect he reserved his delegation's rights under the General Agreement.

91. The representative of Brazil then proceeded to present in detail the views of his authorities on the Report by the Panel. This statement has been circulated in document SCM/96.

92. In response to the comments made by the representative of Brazil, Mr. Wasescha, Chairman of the Panel, said that all issues raised by the representative of Brazil in his statement had been considered by the Panel in its deliberations.

93. The representative of the United States considered that the Report by the Panel accurately reflected the arguments presented by Brazil in the proceedings before the Panel. If members of the Committee carefully reviewed the arguments presented by the two parties to the dispute they would find that the Panel had properly and carefully considered all issues raised. Regarding the points made by the representative of Brazil with respect to the Panel's refusal to consider the comments by Brazil on the findings and conclusions of the Panel, the representative of the United States disagreed with the interpretation of Article 18:6 of the Agreement suggested by the delegation of Brazil. It was standard practice for panels to submit in draft form the descriptive parts of their reports to the parties to the dispute; however, there had never been a case in the GATT history in which a panel had submitted its findings and conclusions for comments to the parties to a dispute.

94. The representative of Brazil made the following comments in response to the remark of the Chairman of the Panel that all questions raised in his statement earlier at the meeting had been considered by the Panel. He pointed out that in his statement he had mentioned two decisions taken by the United States authorities in cases concerning imports of lime and textile mill products subsequent to the circulation of the Panel's Report. These decisions were new elements which had been addressed in his earlier statement because they were relevant to the views of his delegation

regarding the denial of m.f.n. treatment of Brazil by the United States. Furthermore, the objections to the substance of the Panel's Report expressed in his statement had been presented for the first time and were distinct from the arguments presented by Brazil in the course of the proceedings before the Panel. In this connection, he noted that the issue of the pre-selection system and its applicability to the matter before the Panel had never been an issue in the proceedings before the Panel until it appeared in the Panel's Report. The Report contained a contradiction between the new obligation noted in paragraph 4.5 and the "practical" decision which was based on the assumption that no new obligation had been created (paragraph 4.10). This contradiction obviously had also not been addressed in the course of the Panel's proceedings. In addition, the question of whether the chart presented in paragraph 4.9 of the Report was applicable to cases in which a new obligation had been created between the time of the imposition and the time of the levy of countervailing duties had, again, not been addressed. The nature of Article 4:9 of the Agreement had been addressed in the course of the Panel's proceedings but never in the context of the pre-selection system. The representative of Brazil concluded his intervention by reiterating his request that members of the Committee study the comments made by his delegation and draw their own conclusions.

95. The Committee took note of the statements made and agreed to revert to the Report by the Panel at its next regular meeting.

F. Canada - Imposition of countervailing duties on imports of boneless manufacturing beef from the EEC - Report by the Panel (SCM/85)

96. The Chairman recalled that the Committee had continued its examination of this Report at its regular meeting held on 26 April 1989 and had agreed to revert to it at its next regular meeting (SCM/M/43, paragraphs 89-102).

97. The representative of the EEC asked whether the position of Canada with respect to the adoption of this Report or with respect to the possibility of finding a practical solution to this dispute had changed.

98. The representative of Canada said that this Report had been discussed on a number of occasions in the Committee and in bilateral consultations between the EEC and Canada. The Report continued to be under consideration by the responsible Canadian Ministers.

99. The Committee took note of the statements made and agreed to revert to this Panel Report at its next regular meeting.

G. EEC - Subsidies on export of wheat flour (SCM/43) and EEC - Subsidies on export of pasta products (SCM/42) - follow-up on consideration of Panel Reports

100. The Chairman recalled that at its regular meeting in April 1989 the Committee had continued its examination of these two Panel Reports and had agreed to revert to these Reports at its next regular meeting (SCM/M/43, paragraphs 103-105).

