

GENERAL AGREEMENT ON

RESTRICTED

SCM/M/57

5 March 1992

TARIFFS AND TRADE

Special Distribution

Committee on Subsidies and
Countervailing Measures

MINUTES OF THE MEETING HELD
ON 27 JANUARY 1992

Chairman: Mr. Johannes Potocnik (Austria)

1. The Committee on Subsidies and Countervailing Measures ("the Committee") held a special meeting on 27 January 1992.

2. The Committee considered the following item:

United States - Measures affecting the export of pure and alloy magnesium from Canada - Request by Canada under Article 17:3 of the Agreement for establishment of a panel (SCM/130 and 135).

3. With regard to the second item on the agenda of the Committee circulated in GATT/AIR/3284, "Norway's measures regarding salmon fish farmers - Request by the United States under Article 17 of the Agreement for conciliation", the Chairman said that it was his understanding that the delegations of the United States and Norway had agreed to postpone the Committee's consideration of this item in order to allow time for further consultations. He therefore proposed that this item be deleted from the agenda of the present meeting.

The Committee took note of the statement and so agreed.

- United States - Measures affecting the export of pure and alloy magnesium from Canada - Request by Canada under Article 17:3 of the Agreement for establishment of a panel (SCM/130 and 135)

4. The Chairman recalled that on 16 December 1991 the Committee had held a conciliation meeting to discuss this matter and to examine the submission by Canada in SCM/130. He drew the Committee's attention to SCM/135 in which Canada requested the establishment of a panel under Article 17:3 of the Agreement to examine this matter.

5. The representative of Canada said that Canada was requesting the establishment of a Panel pursuant to Article 18:1 of the Agreement to examine whether the United States' initiation of an investigation into imports of pure and alloy magnesium from Canada was consistent with its

obligations under Article 2:1 of the Agreement. He recalled that on 5 September 1991 the US Department of Commerce had accepted a petition filed on behalf of Magnesium Corporation of America for the imposition of anti-dumping and countervailing duties on these imports. Consultations pursuant to Article 3:1 had been held on 23 September 1991. Unfortunately, these consultations had not resulted in a satisfactory resolution of the matter. Conciliation pursuant to Article 17 of the Agreement had similarly failed to resolve the matter. His Government's complaint arose from concerns expressed by Canadian producers of these products. Canada was a substantial producer of pure and alloy magnesium; its industries had traditionally looked to export markets and were seeking fair and equal treatment from the US authorities in this matter. In the course of consultations and of conciliation, as well as in a diplomatic note presented to the US Government on 23 September 1991, his authorities had pointed out that Magnesium Corporation of America did not represent the US domestic industry as required by the Agreement, and that the United States could not, therefore, initiate an investigation based on the latter's petition. Furthermore, Canada had asked US officials to verify whether the petition had in fact been taken on behalf of the US industry. Canada had been advised that the US authorities had taken no steps to verify whether the petition was on behalf of the US industry, and that they did not intend to do so. He said that Magnesium Corporation had indicated in its petition that it represented 22 per cent of US domestic production. The other two US producers, Dow Magnesium and North West Alloys, had not joined in that petition on the basis of which the US authorities had initiated the investigation on 25 September 1991. On 16 October the US International Trade Commission had made a preliminary determination of injury. The United States had relied on the assertions of the petitioner, Magnesium Corporation, that it represented the US domestic industry as a whole, and based on those claims and those claims alone, had initiated its investigation. The United States had not taken steps to verify that the petitioner did in fact represent the US industry. Canada therefore considered that the initiation by the United States in these circumstances was inconsistent with the obligations set out in Articles 2:1 and 2:3 of the Agreement, and had thus decided to proceed with the request for the establishment of a panel to examine these measures.

6. The representative of the United States said that since the procedural requirements of Articles 17:3 and 18 had been met, the United States would not object to the establishment of a panel at the present meeting. He said that this agreement should not be taken in any way as precluding the United States' ongoing legal right to argue in front of the panel that aspects of this dispute were premature and were not a proper subject for a panel decision.

7. The representative of Japan said that in Japan's view, many anti-dumping and countervailing duty cases had taken place due to the lack of appropriate application of provisions on "standing". This was one of the most important areas in the Code on Anti-dumping and on Subsidies and Countervailing Measures. Japan supported the establishment of a panel in this case and reserved the right to intervene in the panel's proceedings.

8. The Chairman noted that the United States did not oppose the establishment of a panel to review this matter. He therefore proposed that in accordance with the provisions of Article 18:1 of the Agreement, the Committee agree to establish a panel as requested by Canada. Unless he was informed by the United States within the next few days that it wished to suggest modified terms of reference for the panel, the standard terms of reference provided in Article 18:1 would apply.¹

9. He also proposed that in accordance with Article 18:3 of the Agreement, the Committee authorize him to decide, in consultation with the parties concerned, the composition of the panel.

The Committee so agreed and took note of the statements.

¹As no such request was received by the United States, the following standard terms of reference will apply to the panel:

"To review the facts of the matter referred to the Committee by Canada in SCM/135 and, in light of such facts, to present to the Committee its findings concerning the rights and obligations of the signatories party to the dispute under the relevant provisions of the General Agreement as interpreted and applied by the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement."