

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

SCM/M/Spec/2  
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Committee on Subsidies and  
Countervailing Measures

MINUTES OF THE MEETING HELD ON 3 MARCH 1982

Chairman: (a.m.) Mr. B. Eberhard (Switzerland)  
(p.m.) Mr. M. Ikeda (Japan)

1. The Committee on Subsidies and Countervailing Measures met on 3 March 1982. The participation in the meeting was limited to the Signatories only.
2. The purpose of this meeting was to examine the status of notifications of subsidies required under Article XVI:1 of the General Agreement. The delegation of the European Community had requested that the Committee consider, at this meeting, a matter connected with the interpretation to be given to Article 9 of the Agreement. The EC request had been circulated in document SCM/Spec/10. Another document relevant to this item was a communication from the United States circulated in SCM/Spec/8. The Committee agreed to address this question once it had completed its discussion on notifications under Article XVI. The Committee's attention was also drawn to a request by the United States to initiate conciliation under Article 17:1 (SCM/Spec/11).
3. The representative of Chile raised a point of order. He wished to have an explanation why the participation in the meeting was limited to the Signatories. He recalled that when this meeting had been decided by the Committee, the Chairman had replied to a question from the observer from Argentina stating that the meeting would be open to observers as well. He was very disappointed to see that the participation was restricted to the Signatories only. He did not see any substantive reason for this limitation in terms of consideration of notifications pursuant to Article XVI:1. Therefore he considered that this item should not be dealt with at this meeting but postponed to another session of the Committee with the participation of observers.
4. The Chairman thanked the Chilean representative for having expressed the interest of observers. As already agreed, the notifications would be examined in detail with observers present. The subject under discussion at the current meeting, however, was examination not of notifications but of the status of notifications, and in particular a review by Signatories of problems that could arise in connexion with the preparation of notifications.
5. The representative of Chile said that if the Committee was only to consider the state of notifications under Article XVI:1 and not to carry out an in-depth examination of notifications, then it was something he could take note of. However he wished to point out that the Committee had never decided to have such a restricted session on this subject. He wondered whether examination of the state of notifications was really a confidential subject.

He saw only two instances where a matter could be considered as confidential. Firstly if a matter was brought by a delegation which requested confidentiality, secondly, in any dispute settlement case. For these reasons he could not agree with the Chairman's explanations and did not see any justification for this meeting being restricted. Consequently he wanted to insist that this meeting should be open to observers even if the subject was the status of notifications.

6. The Chairman said that even if the status of notifications was not a confidential subject, several delegations might wish to discuss the reasons why the current situation was not satisfactory. Such a discussion was perhaps more open and more conclusive if it took place, at least in the initial stage, between Signatories without observers being present. That would not prevent the Chilean representative or observers from raising any problems they might have regarding the status of notifications and their content at the meeting concerned with the substance of notifications.

7. The representative of Chile said that he disagreed totally with the Chairman's assessment of the situation. The examination of this point did not require a restricted meeting. Secondly he wanted to emphasize that normally, if a decision as to the character of a meeting had to be taken, there had always been consultations with Signatories. The present problem could have been clarified and resolved if Signatories had been consulted prior to the meeting. In no case had his delegation been consulted on this problem. He wanted to stress that in the future such a procedure should not be repeated.

8. The representative of Yugoslavia supported the view expressed by the Chilean representative. Article XVI of the General Agreement constituted an obligation for all contracting parties. That was an additional reason not to limit participation to Signatories only during the discussion on notifications.

9. The representative of the United States associated himself with the views expressed by the representatives of Chile and Yugoslavia, that the meeting to discuss notifications under Article XVI:1 of the General Agreement should not have been limited to Signatories only. He hoped that in the future any discussion of this type would be open to observers as well. The representative of Finland recalled that at the previous meeting of the Committee he had raised a question concerning the status of observers and said that Signatories might have some interest in posing certain questions to observers interested in participating in such a discussion. As obligations under Article XVI:1 was applicable to all contracting parties he would prefer to have this meeting open to observers as well. However, as the meeting had been convened, to his regret, without observers he thought that there was no use in prolonging the discussion but the Committee should concentrate on the substance of the matter.

10. Before opening the discussions, the Chairman referred briefly to past developments regarding notifications. At practically all its meetings the Committee had examined the unsatisfactory status of notifications under Article XVI:1. At its meeting in April 1981, there had been agreement that the Signatories would communicate their replies to document L/5102 sufficiently in advance so that at the October 1981 meeting the Committee could examine the questionnaire on subsidies as well as qualitative aspects of replies to it (SCM/M/6, paragraph 15). On 21 September 1981, the acting Chairman had circulated an aide-mémoire (SCM/8) reminding the Signatories of

the Committee's decisions regarding subsidy notifications, and urging them to take the necessary action for notifications as complete as possible to be submitted by the agreed deadline so that the Committee could consider them at its October 1981 meeting. At that meeting, however, the Committee had not been able to begin discussion on the matter, having before it notifications from only four Signatories which provided practically no details on the situation in the industrial sector. In those circumstances, the Chairman had underlined that if the Committee did not want to lose its credibility it should seriously reflect on how to remedy the situation. Accordingly he had again urged the Signatories to make every effort to ensure that notifications as complete as possible were submitted without delay by all Signatories. The Committee had agreed that Signatories which had not yet communicated notifications or complete notifications should do so before the end of 1981. Signatories which considered that they did not grant subsidies in the sense of Article XVI:1 should notify the Committee accordingly. Thereafter, the Committee would hold a special meeting in February 1982 to discuss the matter (SCM/M/9, paragraph 21). Document SCM/M/10 and Corr.1 reported the current status of notifications and the aspects they covered. The Committee had received notifications from thirteen Signatories out of twenty, including one from a member country of the Community. From a first reading of that document, it was clear that before studying in detail the questionnaire on subsidies and qualitative aspects on responses to it, the Committee should identify and examine the problems that were preventing a number of Signatories from fulfilling their obligations under Article XVI:1 of the General Agreement and Article 7:1 of the Agreement. In that connection the Committee could consider three questions. The first was why the Signatories which had already notified, and most of which were known to be granting subsidies on industrial products, had not notified those subsidies with a few exceptions. Were they faced with statistical and administrative problems, or were more fundamental problems involved, for example reluctance to draw attention to certain practices that could be questioned by other Signatories? Without a frank and open reply to that question, no real progress could be made in that area. The second question was why developing Signatories - some of which had already indicated, in the commitments they had taken on, that they were granting export subsidies in various sectors - had not yet submitted any notifications. By notifying, those Signatories would be making an appreciable contribution to better transparency, and thus to proper operation of the Agreement. The third question was that of the structure of the questionnaire on subsidies. In conclusion, he underlined that the question of notifications was important not merely because it involved an obligation under the General Agreement and the Code. Indeed, that obligation was not an end in itself, but had a specific significance and justification. By improving transparency it contributed to international discipline in regard to subsidies. Moreover, being a collective and shared effort, such transparency also had a preventive effect. In that perspective, any remaining reluctance seemed to be attributable to an unduly unilateral defensive approach and to imply some disregard for the offensive impact of notifications. Lastly, notifications would help to avoid or eliminate any suspicions contributing to worsen the climate of international trade.

11. The representative of the Community recalled that his delegation had circulated a note (document SCM/17) presenting preliminary observations to contribute to the Committee's discussion of problems arising in connection with the notification exercise under Article XVI:1 which needed to be reconsidered in the light of the new provisions of the Code. Like most contracting parties, the European Community and its member States applied a number of

programs and programmes for the promotion of social and economic policy objectives. These objectives were mentioned in Article 11 of the Code. Those programmes were already widely known to the Community's trading partners, and, through official publications and information provided in specific cases, a certain transparency existed. The direct or indirect trade effects of those programmes were extremely difficult to estimate, in the terms mentioned in Article XVII. In the Community view, only programmes which provided a subsidy on the production, manufacture or export of particular goods should be considered as having trade effects on other countries - and then only in particular circumstances, to be assessed case by case. Regarding programmes of that type, the Community was of the view that no subsidy scheme was presently being operated directly or indirectly so as to increase exports or reduce imports to an extent requiring notification under Article XVI:1. The European Community and its member States remained ready nevertheless to provide information in response to any specific requests in accordance with the provisions of Article VII of the Code. Several Signatories had made a subjective approach to the question of notifications in considering whether or not they should notify one or other subsidy and regarding the trade effects of such subsidies.

11. The representative of the United States said that he had taken note of the statement by the representative of the European Community that in the light of the Code there should be a reorientation of obligations under Article XVII. From his reading of the Code he could not understand why these obligations should be reoriented. He considered that the purpose of Article 7 of the Code was to take care of the sort of situations that occurred when a signatory felt that a matter had not been notified in terms of Article XVI:1. In addition he wanted to note that, with the exception of Luxembourg, the EC member States had not fulfilled their notification obligations under Article XVII. With respect to the EC contention in SCM/17 that no subsidy schemes besides those notified in L/3102/Add.6 operated directly or indirectly to affect trade, he wanted to remind Signatories that at least the Chairman of the CONTRACTING PARTIES at the XIII Session had invited all contracting parties to provide information on subsidies irrespective of whether, in the view of an individual contracting party, they were notifiable under Article XVII.

12. The representative of Finland said that it was evident that there were certain deficiencies, both in terms of coverage and a complete lack of notifications from some Signatories. It was regrettable that observance of obligations under Article XVI:1 was rather an exception than a rule. He thought that there was considerable room for improvement, both in quantitative and qualitative terms and this was a problem of great urgency for the proper functioning of the Committee. He believed that subsidies could easily become a major part of protectionism and as they tended to proliferate, the success of multilateral trade required that their use should be discouraged. Finland had traditionally supplied very detailed notifications on its agricultural subsidy. It had been much more difficult to establish which generally applicable subsidy measures were falling under Article XVI:1. In his delegation's view notifying such measures under Article XVI:1 might easily be embarrassing. Finland was, however, ready to reconsider its position in order to provide better transparency. His authorities were therefore working

on a complementary notification which would cover measures of general application and those related to industry. This effort was being made with the expectation that other Signatories would act accordingly.

14. The representative of Canada agreed with the previous speaker that in the past the quality and quantity of notifications under Article XVI:1 had been sadly lacking. A few factors might have contributed to such a state of affairs. Firstly, the lack of the injury test by a major contracting party prior to the negotiation of the Subsidy Code. There was also a feeling by many authorities that information relating to the subsidy programmes were available to people interested in such programmes and affected by them. There were also problems with respect to the complexity of the questionnaire. As well, in many countries there were difficult domestic circumstances and there was a feeling that by making a full and detailed listing of all government assistance programmes countries would, in some sense, incriminate themselves. The entry into force of the Subsidy Code had removed some of these difficulties. The Code had also provided for some new procedures relating to notification of subsidies. It was the view of his authorities that Article XVI:1 of the General Agreement still contained the central obligation to notify subsidies on Signatories to the Code. The provisions of Article 7 were supplementary and he agreed with the US representative that Signatories should not contemplate a reorientation, as suggested by the representative of the European Community, of the central obligation in Article XVI:1. Article 7 of the Code was not an alternative to this obligation. Canada had submitted a list of industrial subsidy programmes currently in existence. This list was an addition to L/5102/Add.10. This had been done in the interest of transparency which was the chief objective the Committee should be pursuing. He also agreed that there was another objective, namely enforcing a certain discipline in the use of domestic subsidy programmes so that governments would take into account the effects that such subsidies may have in the field of international trade. Signatories should make as complete a listing as possible of all their subsidy programmes, both in the agricultural and industrial areas through a very simple notification procedure. Such notifications should give a brief description of a subsidy, of the sectors affected and the latest annual allocations made under such programmes. The information which the questionnaire attempted to elucidate was, in many cases, difficult or impossible to provide. This should not, however, deter Signatories from making at least a simple notification as he had outlined. Although some Signatories might take the position that it was sufficient to publish details of government assistance programmes in their domestic publications he did not consider that such a measure was sufficient to serve the objective of transparency at the international level.

