

GENERAL AGREEMENT ON
TARIFFS AND TRADE

RESTRICTED

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Committee on Trade in Agriculture

DRAFT MINUTES OF THE MEETINGS HELD FROM
4 TO 13 OCTOBER AND 28 TO 23 NOVEMBER 1983

Addendum

Exercise B

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Examination of the operation of the General Agreement as regards subsidies, especially export subsidies, and including other forms of export assistance

Introduction

1. In introducing this item, the Chairman recalled that the Committee had agreed that it would commence at this meeting "the examination of the operation of the General Agreement as regards subsidies especially export subsidies and other forms of export assistance". He quoted, in this connection, from paragraph 1(ii) on page 9 of the Ministerial Declaration adopted on 29 November 1982, which forms the basis of Exercise B of the work of the Committee. The Committee had at its disposal recent notifications made pursuant to Article XVI:1 (document series L/5102, L/5282 and L/5449), information on measures and mechanisms influencing exports notified under AG/DOC/5 document series, and information on measures affecting export submitted by participants in the Committee with relation to Exercise A (AG/FOR/document series). Participants had been free to submit written contributions to the Committee with respect to Exercise B, but none had done so at this stage. To assist the Committee in its examination the secretariat had provided in document AG/W/4 an analytical note covering the drafting history of Article XVI and the interpretations of that Article as given by panels and working parties. The Chairman asked the secretariat to introduce its note.

2. A representative of the secretariat stated that AG/W/4 was divided into two main sections. The first section related how Article XVI got to be written the way it was: the evolution of the draft Charter of the International Trade Organization and the incorporation of certain provisions of that Charter in the General Agreement. The section demonstrated that the specificity of primary products was present early on in the formulation of the rules governing subsidies. The drafters had not thought to outlaw subsidies on primary products, but they had tried to ensure, to a certain extent, that world trade in primary products be conducted under competitive conditions. The second section of AG/W/4 provided selected extracts of the work of past panels and working parties as regards subsidies on agricultural products. The representative of the secretariat cited the five panels established, either under Article XXIII or the Subsidies Code, whose findings had related to Article XVI. He noted, however, that no final decision had yet been taken on the reports of the last two panels. Certain problems of interpretation and application of Article XVI had been shown in document AG/W/4. Although any selection must imply a certain amount of discrimination in the choice of the material cited, it was hoped that the Committee would agree that the secretariat note provided as full a picture as possible of the written record about agricultural subsidies and Article XVI. Finally, he noted that Chapter 3 of AG/W/4 provided a summary of the document.

3. The Chairman stated that he wished to orient the Committee's discussion on the basis of AG/W/4 to a more general, political discussion. He did not wish the Committee to get bogged down in debates about theoretical, legal technicalities, but rather to carry out its mandate as given by Ministers. The Committee's examination was with a view to making recommendations to CONTRACTING PARTIES. With this in mind, he asked Committee participants to comment as to whether they considered the operation of the provisions of the General Agreement as regards subsidies to be effective and, if not, to state where, in their view, the provisions were not effective. A second round of discussion could follow, whereby participants could comment as to possible solutions for making the provisions more effective.

General statements

4. The representative of Canada stated that the secretariat note provided a factual and comprehensive analysis of the evolution of Article XVI. The paper, together with the country examinations under Exercise A, wherein the political imperatives influencing domestic policies had been revealed, told a depressing story. The Canadian delegation considered the existing situation to be unacceptable. Panel reports were not being adopted, and basic rules and concepts in the GATT were obscure. The credibility of the GATT was being questioned because of the lack of effective rules on subsidies affecting agricultural trade. He believed that one of the major reasons for the current difficulty was that panels were being asked to make rulings on definitions and concepts which had been deliberately left vague by earlier negotiators. Article XVI, in the view of Canada, was not about export subsidies, but rather related to subsidies affecting agricultural exports. Export subsidies were permitted on agriculture under this Article, but they should not be used to gain more than an equitable share of world export trade. However, it was virtually impossible in practice for panel members to reach a consensus on what constituted an equitable share. Not only was the criterion operationally deficient in the Canadian view, but legal recourse was only possible after serious prejudice could be demonstrated. What was required in Article XVI were guidelines for use by domestic policy-makers to design agricultural subsidy programmes, so as to mitigate their adverse impact on trade. The Canadian representative considered that it would be a major error to view the subsidy problem simply in terms of direct export subsidies. All subsidies affecting exports needed to be looked at, including domestic subsidies. He stated that it was not the technique of subsidization that was important, but rather the level of subsidization; and more precisely, the impact of agricultural support programmes on production decisions of individual producers. The level of support had been considered as largely determining the scale of the import and export measures required to protect the domestic support system. Therefore, in the Canadian view, the Committee should not focus exclusively on export subsidies, equitable share and other technical definitions which had been considered by recent panels. Rather, the attention of the Committee should be on how to develop international disciplines, which would put an effective limitation on the level of so-called domestic agricultural support programmes. The representative of Canada recognized that this was not a new concept.