101. The representative of the United States asked whether the position of the EEC on these two Reports had changed.

102. The representative of the EEC that the position of his delegation with respect to these Reports had not changed.

103. 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)

104. The Chairman recalled that at its regular meeting in April 1989 the Committee had agreed to revert to this Report at its next meeting (SCM/M/43, paragraph 106).

105. No statements were made on this Report.

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106. The Chairman then recalled that at the last meeting of the Committee he had made some observations on the fact that the Committee had four unadopted Panel Reports before it and had expressed his concern about the breakdown of the dispute settlement procedure of the Agreement. This concern was aggravated by the fact that the signatories directly involved were those who, as major trading partners, had a special responsibility for the functioning of the Committee and the implementation of the Agreement. In any dispute settlement situation each party could advance a number of arguments to justify its position. However, the fact remained that four Reports had been pending before the Committee for a number of years and that rules of the Agreement were being interpreted in different ways by various signatories. This created a precedent which might be used by any other signatory to disregard obligations which, for a particular reason, did not suit its particular interests. The result would be that the Agreement would be completely irrelevant. Before one could agree on the establishment of new, improved rules in the context of the Uruguay Round, special efforts were necessary to observe the existing rules. If there was no compliance with existing rules there would be no guarantee that possible new rules would be observed. The Chairman said that he had been under the impression that guided by the spirit of the Uruguay Round, in which commitments had been made to improve dispute settlement procedures, every signatory would make a special effort to restore the confidence in the operation of the dispute settlement mechanism of the Agreement. Unfortunately, his discussions with the signatories directly involved in the unresolved disputes had revealed that some of these signatories were still not prepared to make such an effort. He concluded by saying that he would continue to consult informally with the signatories involved and that, if appropriate, a special meeting of the Committee would be convened.

107. The representative of the United States thanked the Chairman for the efforts he had made to resolve the outstanding disputes and said that his delegation would continue to make the special effort requested by the Chairman to restore the confidence of the dispute settlement mechanism of the Agreement.

108. The Committee took note of the statements made.

I. Canada - Injury determination on grain corn from the United States - Request for conciliation by the United States (SCM/95)

109. The Committee had before it in document SCM/95 a request by the delegation of the United States for conciliation with respect to an injury determination made by the relevant Canadian authorities on grain corn from the United States. The Chairman recalled that this matter had been the subject of a special meeting under Article 16:1 of the Agreement on 5 May 1987 and had also been on the agenda of the regular meetings held on 3 June and 27 October 1987.

110. The representative of the United States said that the principal issue before the Canadian Import Tribunal (CIT) in 1987 and more recently before the Federal Court which had affirmed the decision by the CIT was the interpretation of Canada's countervailing duty laws as embodied in the Special Import Measures Act (SIMA). The majority of the CIT had held that countervailing duties could be imposed under the SIMA without the CIT finding a causal linkage between subsidized imports and injury to a domestic industry. The CIT had written in its determination that the "essential question" was "whether the operation of 1985 US Good Security Act, which, as the Deputy Minister found, subsidized grain corn produced in the United States, was such as to cause prices in Canada to decline to levels judged to be of a material nature". Thus, the CIT had found that "the subsidization of US grain corn has caused and is causing material injury to Canadian corn producers." In reaching this conclusion, the CIT had not even mentioned the rôle of import volume, as required by Articles 2 and 6 of the Agreement. In fact, the CIT had noted that counsel for US exporters had pointed out that "US exports to Canada in recent years have been declining in both absolute tonnage and in percentage of the Canadian market supplied." It was notable that in its complaint the Canadian industry had emphasized not the presence of US imports and their effect on the market but, rather, that there was a connection between prices in the United States and world markets and prices in Canada. The Canadian petitioner had emphasized that "the dominant factor in global corn trade is the United States."