15. The representative of Chile said that there were two main fields of equal importance. One of them concerned the fact that there were Signatories who had not fulfilled their notification obligations. These Signatories should explain why they had not complied with this obligation and tell the Committee how they intended to proceed in the future. In this respect he noted that the member States of the European Community, all of whom had accepted the Code, had not, with one exception, made any notification. These States had, even within the Community, the competence to grant subsidies other than those which were administered by the EEC and therefore they were obliged to notify these subsidies under Article XVI:1. The second field was that of the quality of notifications. If there were difficulties with the questionnaire it might be necessary to review it and possibly prepare a revised, improved version, on

the basis of notifications submitted so far. Referring to the document SCM/17 he said that he shared the comments of previous speakers concerning the reorientation suggested by the representative of the Community and the reference to Article 7. As to the transparency in the EEC he thought that it was important to have a list of subsidy programmes planned or in operation not only at the Community level but also in member States, together with funds allocated to individual programmes. He would agree that in some cases it was difficult to estimate the effects of some programmes as requested by the questionnaire. However such a list would constitute a minimum of information and would enable interested Signatories to request, if necessary, additional information on specific programmes. As to paragraph 5 of SCM/17 he wished to reserve his position with respect to export credits and revert to this question at a subsequent meeting of the Committee.

16. The representative of Sweden said that his authorities applied a number of domestic aid programmes for the promotion of social, regional, labour market and economic policy objectives. These programmes were already widely known by the trading partners of Sweden. As regards the types of these subsidy programmes he believed that they were not operated in such a way as to increase exports or reduce imports to an extent which would justify notification under Article XVI:1. However he wished to concur with the view expressed by the representative of Finland that it was necessary for the Committee to have a factual basis for its work and therefore his authorities were willing to contribute to this objective and if there was a consensus that a broader notification procedure should be adopted, they would add to the present notification such subsidy programmes.

17. The representative of Switzerland said that the situation with respect to notifications was not yet satisfactory, but had certainly improved since the last meeting of the Committee. He wanted to urge those Signatories who had not met their obligation to do so without further delay. With respect to coverage only very few Signatories had submitted full notifications, but it was encouraging that some others had promised to notify industrial subsidies in the near future. As to document SCM/17 submitted by the European Community he welcomed the effort to contribute to the important question concerning the notification procedure. He took note of the statement by the European Community that its contribution was of a preliminary character only and he considered it as an invitation to reflect on the issues raised in the document. Among these issues were difficulties such as estimating direct and indirect trade effects, when quite often the only possibility was to rely on rough estimates. He was concerned about the statement in paragraph 2 that transparency had been assured by domestic publications. Such an approach was not consistent with the requirements of Article XVI:1 and would weaken the transparency. On the same line of thinking he considered that paragraphs 4 and 5 also required very careful consideration and he would like the Committee to come back to several issues raised in this document.

18. The representative of Australia said that he was also concerned with the lack of notifications and the quality of some which had been received. Some of the deficiencies were largely in the area of the extent and the effect of subsidies. One of the reasons evoked in this respect was difficulty in ascertaining such extent and effect, another was said to be an unwillingness to incriminate oneself and a reference had also been made to the subjective nature of a subsidy notification. It was true that there was a grey area in which some factors were difficult to measure. The fact remained however, that

if the Committee were to be able to use the notifications they had to be as complete as possible, and in the grey area at least an indication of the programmes - and if necessary with relevant comments by the notifying party - should be provided. He could not agree with the argument that notifying certain measures, in respect of which there were some doubts as to whether they fell within the scope of Article XVI, would be self-incriminating. Some Signatories had always notified such measures and it had never led to any adverse effect on their national programmes nor to challenges or embarrassment. The question of subjectivity was a problem of considerable concern because if such an argument was used, one could always rationalise oneself out of an obligation. The basic fact was that there was an obligation under Article XVI:1 to notify. The wording of Article XVI:1 did not leave a great amount of room for subjective thinking. Referring to SCM/17 he said that the "transparency" referred to by the European Community representative as described in paragraph 2 did not exist until such time as appropriate notifications were made in the GATT context. This Committee, not having details of the programmes which the EC representative had referred to, was not in a position to conduct its work. As to paragraph 3 he thought that its second part provided so much subjectivity that it would totally nullify any obligation to notify under Article XVI:1. He could not agree that it was up to a contracting party to provide for itself as much room to escape or manoeuvre as was provided in paragraph 3 of SCM/17. Apart from an expression of astonishment he refrained from commenting on the EC view that it did not operate any subsidy scheme which was worth notifying under Article XVI:1 as the thought made his hair stand on end. Finally he wanted to stress that there was an obligation on all contracting parties to notify under XVI:1 and those contracting parties included member States of the Community which operated subsidy programmes financed from their national budgets.

19. The representative of India said that it was a fact that notifications had not been forthcoming and that the fact that some contracting parties had started to submit full notifications should encourage other Signatories to notify accordingly. His authorities had been seriously examining this matter and these notifications would certainly facilitate this examination.

20. The representative of Norway wondered whether one should differentiate between Signatories and other contracting parties but he recognized that there were good reasons to expect that Signatories would respect their obligations under Article XVI:1 more strictly than others. Therefore the Committee should reach an understanding that all Signatories would notify their subsidy programmes and to agree on the scope and procedure for these notifications. As to the notification of industrial subsidy programmes he had no reason to believe that his authorities would not follow the guidelines that the Committee might agree upon in this respect.

21. The representative of New Zealand said he agreed with the interpretation presented by the representative of Canada. He also wished to associate himself with the remark made by the representative of Chile as to what would constitute a minimum in order to meet one's obligations under Article XVI. He considered this discussion extremely helpful and believed that it would help his authorities to focus more precisely on their obligations under Article XVI:1. The representative of Brazil said that his authorities might have some difficulties in answering certain questions in the questionnaire and he wanted to reserve his delegation's position on this aspect. He noted that not only his authorities but also many developed countries, such as

New Zealand, France and other European countries had not submitted notifications. On the contrary only four countries had made full notifications. He would like to have more clarification as to the scope of notifications and he considered that if the above-mentioned countries had fulfilled their obligations under Article XVI:1 it would have constituted an important encouragement for developing countries to notify. He concluded by saying that he acknowledged obligations resulting from Article XVI:1 and gave them his full support.

22. The Chairman said that the Committee seemed to have moved on to the second part of the discussion, regarding the reasons preventing certain signatories from notifying. What were those reasons for not contributing to achieve transparency which had been recognized as necessary by all speakers?