The binding of the margin of support had been examined in the Kennedy Round, but had been put aside as too difficult to implement in practice. Nevertheless, the experience of the last twenty years strongly suggested that meaningful progress in bringing subsidies affecting exports, and a greater international discipline could only occur, if it were recognized that the level of support afforded to domestic agriculture was at the root of agricultural trade problems. The Canadian representative believed that when participants identified or articulated ideas in the Committee, the negotiability of these proposals would have to be borne in mind. It was imperative that all countries share in the burden of adjustment. Solutions could not be identified which would require only certain countries to make drastic changes to their agricultural policies, while others maintained their effective status quo. As regards the negotiability of recommendations the Committee could put forth on subsidies and other matters, a total trade package on agriculture could be based on a few basic principles, he suggested. These basic principles might include the following:

- (a) All export measures could be bound and subject to maximum limits;
- (b) All import measures could be bound. For example, all import quotas could be increased to a minimum size equivalent to a minimum percentage of domestic disappearance. All quotas could be subject to some form of growth provision. Similarly, variable import levies could be required to provide a certain volume of access under a bound tariff, with the base quantity subject to a growth provision.
- (c) Individual support price levels in all countries could be bound so as not to exceed an internationally agreed reference price by a certain margin.

The representative of Canada indicated that these ideas were being put forward to stimulate discussion and did not constitute Canadian proposals, as the Committee was not a negotiating forum. He repeated that the greatest danger facing the Committee was for it to focus exclusively on the parameters of the past. For the Committee to move forward it needed to broaden its horizons so as to break out of the unacceptable status quo.

5. The representative of the European Communities stated that the secretariat document gave the Committee a historical view of Article XVI, as well as of the meaning of that Article, and highlighted the number of problems in its interpretation. The Ministers had done well to ask the Committee to examine whether the operation of the General Agreement as regards subsidies affecting agriculture was effective in promoting the objectives of that Agreement. He mentioned the link between subsidies and national policies and stressed the need to examine the GATT provisions in their whole context. He suggested that the Committee begin its debate as to the effectiveness of the GATT provisions with a discussion on the effectiveness of Article XVI, and in the first instance, its paragraph 1. This provision raised the question of subsidies in general, which encompassed income and price support, and their effect on exports and imports. Since Exercise A of the Committee

had looked into the effects of domestic income and price support on imports, the EEC considered that the examination of Article XVI:1 should concentrate on the effects of subsidies on exports. A first question to be addressed in examining Article XVI:1 was whether the obligation to notify was being fulfilled. In this connection, the Committee should consider what were the subsidies which operated directly or indirectly to increase exports within the meaning of Article XVI:1. The Community did not consider Article XVI to be effective and was not satisfied with the manner in which this provision was being interpreted. The representative drew attention to the fact that the Community had been brought before a panel a number of times.

6. The representative of the United States indicated that his Government was strongly supportive of Exercise B, as the United States considered that export subsidies and agricultural trade had harmful effects on other contracting parties and caused undue disturbance to normal commercial interests. He drew attention to the provisions of Article XVI:3 of the GATT which admonished contracting parties to "seek to avoid the use of subsidies on the export of primary products". The US believed that that objective should be fundamental in guiding the work of the Committee in its Exercise B. The Ministerial mandate to the Committee directed its work programme "with a view to achieving greater liberalization of the trade in agricultural products." Such liberalization could not be achieved, in the US view, as long as export subsidies affected that trade. The Committee, therefore, should determine the nature and extent of the problems that export subsidies created for agricultural trade, and determine whether existing GATT rules operate effectively to deal with those problems. In addition, the Committee should seek a commitment from every contracting party to do much more than had been done to date to avoid the use of export subsidies. The country-by-country examination of export assistance measures under Exercise A was important, as were the conclusions the Committee will reach on the impact of those measures on world agricultural trade. The United States considered that the most revealing commentary on the effectiveness of the GATT process was to be found in the concluding section of the secretariat paper, where it was noted that recent panels had not been able to determine whether GATT obligations had been met; even though the panels had found the existence of subsidies, had determined that market shares had been increased with subsidies, and had concluded that the nature of the subsidy or its impact on trade might prejudice the interest of other countries. In the view of the United States the reason for this situation appeared to lie in the nature of the Article XVI rules themselves. The rules attempted to discipline the effects of export subsidies rather than limit their use. There was sufficient imprecision in the description of effects prohibited by the rules, to allow export subsidizers to argue that the particular effects caused by their export subsidies were not those prohibited by the rules. In the two sugar cases, the panels had been reluctant to establish the causal link between export subsidies and the increase in the subsidizer's market share, although they had found economic damage. In the recent wheat flour case the Panel had described the adverse effects resulting from export subsidies, but had stopped short of finding that these effects were prohibited by Article XVI or the Subsidies Code. The United States did not intend to re-argue panel cases in the Committee, but stressed that the case-by-case application of the rules had been wholly

unsatisfactory, since panels had been reluctant to make clear findings. It considered the question of the causal link between export subsidies and their effects as being particularly important. When the Committee moved to a more technical discussion of the rules themselves, particularly the equitable share concept, it would be necessary to consider how special factors affecting the market should be examined. In the US view, export subsidies were the key factor, and any other factors must so outweigh the effect of the subsidies, that they would completely explain away the causal link between the subsidies and the resulting market shares. The secretariat paper acknowledged that subsidies were still a major factor determining the flow of agricultural trade today. Therefore it would be hard to conclude that the objectives of the GATT, and, in particular, the goal of liberalizing agricultural trade were being achieved. The United States had concluded that present GATT rules were not a sufficient protection from subsidies because the rules did not act until after the damage had taken place. Moreover, the rules relied upon evidence, which either did not exist, or which panels would not accept. Since the rules were ineffective, they merely encouraged the use of export subsidies and other forms of assistance by an increasing number of countries. The representative of the United States concluded that the answer to the Chairman's question as to whether the existing GATT disciplines on export subsidies on primary products were effective, was no. The rules could be strengthened by being interpreted as limiting the use of export subsidies, rather than trying to limit the damage caused by subsidies. The United States posed the following question to the Committee: was it reasonable to require the "victims" of export subsidies to demonstrate the effects of those subsidies on trade when the obligation to avoid the use of subsidies (and thereby avoid their effects) lay with the subsidizing country?