111. The representative of the United States pointed out that the basic requirements of the Agreement with respect to injury were set forth, inter alia, in Article 6. The emphasis of these requirements properly fell on subsidized imports, not on the subsidy programme. Article 6:4 provided that "It must be demonstrated that the subsidized imports are, through the effects of the subsidy, causing injury within the meaning of this Agreement." Further, the Agreement directed investigating

authorities "to consider whether there has been a significant increase in subsidized imports", to examine "whether there has been a significant price undercutting by the subsidized imports" and to examine "whether the effect of such imports has been to suppress or depress prices in the domestic market." Thus, the United States was concerned that the decision of the CIT did not comply with Canada's obligation under the Agreement to demonstrate a causal relationship between subsidized imports and injury. It was clear from the language of the CIT's decision that there was no finding that material injury had been caused by the subsidized imports but rather by the existence of a foreign subsidy programme. Importation of countervailing duties following such a finding would not appear to be sanctioned by the Agreement. He concluded his statement by expressing the concern of his delegation that this decision might constitute a precedent for future decisions by Canada or by other signatories.

112. The representative of Canada considered that the injury determination made by the CIT in the case of grain corn from the United States was in full conformity with the provisions of the Agreement. This determination had been made by the CIT, an independent, quasi-judicial body, following an objective examination of the facts gathered and presented to it in the course of the investigation. Because of the openness of the Canadian market, in response to agricultural subsidies granted by the United States, Canadian corn producers had had to lower their prices to maintain their sales in the face of the actual and potential inflow of corn from the United States. This had also resulted in substantial increases in charges on Canadian agricultural stabilization programmes. Without the price response by the Canadian producers, increased imports of corn from the United States would have been a certainty. With regard to the volume of imports of corn into Canada from the United States, the representative of Canada said that this volume had not been inconsequential, standing at 5.7 per cent of the Canadian market. He recalled in this context that the United States had itself applied countervailing and anti-dumping duties on imports from Canada in situations where the Canadian market share in the United States had been lower than the share of the Canadian corn market held by the United States producers. For example, in a case concerning countervailing duties on imports of live swine from Canada, these imports had represented 1.6 per cent of the domestic market in the United States.

113. The representative of Canada further stated that Article 6 of the Agreement provided that in a determination of injury both the volume of subsidized imports and the impact of such imports on domestic producers must be considered. This Article also recognized that a certain volume of imports could have a price suppressing effect. In an examination of the volume of imports and their consequential effect on prices, the Agreement required a consideration of whether a significant increase in imports, either absolutely or relative to domestic production or consumption, had occurred. At the same time, as regards the impact of imports on domestic producers, there was a recognition in the case of agricultural products that there could be injury through an increased burden on government support programmes. Clearly, where producers matched prices of subsidized imports to retain market share, this would have an impact on import

volumes. Price suppression and an increased burden on support programmes were two key factors in the injury determination made by the CIT in this case. The Agreement recognized that injury could manifest itself in different forms and thus provided that no one or several of the factors listed could necessarily give decisive guidance. This meant that the issue of whether there was an increase in imports could not alone give decisive guidance on the determination of injury. It was clear that injury could result from subsidized imports even where such imports did not necessarily increase dramatically.

114. The representative of Canada explained that in its decision reviewing the determination by the CIT the Federal Court of Canada had confirmed that the CIT had not erred in law in its finding that the subsidization of grain corn by the United States had caused, was causing and was likely to cause material injury on the basis that a causal relationship existed between actual imports of subsidized grain corn and material injury to domestic corn producers. This case was, however, still a matter of appeal before the domestic judicial system of Canada; the appellants had been granted leave to appeal to the Supreme Court of Canada. The fact that the matter was thus still sub judice limited the extent to which the Canadian delegation could comment on this matter. He noted that the United States was positing a hypothetical situation, namely what action might be taken under the Canadian countervailing duty law in an investigation where no imports existed. He stressed that this was hypothetical and that in the grain corn case imports were involved. It was not general practice in GATT to challenge hypothetical suppositions but to proceed on the basis of actual trade measures taken under a particular provision of domestic law. Furthermore, it was important that in the administration of the relevant provisions of the Canadian Special Import Measures Act for the last five years the practice had been to include, among other factors, considerations of the volumes of imports of subsidized goods in evaluations of the question of injury. Indeed, these principles were incorporated into the rules of procedure of the CIT.