23. The representative of Uruguay said that the statements made so far had disturbed him because since the Code had entered into force certain doubts had not been dispersed. The fact that only thirteen countries had submitted their notifications indicated that obligations under the Code were not fulfilled in a way that would encourage other countries to join. It seemed that those who wanted to participate in the notification exercise provided some information while those who did not want to participate did not provide any. He believed that the objective was a good one but he thought that the discussion should not only cover the consideration of each notification but it should also determine what goals were to be achieved as the final result. As there were no contributions from at least sixty contracting parties it was difficult to imagine what interest a country would have in signing a Code which involved obligations, while those who really applied subsidies were not going to notify anything whatsoever. If only some contracting parties notified their subsidies it would not be possible to have an idea of the consequences subsidies had on international trade.

24. The representative of Canada referred to the second question originally asked by the Chairman why some Signatories, and among them developing Signatories who had made commitments concerning export subsidies, had not notified these practices under Article XVI:1. He wanted to urge all Signatories who had export subsidies to notify them in accordance with Article XVI:1. In particular he wanted to ask whether the US government intended to notify the DISC as a subsidy within the meaning of Article XVI:1 and whether the US representative could describe what had been done to date or was planned to bring the DISC in conformity with the Code within a reasonable period of time in accordance with note 2 to Annex I of the Code.

25. The representative of Korea said that his authorities would be able to submit its notification of subsidies in the near future. The representative of Uruguay said that one of the difficulties which prevented countries from notifying their subsidies was that if a country notified them, it would find itself in a position of inferiority with regard to those countries which had not notified anything. For these reasons many countries waited to see what other countries would do and this created a vicious circle. The representative of Pakistan said that some developing countries had a genuine motive to wait and see how the notification procedure would work. This was also the case of his country. Subsidy programmes operated by his authorities were published in domestic publications and therefore there was some transparency in this respect.

26. The representative of Chile said that he could not agree with those who had expressed the view that since some countries had not notified, others felt that they should not notify either, or that because difficulties inherent in the procedures had not been resolved, they could suspend their obligations. These obligations resulted not so much from the Code but from the General Agreement and should have been fulfilled a long time ago. For the credibility of the Committee and the future operation of the Code it was very important that all Signatories notified their subsidies as quickly as possible, irrespective of whether they were developed or developing countries. Once all material for an in-depth examination of notifications was available, the Committee would be in a much better position to determine difficulties and problems and to decide whether any changes to the questionnaire were necessary.

27. The representative of the Community said that the Community's contribution reproduced in document SCM/17 had shown that there were several concrete problems in the area of subsidy notifications. It had in no way been the intention of the Community and its member States to evade any obligations under Article XVI. But they had wished to draw the Committee's attention to those problems. The Chilean representative had rightly pointed out that all countries, including developing countries, were concerned and should carry out their obligations under Article XVI, and that it was not a proper approach to decline to notify until such time as others did so. He noted the question put by Canada to the United States regarding the DISC, and reserved the right to revert to it at an appropriate moment.

28. The representative of the United States said that the questionnaire used for Article XVI:1 notifications did present certain problems for certain types of programmes but in some of the notifications submitted so far there had been a flexible approach to the questions asked in the questionnaire. Therefore if a Signatory found that it could not adequately answer a particular point in the questionnaire it could at least indicate that such a question did not apply or was impossible to answer.

29. The representative of Finland said that it would be difficult to go into detail in respect of the questionnaire in a situation when it was not known what kind of notifications would be coming from a number of Signatories. He wanted, however, to remark that the information required under part II.A of the questionnaire was something which could very seldom be quantified exactly. The way to avoid difficulties resulting from this situation was rather to adopt a flexible approach, as suggested by the representative of the United States, than not to notify at all. This part of the questionnaire was certainly eligible for consideration in the future.

30. The Chairman said that the discussion had revealed some concurrence on several points that seemed to him fundamental. The first was that the Article XVI:1 obligation was fully recognized and confirmed by all contracting parties and in particular to the Signatories. In that connexion, at the 13th Session of the CONTRACTING PARTIES the Chairman had stated that all contracting parties should furnish information on the subsidies they applied even if in their view those subsidies were not within the purview of Article XVI:1. That was a very extensive interpretation of the Article XVI:1 obligation but it had never been challenged. In his view, the Code had not changed that obligation in any way. Secondly, all speakers had underlined the need for transparency. Everyone had recognized the usefulness, even the

absolute need in the present situation, to take the Article XVI:1 obligation very seriously. Thirdly, some delegations had had misgivings about the incrimination effect of notifications. Yet if one acknowledged transparency as such as having some virtue, there was no reason to fear any effect of automatic incrimination, and consequently that should not prevent the Signatories from fulfilling their obligations. Fourthly, in certain cases the questionnaire involved some practical problems. One might wonder whether the shortcomings of the questionnaire should not be remedied at an appropriate moment. For the time being the most reasonable approach seemed to be to show some flexibility as to use of the questionnaire, and as to replies to its second part in particular. In addition, however, certain contradictions had emerged in the discussion. Some delegations had stated that notifications were not necessary because transparency was already assured through official publications. That conclusion was disputable, however: when a measure was published at national level it was contradictory to claim that notification at multilateral level was superfluous or even impossible. Secondly, reference had been made to the possibility under the Code of requesting and obtaining additional information that could make notification unnecessary. In that connexion the Chairman drew the Committee's attention to the risks inherent in any bilateralization of information which would not correspond to the transparency sought. Lastly, the problem of subjectivity of notifications had also been underlined. In that connexion the Committee should start from the premise that a determination as to whether or not a measure was within the purview of Article XVI:1 should not be made unilaterally, and in case of doubt one should opt for notifying rather than refraining. If in the light of the discussion agreement could be reached on that approach, one would have attained some mutual encouragement to improve and supplement the notifications still lacking.

31. For the Committee's future work, the Chairman proposed that the Signatories should renew their efforts to present or complete their notifications as soon as possible. Once the first set of full notifications had been presented, the Committee could examine the questionnaire and its shortcomings. To be successful in that task the Signatories should not adopt a "wait and see" attitude but should complete what was already under way. The Committee should also set a new and definitive deadline for the submission of notifications.

32. The representative of the United States said that he agreed with the Chairman's proposal but wanted to make an additional suggestion as to the time-period. As the Committee was going to meet at the end of April the question of notifications should be carried over to that meeting as an agenda item and during the intervening period the Signatories should make an effort, either to complete notifications already made or to submit new notifications. At that meeting the Committee should also examine the substance of notifications. If any Signatory considered at that time that adequate notifications had not been received he could bring the matter to the attention of the Committee in accordance with Article 7:3.