7. The representative of Argentina stated that in conducting both Exercises A and B, the Committee should not lose sight of the fact that the Ministers had established the work programme of the Committee for the purpose of making recommendations with a view to achieving greater liberalization in the trade of agricultural products. These recommendations were expected to be made to the CONTRACTING PARTIES not later than their 1984 session. The Committee could analyse the present situation, review the history of Article XVI and propose and consider new guidelines for a better respect or interpretation of the rules. The secretariat document provided a rigorous and objective background document, but it was the participants of the Committee who were responsible for making precise recommendations. The Committee must recognize whether or not export subsidies caused serious prejudice for the trading interests of contracting parties, and whether they distorted trade flows. The representative considered that there was far from a uniform interpretation of Article XVI, as each contracting party interpreted the various provisions of that Article to suit its own commercial interest. He felt that the major problem of Article XVI was not simply that of transparency and better notification procedures. Rather, the Committee should concentrate on seeking effective solutions towards new disciplines. He called attention to the fact that in carrying out the tasks enumerated in the Ministerial Declaration, the Committee must take full account of the special needs of developing countries, in the light of the GATT provisions providing for differential and more favourable treatment for such contracting parties.

8. The representative of Japan considered that heavy subsidies on agricultural exports had created serious adverse effects on trade. The GATT rules had not functioned effectively to solve this problem. He alluded to the ambiguities relating to the concepts equitable share and primary products. He hoped that the discussion in the Committee would bring about a common understanding on these provisions. He also believed that the Committee should concentrate in this exercise on subsidies on exports and should try to develop solutions.

9. The representative of Australia considered the underlying problem to be support policies, which by their nature raised the aspirations of agricultural producers, and created false price and market signals. These policies encouraged production for purposes of government buying and storage, and not for commercial purposes. Australia was a price-taker on the world market. It believed that domestic support policies had depressed world prices and distorted supplies by generating surpluses which moved directly to commercial markets via intervention agencies or other channels. Subsidies had permitted net importers to become self-sufficient and thereby reduce their own market for imports. In some cases net importers had changed to net exporters. The representative of Australia drew attention to the fact that in a recent meeting of the Dairy Committee, it had not been possible to raise the minimum export prices, which were set at unrealistic levels, because of the chronic export surpluses and subsidies that existed in that sector. Australia had lost its market shares to others, whose share had increased with the help of subsidies. The effectiveness of international commodity agreements, in some cases, had been frustrated by subsidization. Australia, which was an efficient agricultural producer, had had to contract its production of dairy and fruit as a result of subsidized competition, and its production of meat, dried fruit and grains was threatened. The domestic market of Australia was essentially open, but it had had to take unprecedented restrictive action against subsidized imports of cheese. Australia had not been able to negotiate the access opportunities it would have wished for in the major developed countries as well as the Nordic countries and Switzerland. It was coming under pressure to restrict its own market, as well as to subsidize its exports, which was something beyond its resources to do. Australia had failed to achieve redress for the problems that it had raised in the GATT from time to time. The representative of Australia admitted that this view was that of an aggrieved agricultural exporter, but that one had to understand also the problems of the subsidizing countries. Their support costs were increasing, for example, the EEC cost of supporting agricultural exports had increased from 800 million dollars before the Tokyo Round to 6,000 million dollars in 1982, and further increases were likely. EC producer subsidies on wheat, milk and sugar had increased from US\$ 93/m.t. to US\$ 249/m.t. over the last half of the seventies. Similarly, there had been a dramatic increase in the United States' Commodity Credit Corporation expenditures from US\$11.6 million in 1982 to around US\$21 billion in 1983. Japanese subsidies on rice and milk had grown from US\$ 440/m.t. to US\$ 708/m.t. during the same time-frame. The Australian representative admitted that there might be a margin of error in these calculations. However, they did demonstrate the order of magnitude in the trend of subsidization. The rapid growth in the use of agricultural subsidies, together with the

prospect that that trend could continue, must be a matter of great concern to all contracting parties because subsidization was clearly a major factor contributing towards destabilizing world trade. Australia believed that subsidies of all types should be addressed, and this in a multilateral context in the GATT. The issue could not be solved in a bilateral discussion between the major trading powers. They might negotiate on the basis of reducing their own costs, but this would not help other countries, like Australia, who were affected by the problems of subsidization. Australia considered that Panels had avoided giving clear interpretations and determinations on the basis of the relevant provisions of Article XVI. To the broad question as to whether the GATT provisions on agricultural subsidies had been working effectively, Australia's answer would have to be no. Even the provisions on notification had not been working.