115. The representative of the United States thanked the representative of Canada for his comments; however, these comments had not alleviated the concerns of his delegation with respect to the determination by the CIT. He reserved his delegation's rights under the Agreement and in particular under Article 18.

116. The representative of the EEC reserved his delegation's right to intervene in any possible future stage of this dispute. He considered that the subject matter of this dispute raised issues which could have important implications for the interpretation of the provisions of the Agreement regarding the determination of injury. He requested that the Committee revert to this matter at its next meeting.

117. The Chairman encouraged the signatories involved to make their best efforts to find a solution to this dispute which would be mutually satisfactory and consistent with the Agreement.

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

J. Draft guidelines on the application of the concept of specificity (document SCM/W/89)

119. The Chairman recalled that at its meeting held on 31 May 1988, the Committee had expressed a desire that the principles contained in the Draft Guidelines continue to be applied by all signatories. At the meeting held on 26 April 1989, the representative of the United States had stated that the Omnibus Trade and Competitiveness Act of 1988 contained a provision on the specificity concept which was consistent with the letter and spirit of the Draft Guidelines.

120. The representative of the United States said that, while his authorities continued to apply the specificity principle in practice, they were unable to agree to the formal adoption of the Draft Guidelines at this time.

121. The Committee took note of the statement made by the representative of the United States and agreed to revert to this matter at its next regular meeting.

K. United States - Countervailing duty investigation of imports of fresh cut flowers from various countries

122. The Chairman recalled that the Committee had continued its discussion of this matter at it regular meeting held on 26 April 1989 (SCM/M/43, paragraphs 114-118). At the request of the delegations of the EEC and Chile the Committee had agreed to revert to this matter at its next meeting.

123. The representative of the EEC recalled that on previous occasions his delegation had stated its concerns regarding the application of the concept of de facto specificity by the United States in the investigation of fresh cut flowers from the Netherlands. He understood that administrative review proceedings had been initiated with respect to the outstanding countervailing duty orders on fresh cut flowers and he requested the representative of the United States to inform the Committee of the current state of these review proceedings.

124. The representative of the United States said that on 20 October 1989 preliminary determinations had been made in the administrative review of the countervailing duty order on fresh cut flowers from the Netherlands. For the first period covered by this review, 27 October-31 December 1986, the amount of subsidization had been found to be 0.66 per cent ad valorem; for the second period covered by the review, 1 January-31 December 1987, the amount of subsidization had been found to be 0.57 per cent ad valorem. These two rates represented a significant decline compared with the rate found in the final determination in the original investigation

(3.48 per cent ad valorem). The declines in the rates mainly reflected changes which had taken place with respect to the pricing of natural gas and the administration of the agricultural guarantee fund.

125. The representative of the EEC said that his delegation would like to study the preliminary determinations referred to by the representative of the United States and requested that the Committee revert to this matter at its next regular meeting.

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

L. Other Business

(i) Withdrawal from the Agreement by Spain

127. The Chairman informed the Committee that on 24 July 1989 the Director-General of the GATT had received a notification from the Government of Spain under Article 19:8 of the Agreement in which Spain had announced its withdrawal from the Agreement.

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

(ii) Initiation of countervailing duty investigations in the United States

129. The representative of Canada made a number of comments with respect to the standards for the initiation of countervailing duty investigations in the United States. In two recent cases the United States had opened countervailing duty investigations despite the fact that the petitions which had led to these investigations did not appear to contain the necessary elements required by Article 2:1 of the Agreement. He recalled that his delegation had raised this question in the Committee at its meeting in May 1988 in relation to an investigation of thermostats from Canada. In that case the petitioners had failed to provide evidence to support their allegation that Canadian producers were being subsidized. The petitioners had mentioned two Canadian programmes and alleged that Canadian producers and exporters would have been eligible for assistance under these programmes, even though they had noted that one of these programmes had been discontinued in 1985. The Department of Commerce had subsequently found that Canadian producers were not being subsidized and no countervailing duties had therefore been applied. In a more recent investigation, involving limousines, the evidence provided by the petitioners had been limited to general descriptions of programmes which might be available but the petitioners had not provided any specific information on the availability of these programmes to Canadian producers of limousines. As in the case of the investigation of thermostats, the Department of Commerce had also in this case reached a negative preliminary determination.