33. The Chairman took note of the United States proposal. Signatories should make every effort to present or complete their notifications sufficiently early so that at its April meeting the Committee could examine them and revert to the matters discussed at the current meeting. It was so decided.

34. The representative of Canada wished to know when he would receive an answer to the question he had asked the US delegation concerning DISC. The representative of the United States said that he would reply at the next meeting when the Committee would examine the substance of notifications. The representative of Canada said he hoped that the representative of the United States would be able not only to provide the answer to his specific questions but he would also, in the spirit of the discussion held at this meeting, and in accordance with the decision just taken, come forward with a notification of the DISC.

35. Following a previous arrangement, the Committee proceeded, at the end of its morning session, with the election of a new Chairman. The Acting Chairman, Mr. B. Eberhard thanked members of the Committee for their co-operation and the advice he had enjoyed in the performance of his duties. The Committee elected Mr. Mishihiko Ikeda (Japan) as its new Chairman.

Chairman: (p.m.) Mr. M. Ikeda (Japan)

36. The Chairman said that after extensive consultations he felt authorized to propose Mr. Vasconcellos of Brazil as the Vice-Chairman of the Committee. The Committee accepted this nomination. The Chairman said that in performing his duties he would have only two guidelines: the letter and spirit of the Agreement and the will and wish of the Committee. He also hoped for the co-operation of Signatories and of the secretariat in performing his duties.

37. On behalf of the Committee the Chairman expressed sincere thanks and appreciation to the former Chairman, Mr. Eberhard. He said that Mr. Eberhard had always been appreciated and respected by the Committee and it was a great advantage to the Committee that he would continue to participate in its work and would contribute to the success of its deliberations. Signatories expressed their appreciation and thanks to Mr. Eberhard for his performance as Acting Chairman. They also congratulated the new Chairman and Vice-Chairman and wished them all the best in their new functions.

38. The Chairman welcomed the representative of Egypt, Mr. Abdel-Fattah, who for the first time participated in the meeting of the Committee as a Signatory. The representative of Egypt said that his Government would abide by the provisions of the Agreement and would fully co-operate with other Signatories in the Committee.

39. The Chairman recalled that the delegation of the European Community had raised, in its request to have a special discussion in the Committee (SCM/Spec/10), several issues the most important of which was, as he understood it, the following: did the Agreement prohibit an export subsidy on a processed agricultural product which had been produced from a primary agricultural product consumed in the production of the processed product, if such a subsidy was essentially limited to the amount of the subsidy which would have been payable on the quantity of such primary agricultural product if exported in the primary form. It was also his understanding that the European Community would like to have a general interpretation of the application of Article 9 of the Agreement without reference to any specific case, although it had been prompted to raise it at this moment because of divergencies of views with respect to subsidies on export of pasta.

40. The representative of the Community made a statement regarding interpretation of Article 9 which has been circulated in document SCM/Spec/12.

41. The representative of the United States said that his delegation was deeply troubled by the suggestion that the Committee discuss, at this point the question of interpretation of Article 9. He wished to draw the Committee members' attention to a problem which he considered fundamental to the operation of the Agreement. On 2 December 1981 his Government had requested consultations with the Community under Article 12:1 of the Agreement concerning EC subsidies on the export of pasta. On 25 January 1982 the Community had finally replied refusing consultations under Article 12:1. The Community had indicated that it would prefer to discuss the matter either in the Committee or informally. On 2 February 1982 his delegation had reiterated its request to have consultations under Article 12:1. The Community response had been to ask for this meeting to discuss the interpretation of Article 9. In document SCM/Spec/11 his delegation had outlined its viewpoint on this question of principle. There was a considerable risk to the integrity of the dispute settlement procedures of the Agreement in the Community's refusal to accept the US request for consultations. There was no basis in the Agreement for such a refusal. In thirty-five years history of GATT one had never heard that a basis for refusing consultations could be that an acceptance of those consultations might be taken to imply recognition of the validity of the complaint of the requesting party. Furthermore he did not think that there was any justification for refusing consultations on the basis that one did not agree with interpretations of the requesting party. He wanted to emphasize the concern of his delegation because of the Community's refusal. The alternative which the Community presently wished to pursue was to have a general discussion by the Committee of the important issue of interpretation. However under the dispute settlement procedure provided for in the Agreement, the Committee was supposed to serve as a conciliatory body and if this conciliatory process did not product a mutually satisfactory solution the Committee should establish a panel which would give careful consideration to the positions of both parties on all issues of interpretation. Then the Committee should act on the panel's report which of course would not have any formal status unless and until adopted by the Committee. The discussion that the Community sought to pursue in the Committee would be on an issue which should be carefully examined in the dispute settlement process. Therefore if the Committee would discuss this issue at this meeting the consequences for the dispute settlement process would be very serious. Perhaps some delegations would agree with the Community, some others would agree with the United States. But this kind of discussion would prejudice the possibility of having a fair dispute settlement process. For these reasons he believed that the Committee should not address this issue of interpretation at this time. It would be a very serious mistake and it would haunt this Committee for many years to come. The Community seemed to be very concerned about the question of interpretation of Article 9, but in almost every dispute settlement case the defending party thought that the issue was fundamental and that the complaining party was wrong about its interpretation. Nevertheless parties had never refused to engage in consultations. The Community's refusal would constitute a very dangerous precedent. He also wondered whether the Community really cared what the Committee thought about this issue because its representative had said that the Community would never accept another interpretation of Article 9. It seemed to offer the Committee the opportunity of either agreeing with the Community or seeing it leaving the Agreement. He hoped that he had misunderstood the representative of the Community on this

point. He was also surprised to hear the representative of the Community say that it could not accept an interpretation of Article 9 coming out of the dispute settlement process which would modify its obligations. Of course the purpose of dispute settlement process was not to modify the obligations of anyone but to determine whether the party's actions conformed with its existing obligations.