10. The representative of Hungary expressed great sympathy with those delegations who had proposed solutions to try to introduce elements of measurable disciplines, bindings, and multilateral understandings. He considered it curious that in a meeting of contracting parties, negotiation was considered a dirty word. The Committee should look for common denominators. It should come to some agreement on measurable disciplines, and try to re-establish the balance of rights and obligations. He referred to the need to share advantages as well as sacrifices. In this connection, the position of the recipients of subsidized imports should also be considered.

11. The representative of Chile stated that as regards the question as to whether the operation of the provisions of the General Agreement concerning subsidies had been effective in promoting the objectives of the General Agreement and in avoiding subsidization seriously prejudicial to the trade or interests of contracting parties, the answer would have to be negative. He considered that a solution for making the rules more effective would be for contracting parties to eliminate all subsidies and all other distortions to trade. The representative of Chile recognized, however, that it would take time for countries to be converted to this thesis, and therefore solutions would have to be found elsewhere. The secretariat paper had demonstrated that the GATT disciplines on subsidies were full of holes. A great number of transactions under special conditions existed. Interpretations had been given to the GATT rules to fit diverse national interests. This had led to unilateral and differing interpretations which did not contribute to international co-operation. A number of years ago, a Subsidies Code had been signed with the aim of improving the disciplines of Article XVI and of making the interpretation of that Article more precise. However, he considered that the results of the Code had been negative, given the number of complaints filed, and the lack of definite conclusions among Code signatories. It was important not to look at Article XVI alone, but also the relationship of that Article to other GATT provisions or resolutions; for example, those dealing with the disposal of surplus agricultural commodities. He agreed with the representative of Canada that one must begin the discussion by taking into account national agricultural policies. It was not appropriate in the Committee to question the objectives which governments wished to achieve in those policies. However, one must recognize that domestic policies were not neutral as regards trade and the interests of other contracting parties. As long as the GATT had existed, subsidies had been an integral part of national agricultural policies, and their influence must be so recognized. Moreover, the representative of Chile considered that there was an

imbalance in the rights and obligations under the GATT, stemming from the fact that redress could only be sought after the effect of the subsidy in question had been felt. The Committee's work, consequently, should be oriented towards bringing contracting parties back into the GATT by way of substantive obligations, which limited the prejudicial effects of national policies which engaged in subsidies or other aids. The problems of agricultural trade must be examined globally, and progress must be made as well on the question of market access.

12. The representative of New Zealand agreed that the subsidy issue must be considered in a wide framework. Given the Ministerial Declaration, the Committee would have to look at Article XVI, but he believed it should not merely focus on the language of that Article but also look at what aspects of subsidies had an impact on trade. Moreover, the Committee would have to consider other provisions of the General Agreement. The representative of New Zealand held the view that the drafters of Article XVI should have begun that Article with its paragraph 2, wherein the general principle is stated that contracting parties recognize that the granting of subsidies may cause undue disturbance to their normal commercial interests and may hinder the achievement of the objectives of this Agreement. He understood that it was an accident of history, whereby the procedural provisions contained in paragraph 1 had been placed before the general principles of paragraph 2 as well as the first sentence of paragraph 3. The impetus of the work of the Committee should be towards diminishing the impact of subsidies, rather than focussing on the interpretations of what could be characterized as devices for measuring the size of the loopholes, such as equitable share. Moreover, the impact of subsidies on returns received and prices attainable in the market-place would also have to be considered. This was particularly important for those countries who did not subsidize or subsidized to a limited extent.

13. The representative of the European Communities did not agree with the view that Article XVI had been badly written since it began with paragraph 1 and not paragraph 2. To the contrary, he believed the drafters' approach had been logical, seeing that they had first tried to define what constituted a subsidy. The representative of Chile had called attention to the existence of non-commercial transactions. However, when these transactions had been raised in the GATT, some parties had stated that they should not be talked about in the GATT, but elsewhere. Therefore, he considered it very important to first address the question as to what the Committee was talking about and what constituted a subsidy. He drew attention to the fact that a number of contracting parties, including Argentina, had not fulfilled their obligations to notify subsidies. He believed that the Committee should agree that price and income support measures should be notified. This being said, he did not consider exercise B to be limited only to a discussion of Article XVI, paragraph 1, but should address the totality of that Article, and in a logical fashion.

14. The representative of Argentina supported the Chilean view that the Committee examine all other forms of export assistance as well as subsidies. This indeed had been specifically mentioned in the Ministerial Declaration regarding the agricultural work programme. The Argentinian representative considered that anything relevant to trade

could be discussed in the GATT. Non-commercial transactions had an effect on trade and had to be examined by the Committee in depth. Whether a transaction was considered commercial or non-commercial, was a subjective matter. He drew attention to the fact that there was no specific criterion on this; for example, Argentina considered a transaction which accorded credit longer than six months to be non-commercial, while other governments considered transactions to be non-commercial only if credit was extended for longer than three years. He referred to the frequent disposal of surplus commodities in the guise of food aid, covering products other than those which met the basic needs of the beneficiaries. Other forms of subsidies, especially in the agricultural sector included special conditions for payment. He also referred to the special characteristics of agricultural products and the need to dispose of surplus products on account of their perishability, and to reduce storage costs. There were also political factors involved in agricultural trade and these and all other factors should be addressed in the GATT. He considered that the Committee should not concentrate on any particular form of subsidization, because new mechanisms could always be invented. It was important to know whether the political will existed to impose more effective discipline and to avoid distortions in agricultural trade. It was important to negotiate on a sound basis and with a firm will to dialogue. In response to the comment that Argentina had not made a notification under Article XIV:1, he pointed out that Argentina was not distorting agricultural trade. On the contrary, it was applying duties on its exports. Furthermore, Argentinian agriculture was efficient enough, so that there was no need to subsidize exports.