130. The representative of Canada considered that the initiation of a countervailing duty investigation in the absence of sufficient evidence of subsidization must be seen as harassment of exporters. In the two cases to which he had made reference, Canadian exporters had been forced to undertake costly legal defences and the opening of these investigations had caused uncertainty to these exporters. He requested the delegation of the United States to explain how in these two cases the opening of an investigation could be justified under the "sufficient evidence" standard of Article 2:1 of the Agreement. Furthermore, he asked whether in the view of the United States the mere existence of a programme in a particular country was sufficient ground to open an investigation or whether it believed that it was necessary to have more specific evidence showing that a programme was in fact available to particular producers.

131. The representative of the United States gave the following preliminary replies to the issues raised by the delegation of Canada. In both cases referred to by the representative of Canada investigations had been opened only with respect to programmes which in previous investigations had already been found to constitute subsidies. In the investigation of limousines from Canada the Department of Commerce had declined to include in the investigation several programmes mentioned in the petition which on previous occasions had been found not to constitute subsidies and in respect of which the petitioners had not provided evidence of changed circumstances. Furthermore, the Department had also not included programmes in respect of which the petitioners had not provided sufficient evidence of the existence of subsidization. Another programme which had not been included in the investigation was a programme for which the petitioners had not been able to demonstrate that the Canadian producers of limousines were, in fact, eligible for assistance under this programme. These examples illustrated how the United States applied in its practice the "sufficient evidence" criterion of the Agreement. In response to the question by the representative of Canada of whether the United States required that there be evidence in a petition that producers were in fact eligible for assistance under a given programme, he said that eligibility was an important factor in decisions on the admissibility of petitions. By way of general comment, he pointed out that the countervailing duty legislation of the United States was intended to provide relief from subsidized imports to all members of all industries in the United States. When petitions were filed by small businesses the Department of Commerce could not apply the same strict standards to determine the sufficiency of petitions as in the case of petitions filed by large multinational corporations.

132. The representative of Canada said that in both cases to which he had made reference the Department of Commerce had found in the course of its investigations that no subsidization existed. While it could be argued that the remedies under the Agreement should be available to all industries, regardless of their size, it should also be kept in mind that the opening of investigations imposed a serious burden, in particular on small exporters against whom allegations were made. Article 2:1 of the Agreement was quite clear in its requirement that there must be "sufficient

evidence" to justify the opening of investigations. While this term had not been defined, it should be applied in a meaningful manner so as to avoid harassment of exporters.

133. The representative of the United States said that he would communicate the concerns expressed by the delegation of Canada to his authorities.

134. The representative of the EEC said that under the Agreement it was not sufficient that a petition contain sufficient evidence of the existence of a subsidy. There also had to be evidence that a subsidy had been granted or was available to a particular exporter.

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

(iii) Imposition of countervailing duties by the United States on fresh, chilled or frozen pork from Canada

136. The representative of Canada said that at the meeting of the GATT Council in November Canada would request the establishment of a Panel under Article XXIII:2 of the General Agreement in the matter concerning the imposition of countervailing duties by the United States on fresh, chilled or frozen pork from Canada.

137. The Committee took note of the statement made by the representative of Canada.

M. Annual review and Report to the CONTRACTING PARTIES

138. The Committee adopted its Report (1989) to the CONTRACTING PARTIES (L/6590).

Date of the next meeting of the Committee

139. The Committee agreed to hold its next regular meeting in the week of 23 April 1990.