42. The representative of Chile said that his delegation was very concerned by a fundamental question raised in the EC statement. He had no intention, at this point, to take a position either in favour of the United States or the Community but he wanted to address a problem of special importance to the Committee, which constituted the most delicate problem in its discussion of the whole question. He considered that this problem had to be resolved before any other question of substance could be discussed. This problem was the Community's refusal to undertake consultations with another Signatory. In making this intervention he was trying to defend the interests of his country with a view to the future because he did not want to see his country in the situation of requesting consultations with another Signatory and this Signatory refusing consultations for one reason or another. He believed that the provisions of the Agreement and the provisions of the General Agreement were absolutely clear on this point. Practice also confirmed that a country, when requested to undertake consultations could not refuse to do so. As a counterpart to this, the country which had been invited to undertake consultations was not deemed necessary to accept allegations of the country which had requested consultations by the mere fact of agreeing to have consultations. For his delegation this matter was of such great priority that it was indispensable to arrive at a decision on this problem before the Committee could embark on the interpretation of Article 9. He thought that for the moment the discussion should concentrate on this point because it most profoundly affected the rights and obligations emanating from the Agreement and from the practice of resolution of disputes under the General Agreement.

43. The representative of Switzerland, underlining the importance of the question of interpretation and application of Article 9 of the Agreement, said that he could support a number of elements in the statement by the Community representative. At the current juncture it would be difficult for the Committee to impugn the motives of any delegation which invoked one or other legal basis in a dispute. It was useless to speculate on that subject because in the extreme case one could also allow that there had simply been a legal mistake. The interpretation of Article 9 seemed extremely important, but it seemed excessive to say that the question was too important to be decided on by a panel. In actual fact, it was never a panel that decided, but ultimately the Committee that approved the report. The decision was carefully prepared by the panel but was made by all of the members of the Committee. In that connexion he could not see why in the present case, even if it was particularly important, any pre-condition was necessary in the sense that a refusal to consult was tantamount to a pre-condition. Such an attitude seemed to him very disquieting. He underlined that while the Committee had some very important substantive matters before it, the question of the proper functioning of procedure, and of the dispute procedure in particular, was also extremely important. It was fundamental that all parties to the dispute should show good will to secure the application of the Agreement.

44. The representative of the Community said that the three preceding statements had been in the same camp. The Chilean representative had forgotten to read document SCM/Spec/10, otherwise he would have known that for the moment the only item on the agenda was the question of interpretation of Article 9. Document SCM/Spec/11 was not on the agenda. Accordingly, it was a curious approach to suggest discussing first SCM/Spec/11 and then SCM/Spec/10. The Community had expressed its readiness to have informal consultations. One could not therefore reproach the Community with having refused discussions with the United States. It was true that the Community had replied to the United States letter of 2 December only on 25 January. But the Community was not just one person and account must be taken of the co-ordination procedure which had taken some time. Moreover, the Community could not accept a consultation request consisting of one half-page. Any request for consultation in terms of Article 12:1 had to include a statement of available evidence and he could see no such statement in the United States letter. When the former Chairman of the Committee had reproached the Community with not having observed the procedure, he should have borne in mind that in the recent case of flour the procedure had not been observed in at least eleven cases with the complicity of the Chairman. With respect to the statement by the United States representative, he could agree that there was an antinomy between the substantive matter and the procedure. Quite clearly, what was important for the United States and for Switzerland, was not the substantive matter but the procedure. In speaking of conciliation therefore, the question was conciliation on what? It was clear that conciliation would not be on procedure but on the substance of the matter. And the substance of the matter was to determine the content of the obligations stipulated in Articles 9 and 10 of the Agreement. It would be interesting to know what injury was alleged. The complaint by the United States Pasta Association included certain evidence of injury, but none was mentioned in the United States request. The United States letter of 2 December had simply raised the question of Article 9. In fact it was not a matter of settling disputes but of giving to Article 9 an interpretation that went entirely beyond rules established twenty years before. How could the Community be expected to accept consultation on that basis? The Community was ready to discuss with the United States representatives, but informally, in order to request certain clarifications and in particular to ascertain whether the United States declaration of 1960 was still valid. If the United States contended that it was not a matter of interpretation of Article 9 but simply a matter of injury, would United States production really be in danger because of Community exports which were equivalent to 2 per cent of that production? In conclusion, he pointed out to the Swiss representative that the Community had not set any pre-condition for consultations. The Community had proposed recourse to Article XXII and the United States had refused. The problem at issue concerned the content of Article 9. If that was not a real problem for the Chilean and Swiss delegations, they might perhaps tell the Committee how they would interpret that article. That might help to set in motion the phase of conciliation with the United States.

45. The representative of Pakistan said that he was not an expert on dispute settlement mechanism of the Agreement but he thought that the Committee should not spend too much time on procedural questions. Certainly consultations should be welcomed but as in this case the European Communities felt strongly that the matter did not fall within certain provisions of the Agreement and as it was willing to bring the matter before the Committee it certainly acted bona fide. The Committee should therefore concentrate on the heart of the

matter which should constitute the substance of the discussion. He wished that the Committee proceed with the exchange of views on the interpretation of various provisions of the Agreement in order to be in a better position to advise the parties on further proceedings.

46. The representative of Chile said that he had become used to the language used by the representative of the Community and he would take this aggressive approach in good form. The representative of the Community had wondered whether he had read document SCM/Spec/10 and therefore he wished to refresh his memory by pointing out that the third paragraph of this document read "The European Community cannot accept a consultation request formulated in these terms ...", and then the next paragraph continued "In the light of this divergence of interpretation of a fundamental obligation of the Code, it seemed to us impossible to accept a request for consultations founded on a totally erroneous understanding of the Code." He said he had to insist on what he had said in his previous intervention. It was a fundamental obligation of a contracting party in general and of Signatories of this Agreement in particular that, if requested to undertake consultations, whether or not they are considered the interpretation of legal provisions of GATT or this Agreement was erroneous, they had to agree to the consultations. It was a basic concept underlying the whole system of the GATT and in particular the system of settlement of disputes. It was not his rôle to defend the United States and neither did he intend but, wanting to avoid an unacceptable precedent being created, he wished to stress that it was unacceptable that a party requested to undertake consultations could refuse to do so. The Committee should clearly reaffirm these fundamental obligations which had always existed under the Agreement to hold consultations. It should also be made clear that acceptance of consultations had never meant a recognition that there was a valid basis for such consultations. He considered this matter as a crucial point which had to be clarified before the Committee could go further with its discussion on the question of substance brought up by the European Community.