Article XVI:1 first sentence : notifications

15. The Chairman next directed the discussion of the Committee to specific questions regarding the different provisions of Article XVI. He asked the following questions: Are a significant number of contracting parties fulfilling their obligation to notify under Article XVI:1? Are there certain forms of export assistance which systematically are not the subject of notifications and should be?

16. The representative of Canada considered that the drafters had been correct to place paragraph 1 first in Article XVI, since this provision recognized that subsidies had an effect on domestic production as well as imports or exports. One could argue, he said, that only after its paragraph 1 did Article XVI deteriorate. Other participants had raised the problem as to what was a subsidy. It was not as simple as eliminating subsidies to resolve the present difficulties. Governments could distort trade merely through their import régime, which could encourage domestic production and result in exports without any direct government transfers. He agreed that more transparency in the notifications was needed. However, he referred to the difficulties of quantifying and reporting on certain measures involving infrastructures; for example, hydro-electric projects which could stimulate the production of fruits and vegetables. It was difficult to draw the line between subsidies which had a trade effect, and those which had little or no trade effects. However, in the area of non-commercial or concessional sales, which did have an impact on trade, he concurred with the view that there was a conspicuous lack of international surveillance.

17. The representative of Australia adopted a broad view of what constituted a subsidy, and what should be notified. He believed that not just export subsidies should be dealt with, but also various measures within importing régimes, such as state-trading mechanisms which not only affected imports but could affect other countries' exports. This was particularly relevant in markets, which would normally be expected to be large importing markets, without the effects of domestic support systems. He believed that a broad view of what constituted a subsidy was borne out in the secretariat paper as from paragraph 44 under the section entitled "Measures Notifiable". He believed notifications should be full and universal, and that measures in the so-called grey area should be notified as well. He considered that notifications should not be an end in itself, but that a regular review process was needed on an annual basis, similar to what was being conducted in the Committee at the moment. This type of surveillance could lead, if not to a definition of subsidies, at least to a better view of the areas with which participants needed to concern themselves. Moreover, he considered that the purpose of notifications was to negotiate better rules on the application of measures; i.e., rules with teeth. In this connection, he drew attention to the second sentence of Article XVI:1, which in the Australian view, was aimed at limiting the subsidization, rather than a theoretical discussion.

18. The representative of Hungary stated that Chile and Argentina had been right to draw attention to the effects of food aid, even though this aid was not treated in the GATT but elsewhere. He believed that charity should begin at home. He was not questioning those countries who chose to characterize their disposal of agricultural surpluses as food aid. He also mentioned that unsuccessful attempts had been made to define subsidies. Many things that existed in market economies could be considered as subsidies; for example, low fees to agricultural schools. However, he took the view that subsidies were whatever others did that disturbed the trade of his country. His government was not so much concerned about, for example, US aid to faraway islands where Hungary did not export. However, Hungary might object to subsidies on products and for certain markets in which it had an export interest, for example, butter, wines or pork. He thought that such a diverse notification exercise should be pragmatic, as he has never seen rules with teeth. Only big powers had teeth.

19. The representative of the United States agreed that greater transparency in notifications was needed. To that end, he stressed that notifications should not only identify programmes but also supply sufficient information on the incidence of the subsidy, the quantitative trade effects of the subsidy, and the amount of the subsidy, as required under the questionnaire.

20. The representative of the European Communities noted that the provision on notification under Article XVI:1, was a GATT obligation. The Community did not put into question this obligation. He stated, however, that contracting parties should be clear as to what they should notify. This initial difficulty over what should be notified did not appear too great, in the light of the remarks of Canada and Australia. He thought that there would be an improvement over the present reality,

if all participants were to agree with the principle that all subsidies should be notified; that is, those subsidies as mentioned in Article XVI:1, without prejudice to what followed later in the Article. This would represent progress, in his view, since many contracting parties now notified badly or not at all, because they themselves made the choice as to what was notifiable. This was due to the ambiguity of Article XVI:1, in the sense that it spoke not of all subsidies but any subsidy which operated directly or indirectly to increase exports or reduce imports. He considered that a first step towards total reciprocity and equality among contracting parties would be that all agree that all income or price support measures must be notified. He believed that all subsidies which fell under paragraph 1 of Article XVI should be indicated as subsidies on exports. One found reported in the notifications, subsidies granted at the time of exportation; for example, the EC restitutions. However, the practice had been for those countries that did not subsidize their exports directly, but rather subsidized at the stage of production, that is, before the stage of exportation, to consider these not as export subsidies and therefore, not subject to other obligations; for example, Article XVI:3. He cited as an example the United States' price support on grains, which was maintained at artificially low prices. He questioned whether the United States' system did not, in fact, result in increased exports. He doubted whether the level of grain production and exports in the United States would be the same as was the case now, in the absence of such a system. Was it appropriate, the EC representative therefore asked, for disciplines to apply only to the EC which subsidized at exportation, or whether price and income support should also be covered by the rules. To clarify the debate, therefore, participants should agree that all forms of price and income support should be notified. The representative of the EC referred to the dispute the Community had had with Canada on wine. In that case, Canada had not limited its investigation to export subsidies, but had also looked at aid for electricity given in south-western France. The GATT did not speak about all subsidies, but all subsidies which had an effect on trade. Canada might have considered that the aid on electricity had an indirect effect on trade. One difficulty, therefore, with Article XVI:1, was that it did not identify the subsidies covered. Moreover, the EC representative asked whether the Community would have the right to use the procedures of Article XVI:1 second sentence, because the United States maintained its prices artificially low domestically as well as on the world market. Since the United States was the largest agricultural exporter in the world, this resulted in diminished returns for certain producers in other countries, as well as forced certain countries to subsidize their exports. Finally, the representative of the European Communities referred to the fact that certain delegations believed that food aid was not covered by Article XVI. He did not share this view.

21. The representative of Chile stated that it was clear that the obligation to notify was not being fully complied with. Secondly, the countries which did notify, did not fulfill their obligations well. He cited three countries which, in his view, had fulfilled their obligations to notify well. Switzerland had made a comprehensive notification. Chile and Hong Kong had notified that they did not

maintain subsidies. The representative considered that transparency was not an end in itself but the purpose of the notifications was closely linked to other provisions. Moreover, many notifications contained information which was either not useful or not necessary. Many were in fact incomplete. It was not the first time that contracting parties had considered the definition of subsidies; for example, the Panel established in 1958, had done so, as noted in the secretariat paper. At that time, the present questionnaire had been worked out. He was not sure whether that questionnaire met the needs and objectives of the present time. It might be a good idea to update and modify it. He recalled that the Committee on Subsidies and Countervailing Measures had also examined the questionnaire and found it to contain certain shortcomings. The EEC had made a number of comments at that time which could be found in SCM/W/34. The representative of Chile considered that this document might serve as interesting background for the work of the Committee on Trade in Agriculture. He characterized the Australian suggestion for periodic reviews by the CONTRACTING PARTIES of notifications as an interesting one. Such a review had taken place in the Committee on Subsidies and Countervailing Measures among its signatories and had produced good results. The quality of the questionnaire as well as the notifications had been examined. The examination appeared to have served as an incentive to those countries who had never notified, to do so. He considered that the suggestion to have a review therefore should be examined in more depth. It might not be necessary for such a review to take place every year. However, given that full notifications under the questionnaire were required every three years, it might be useful then to have a review of the notifications every three years.

22. The representative of Argentina was of the view that it was up to the contracting parties themselves to decide what had to be notified, on the basis of the scope of Article XVI:1. He also drew attention to paragraphs 47 to 50 of the secretariat paper. It was noted therein that certain member states of the Community had notified that they did not maintain subsidies under Article XVI, paragraph 1. The agricultural work programme, as defined by the Ministerial Declaration, had specified that an improved and unified system of notifications should be introduced so as to ensure full transparency. He believed that the question of notification should not be limited to Article XVI:1 alone. In the secretariat paper, it was stated that it was apparent that not all contracting parties were fulfilling their obligations to notify under Article XVI:1. Moreover, among those countries, not all had provided complete information on the subsidies they granted, particularly as to their effect on trade. He questioned what was to be drawn from the notifications by those countries which had stated that they did not maintain any measures within the meaning of Article XVI:1. That provision contained elements which might be of a subjective character. It was apparent that certain contracting parties did maintain export subsidies which they did not notify, because they did not consider these measures to have the effects as described and covered by Article XVI:1. It would be difficult to judge the clarity of the scope of this provision. An interpretive note might have to be decided upon. However, he considered the Hungarian suggestion for reverse notifications provided a much more pragmatic approach. Such a method

could be used in the Committee to analyse the measures and to see whether they constituted a subsidy within the meaning of Article XVI:1. The Ministerial Declaration had spoken of the need for an improved and unified system of notifications, and this not only on subsidies but on the totality of measures which affected agricultural trade. He suggested that the Committee identify the various categories of measures or subsidies, with the assistance of the secretariat. A list of measures applied on exports could be drawn up on the basis of notifications and reverse notifications. Given that contracting parties should seek to avoid the use of subsidies on the export of primary products, according to Article XVI, he wondered whether in cases where subsidies were found to exist, not only should their effect on trade be evaluated, but also whether the subsidy in question was necessary. He stated that the Committee was not in a negotiation nor pre-negotiation phase, but it should analyse all problems in a frank manner and make recommendations.

23. The Chairman recalled that the Subsidies Code contained an illustrative list of export subsidies in its Annex. This list might not be considered exhaustive nor cover all of the measures referred to by participants in the Committee as affecting agricultural trade.

24. The representative of Finland, speaking on behalf of the Nordic countries, stated that those countries supported increased transparency and efforts to improve the rules on agricultural trade. They stood ready to take part in efforts to narrow the gap in the various interpretations of the rules, which had led in the past to serious conflicts in agricultural trade. He recalled, however, that the Subsidies Code represented a step forward towards a more unified interpretation of the rules on subsidies, and therefore should not be overlooked nor dismissed. The agricultural policies of the Nordic countries aimed at assuring a certain production capacity for security reasons. They considered that there was an overall limit to their support measures inherent in their policies, since production ceilings were set, and producers themselves carried the cost of marketing and production beyond those ceilings. The representative agreed with the other participants who had emphasized the necessity of complying with the obligations to notify under Article XVI. Certainly performance in this area had left a lot to be desired. To the extent that the failure to notify resulted from technical difficulties, the Nordic countries were ready to listen to suggestions to facilitate this task. However, there was no getting away from fulfilling the obligation to notify. As the representative of the Community had stated, it was important for the Committee to have as full a picture as possible of subsidies affecting agricultural products, be they direct or indirect. However, notification should not prejudge the status of the measures under Article XVI. Practice had revealed that it was often quite impossible to assess the effects of various support measures. He considered that this question should be addressed when the Committee studied the notification procedures. He also recalled that Article XVI:1 was of course not limited to notifications of agricultural products. Finally, he believed that the Committee should not only consider paragraph (ii) of the Ministerial Declaration referred to, but should also keep in mind all the other elements contained in that Declaration.