47. The representative of Canada said that the questions raised at this meeting were very important to the Committee and to the functioning of the Agreement. His delegation was disturbed by the European Community's refusal to accept consultations when they had been so requested under Article 12:1 of the Agreement. An offer to informally discuss, outside the Agreement, the problems raised by the US delegation was not sufficient to meet the requirements of Article 12:5. As to the request by the European Community to discuss the interpretation of Article 9, he recalled that at its December meeting convened in order to conciliate on the case of wheat flour the Committee had decided that questions of the merits of either side to the dispute should not be, in the first instance, discussed in the Committee prior to the resort to the full dispute settlement procedure. He agreed with the assertion by the US delegation that a preliminary discussion of issues of substance pertinent to the interpretation of rights and obligations under the Agreement would prejudice the resort to the dispute settlement procedures; which was the right of every Signatory. Therefore his delegation was of the view that, at this meeting, Signatories should address themselves primarily to the question of whether the procedures adopted by the parties were appropriate and consistent with their obligations under the Agreement.

48. The representative of India said that he was not sure whether the silent majority to which his delegation belonged was really ready to undertake an examination of substantive aspects of the matter before the Committee, regarding interpretation of Article 9. If the Committee was to proceed with this examination he would have to place on record his delegation's reservation. This matter was complex and it required more examination and the Committee would have to revert to it at a subsequent meeting. As to the question of procedure he hoped that he had been mistaken when he had heard that three earlier interventions had been qualified as belonging to the same camp. He wanted to emphasize that his statement should not be placed in any camp at all. His delegation had always maintained that the question of disputes should be approached in a spirit of co-operation and goodwill. If a country requested consultations under Article 12:1 the party so requested should agree to enter into such consultations promptly. He wanted to reiterate that readiness to comply with a request for consultation should not imply that the party agreeing to consult had, even by remote implication, recognized the merit of the case. Agreeing to consultations should not, and would not prejudice the interests of any party. This understanding was fundamental to the appropriate functioning of the dispute settlement mechanism which was the only method through which Signatories would have their points of view heard and considered.

49. The representative of Switzerland said he did not want to prolong this discussion but he wanted to draw the attention of the representative of the European Community to the fact that he had started his earlier intervention by recognizing that the Community had raised many points which deserved a very careful examination and which deserved his support. Therefore he did not see any reason for qualifying people as belonging to one camp or another. The question addressed by him in his previous intervention went well beyond the procedural aspects but he wanted to add some precision to his earlier remarks. First of all if a party requested consultations under Article 12:1 one could hardly reproach it that it had not demonstrated the existence of prejudice. The correct reading of Article 12:1 would leave no doubt that it did not require such a demonstration. It was therefore understandable that the request for consultations was rather short. Furthermore he could not see how a party which had been requested to enter into consultations could, by the mere fact of acceptance, be deemed as recognizing the legal basis upon which the request for consultations had been made.

50. The representative of Japan said that with respect to the question of acceptance of consultations he was in agreement with the representative of India that the purpose of dispute settlement required a spirit of co-operation. Looking at relevant provisions of the Agreement the only conclusion one could draw was that if a request was made to enter into consultation the other party was obliged to accept such a request. It did not mean that acceptance of a request implied acknowledgement of the argument presented by the requesting party. The Committee should make this point clear in order to avoid that Signatories might have difficulties in accepting a request for consultations. As to the question of interpretation of Article 9 he thought that the Committee would need more time to examine this important matter and he agreed with the representative of India that the matter be deferred to a subsequent meeting of the Committee.

51. The representative of Finland said he regretted that the atmosphere of relations between some major trading partners had been deteriorating. The situation which the Committee had to face had not been foreseen in the

negotiations as nobody had anticipated that there might be a dispute on the subject of holding consultations. At that time it was generally understood that, if requested, consultations would be held. On the other hand he was worried by the feeling in the Committee that the Community had no right to bring the matter before the Committee. He thought that the Community had every right and could request the Committee to pronounce itself on the substance of the matter. One could have various views on whether it was appropriate to pronounce oneself on a matter which had already been brought under the dispute settlement procedure but this should not affect the right of a Signatory to bring such a matter before the Committee. As to the substance of the dispute he had some sympathy and understanding for the way the Community had handled the matter and he was very surprised by the US interpretation of the question of subsidization of export of processed agricultural products. He did not wish to go any further into detail at this point but he wanted to stress that he could not recall any instance during the negotiations of the Agreement when the subsidization of processed agricultural products had been questioned. He did not think that the Agreement had in any way changed the situation as compared to the situation which existed in 1960 when the United States and Finland had had the same interpretation of this matter.

52. The representative of Australia said that he could agree with the representative of the European Community in that the interpretation of Article 9 was not a small matter. He wondered whether, in the light of that, the discussion which had taken place so far was going to solve the problem. On the other hand he recognized the point made by the United States that for Signatories to pronounce on the subject raised by the European Community could prejudice the dispute settlement activities. He agreed with the representative of Switzerland that the Committee could address this subject after it had been referred to the Committee by a panel. Only the Committee was authorized to make binding interpretations of the Agreement. He thought that the Committee was not, as yet, ready to pronounce itself on this matter and to do so could risk prejudicing the dispute settlement activities. Although he himself had an opinion on the matter he considered that it would be inappropriate to put it forward for the same reasons as given earlier. On the subject of procedure the United States claimed, and the Community admitted, that the Community had refused a request for consultations under Article 12. The representative of the Community had given two reasons for this refusal. First that the United States had not fully complied with the requirement of Article 12 to provide a statement of available evidence and second that the Community could not accept a request formulated in terms of Article 9. As to the first point he said that not having participated in the drafting of the Agreement he did not know what was meant by "statement of available evidence" but he thought that for those who were familiar with the common organization of the market in the European Community or with the common agricultural policy, what was contained in SCM/Spec/8 provided sufficient information. References were clearly made to EEC regulations under which export subsidies were granted on a range of products. He therefore thought that the representative of the Community - who was very familiar with, if not himself the author of, many of these regulations - would recognize the basis on which the United States had lodged its complaint or sought consultations. He did not therefore think that the information provided in SCM/Spec/8 was insufficient in terms of constituting a statement of available evidence. Referring to questions related to the application of Article 12:3 of the Agreement he said that this provision was mandatory and clear. Any refusal to

have consultations would undermine the rights of the Signatory requesting them and he would be very concerned if a request for consultation would be met with a refusal on procedural or other grounds. There was no question that agreeing to consult carried with it any implication of guilt by the party agreeing to consult, hence any refusal to consult was contrary to the proper functioning of the Agreement and detracted from the rights of other Signatories.