25. The representative of Switzerland pointed out that the subject of subsidies had been focused on from the point of view of exports during the discussion, as it had been in the Ministerial Declaration. He agreed with the Community's position that price and income support measures should be notified under Article XVI:1, but did not consider that these should be notified systematically as measures affecting exports on the format. For its part, Switzerland notified its domestic support measures as measures affecting imports on the format. The representative considered that the interest of importing countries were not necessarily those of the exporters. In a certain sense importing countries benefited from subsidies. To be able to buy cheaply, benefited both the economy in general and the state of public financing. However, and this was the case in Switzerland, in some cases, subsidies did affect adversely the domestic situation by putting downward pressure on prices. This posed domestic and political problems, since consumers often wanted to take advantage of low prices. Switzerland did export modestly and also suffered from competition from subsidized low prices on foreign markets. He agreed with previous speakers that notifications should be as complete as possible and encompass not only subsidies accorded at the stage of exportation but at preceding stages as well. Moreover, those countries from whom notifications were missing should fulfil their obligations under Article XVI:1. If not all notifications were submitted, he asked how the contracting parties could determine whether the other provisions of Article XVI were being respected. It was necessary to know what was the reality. He saw a certain danger in institutionalizing a system of reverse notifications. Certain countries might consider that this would dispense them from notifying. The representative considered that other aspects of price support, as well as border measures, could have the same effect on trade as subsidies. In parallel then to the notifications on subsidies, he believed that the information on these other aspects, for example, quantitative restrictions, should also be updated. The Committee might consider therefore whether the notification obligations of Article XVI:1 should be complemented by obligations to notify these other measures as well.

26. The representative of New Zealand considered that quite clearly the notifications had fallen far short of what was desirable. However, to say why this was so, was perhaps a more complex question to answer. Experience had shown that contracting parties generally notified their export subsidies well, with of course varying degrees of completeness in the notifications. Some also notified, as they should, their price and income support. The difficulty came, in his view, from estimating the effect of the subsidy. This was extremely difficult to quantify, not only as regards the effect on exports of the subsidy, but also the effect of domestic price or income support on increasing domestic prices, reducing demand, and therefore limiting the opportunities to import in that country. He considered the country-by-country examination under Exercise A that the Committee had been undertaking, to have been especially informative. It had shown that countries who adopted an integrated series of measures, by setting aside their domestic market from international trade, applied, in effect, what amounted to be a price support system, which even without government-financed export subsidies did have an impact on trade possibilities. The notification exercise had brought to light a whole

range of measures which could form the basis of an illustrative list of subsidies and price or income support measures. This list could guide contracting parties as to what types of measures should be notified under Article XVI. However, contracting parties would be the final judge of whether these measures had any effect in increasing exports or reducing imports. He considered that the determining factor for notifying domestic measures was whether, in effect, they had an impact on trade. This consideration, then, would eliminate certain measures that had been referred to; for example, fees to agricultural education. Another important distinction he felt should be made, was between those measures which had a direct effect on exports, and those whose effect was indirect, or which affected importing opportunities. Both of these types of measures, of course, were covered by Article XVI:1. According to the competing unsubsidized trader the difference was very important. A price support system, however it was organized, if it kept prices above international levels, involved a subsidy element affecting its domestic market and affecting import possibilities. It might have an indirect impact on external third country markets as well; for instance, by contributing to an overhang of stocks or price effects. But from the point of view of the competing trader, a much more serious dimension was added when the country with the support system went on to provide a subsidy or export refund, which then had a direct impact on the international market. He thought it was important that this distinction be visible in the notifications. The representative also saw some benefits from having a system of reverse notifications, which could bring about a greater meeting of the minds as regards identifying the trade impact of the particular subsidy, and this short of recourse to the dispute settlement procedures of Article XXIII.

27. The representative of the European Communities believed that there was a consensus in the Committee to consider that, under Article XVI:1, there was an obligation to notify all forms of subsidies that operated to increase exports or to reduce imports. As the Nordic countries had pointed out, notification should not prejudge whether the measure was a subsidy under Article XVI:1; for example, one could question whether an aid to an agricultural school was a subsidy that operated to increase exports or reduce imports. As regards the suggestion for reverse notification, he recalled that Article 7, paragraph 3, of the Subsidies Code had already instituted such a procedure. The Community did not object, however, to having reverse notification in this context of agriculture. Another notion that had been put forward in the Committee was establishing a list of subsidies. The Chairman had recalled that such a list already existed in the Subsidies Code. The representative stated that not being very satisfied with the Code, he was not very satisfied with this list either. The subsidies that were included in the list were those that were granted at the time of exportation. However, Article XVI:1 was not limited to those types of subsidies. Other speakers had pointed out that there were a number of subsidies which had the effect of increasing exports and these were not to be found in the list of the Code. He was not favourable to the idea of establishing a list because he foresaw difficulties in drawing one up. The representative asked the Chairman to seek the views of the secretariat as to whether the secretariat was satisfied objectively with the notifications that were being submitted, and what could be done to improve transparency in this regard. He proposed that the secretariat utilize the notification made by the European Communities as an example.