17. The representative of New Zealand said that as far as the interpretation of Article 9 was concerned his delegation was in the same position as a number of others and that the matter was far too important to expect the Committee to come to some sort of decision or interpretation at this stage. As to the second point, he considered that the Community had every right to bring this matter before the Committee and, even more so, every Signatory had a right to request consultations on a particular issue. The dispute settlement procedure was central to the Agreement and the Signatories should consult bilaterally before bringing the matter before the Committee or a panel. It seemed to him quite erroneous that a Signatory could decide not to engage in formal dispute settlement procedures simply on the grounds that he considered that the request was inappropriate. He said that having a particular interest in the work of this Committee his delegation would not like to see the whole dispute settlement procedure founder by means of delegations which did not wish to engage in such procedures raising matters of interpretation as a means to avoid consultation.

18. The representative of Sweden concurred with the concern expressed by the previous speakers with regard to the dispute settlement procedure. He was impressed by some of the arguments presented by the European Community on the interpretation of Article 9 but he hesitated to state his position at this juncture because of the implication of the discussion on the functioning of the dispute settlement system. He felt that it was very important not to prejudice the work of panels. The representative of Norway said that the matter was very complicated and some tactics were certainly involved. His understanding of Article 9 was, in principle, the same as that of the Community although there might be some points he would like to reflect upon. He was very much in favour of consultations and, as a matter of principle, if there was doubt whether one should consult, consultations should have the benefit of the doubt.

19. The representative of the Community enquired what would happen if the Community were to ask Australia for consultations on motor vehicles under Article 17 of the Agreement. Would Australia not say that such a request on the part of the Community was absolutely frivolous? Could one not say the same thing about the United States request? The United States had requested consultations under Article 9 on a product that was an agricultural product. The purpose of consultations was to clarify the facts of the situation and to arrive at a mutually acceptable solution. The facts were that the United States was alleging that Article 9 covered all processed products. What could then be the mutually acceptable solution? One could also ask on what basis the Committee could conciliate. One did not know exactly what settlement could be reached in the dispute, nor what one could recommend to the Community. No doubt there was a procedure, but the question was how it was to be utilized. The Community was simply asking the Committee to discuss the question of interpretation, i.e. how to evaluate the content and coverage of the obligations set forth in Article 9. In the spirit of certain delegations, the important thing was the procedure. But the question of the

level of GATT obligations was being disregarded. The Community had raised the question of interpretation of Article 9; everyone seemed to agree that it was a very important matter and the Community was entitled to ask the Committee to discuss it. If after that the question of Article 12 was discussed, the Community was ready to discuss with the Committee whether it had observed its obligations under the procedure. The Community representative would even be ready to accept a finding that the procedure had not been observed by the Community and that one should move on to the second phase, that of conciliation. In that connexion, since the request for conciliation had been made only that morning, the Community was requesting an eight-day period of reflection in order to decide whether or not it would accept conciliation. In the meanwhile, it would wish to have information regarding the coverage of the conciliation procedure. Moreover, since the Community had made a separate request regarding interpretation of Article 9, the Committee should continue its work on that matter. There were two separate matters, therefore: in the first place, the question of general interpretation of the content and coverage of Article 9. (If the Committee wished, the Community could circulate in writing the statement it had made at the beginning of the meeting.) In the second place, the United States complaint which was another matter, on which the Community had refused consultations and which was now at the stage of conciliation. The Community was requesting eight days for reflection and hoped that solutions could be found when the matter was examined. With respect to procedure, it could accept that the request for conciliation was dated 3 March, and that accordingly the 30-day period ran as from that day.

56. The representative of the United States said that if a solution was found for the pasta case in the process of conciliation, this case would be cleared from the agenda and subsequently the Committee could have a useful discussion on interpretation as proposed by the Community, if the members of the Committee so wished. However, if the conciliation was not successful then a panel would have to be established and the Community would have an opportunity to present its argument in full before the panel and the United States would do the same. The panel could take its time and give attention to this question. The results would come from the panel and the Committee would carefully examine the panel's report. For these reasons he did not think, even in the terms of sufficient functioning of the Committee, that the Committee should pursue these two tracks in parallel. He wanted to reiterate that his delegation did not intend to prevent the Committee from interpreting the Agreement but if the members started to interpret the Agreement at this point it could be prejudicial to the Committee's function in the dispute settlement process. This dispute settlement process provided an orderly way for the examination of issues with appropriate attention, without infringing the rights and competence of the Committee.

57. The Chairman said that two possible courses of action had been proposed. First the Committee could continue the discussion of general interpretation of Article 9. Second, the Committee could take up the United States' request for conciliation. These two proposals were before the Committee and he wished to propose that the Committee should meet on Friday 12 March to continue the discussion of these matters.

58. The representative of the United States said that he continued to believe that the Committee should not have a general discussion on Article 9 while the

particular dispute was in motion. He said that he did not agree to having such a discussion and recalled that many other Signatories had expressed the same reservation.

59. The Chairman said that he had noted the US statement.

60. The representative of the Community said that he could not accept that any member of the Committee should set a pre-condition by saying that the dispute settlement procedure should be completed before the Committee could take up the question of interpretation of Article 9. The Community had the right to put the question to the Committee, and that right had not been denied. If the United States refused that right, the Community would make it a major issue.

61. The Chairman said that the Committee had taken note of the two statements made by the representatives of the United States and the Community and it would continue the discussion on Friday, 12 March.

62. The representative of Australia wished to respond to the hypothetical question posed earlier by the representative of the European Community, who had asked what the case would have been if the Community had sought consultations with Australia under Article 10, which dealt with primary products, to discuss the subject of motor vehicles. He wished to respond that if the Community had made such a request and if, indeed, motor vehicles had fallen under Article 10 then the Community would, at long last, have found an agricultural product which Australia protected.

63. The meeting was adjourned until Friday, 12 March at 3 p.m.