28. The representative of the secretariat stated that, from the point of view of the secretariat, which was the guardian of the General Agreement, the notifications under Article XVI:1 were deficient in many regards; both as regards direct export subsidies and indirect export subsidies. Speaking first of the deficiencies on direct export subsidies, he considered that they were deficient in three areas: credit, the so-called grey area measures, and export subsidies properly speaking. In response to the EC invitation to the secretariat to comment on the EC notification as an example, he referred to the fact that the day before, a member state of the Community had renewed for three years a financial protocol with a developing country. This would allow that member state to sell agricultural products within a specified amount of drawing rights. The protocol had already existed for three years and was now being renewed. He believed that the EC had never mentioned such a protocol in any of its notifications, even though the protocol amounted to a considerable amount of money; i.e., 500 million French francs. Similarly, advances extended by US banks to Latin America had not been notified to the GATT. As a result, the first deficiency one could mention as regards notifications was the lack of information on export credit. Secondly, as regards the grey area, there were two kinds of measures that could be considered under Article XVI:1: non-commercial transactions and the new techniques that had been developed for selling. Given that everybody recognized the importance of non-commercial transactions in penetrating markets, he considered it incredible that these were not notified to the GATT. In the Consultative Sub-committee on Surplus Disposal in Washington, where these transactions were notified, in principle, before, during, or after they took place, usual marketing requirements were discussed. He considered that these requirements reflected a certain vision or a certain concept of what constituted or should constitute the commercial market of an importer, which was never heard of in the GATT. He personally had had to arrange with the secretariat of this Consultative Sub-committee on Surplus Disposal to receive a record of the discussions, two months after they took place. Otherwise the GATT would be completely ignorant in this area. As regards the new techniques for selling, experts and economists had agreed for the most part, that between a quarter and a third of sales for export in 1982 were made in the form of barter, countertrade, buy-back or other operations of this kind. The representative of New Zealand knew very well the importance of transactions of this kind, countertrade or barter, since his government had signed a certain number of agreements with Middle Eastern countries. By referring to this, the representative of the secretariat stated that he did not wish to say that this necessarily represented a subsidy in the sale of sheep. In order to determine this, one had to know the terms of the exchange, how many barrels of oil had been exchanged for how many carcasses of lamb. There could probably be an element of subsidy therein. At any rate, such information would be of interest to contracting parties. He also referred to the fact that Indonesia had made this kind of transaction a sort of rule for its external trade. It was very difficult at the present time to sell products to Indonesia, if in exchange, and this was so inscribed in law, one did not take a certain quantity of oil or raw materials. He also questioned whether there was not perhaps here also an export subsidy. This remained, in his view, something to be proven. Certainly it would

interest all the contracting parties to know whether or not this constituted a subsidy within the meaning of Article XVI. A third deficiency in his view concerned direct subsidies, which were regarded as subsidies, strictly speaking. He shared the concern of the representative of the Community about the difficulty there would be in establishing an illustrative list. He wondered whether in so doing the Committee would be trying to pick on a bone that was too big, and whether in fact such a list would in the end be incomplete. He considered it extraordinary that the problem of export subsidies, which was regarded as one of the major problems of agricultural trade today, was not periodically examined by the contracting parties. There was no review, neither annual, nor biennial, nor even triennial. The last review, the last time when the whole of the problems on subsidies were discussed in a group, called a Panel on Subsidies, which included all of the contracting parties, had taken place in 1961, twenty-two years ago. Of course inbetween-time the signatories of the Subsidies Code had met from time to time to go over together and examine notifications. But he believed that all contracting parties should decide to establish, on a more or less permanent basis, a review of all subsidies every year or every two years or every three years. On that occasion so-called reverse notifications could take place, as well as an effective analysis of the effect of the subsidies on trade. He was not so naive as to believe that the country notifying a subsidy would say that it had a considerable effect on its export trade. However in a group, others could say for what reasons in their view such and such a subsidy had an important effect on trade. He believed that the questionnaire, which had been drawn up by the Panel on Subsidies established in 1958, was largely out of date and could gain by being modified somewhat. As regards indirect subsidies it was clear that there were several types of indirect subsidies. Some were indirect to a first degree, others to a second degree and others to a third degree. He considered that subsidies which were granted to agricultural schools, to be subsidies of the third degree. There would not be much of an interest in contracting parties knowing exactly what the amount of subsidies paid by a country to such a school would be. This was for the good reason that the effect of the subsidy was so dispersed that it would be almost impossible to re-allocate those credits for any particular exportation. As an example of an indirect subsidy to the second degree, he referred to the subsidization of agricultural fuel by a certain number of European countries. Their farmers put into their tractors gasoline which was not at the world price. This was a subsidy to the second degree. Here again, he asked how one could establish the relationship of the amount of this subsidy with the measure of unfair competition brought about. With the benefit of subsidized gasoline, the farmer would plant sugar beet, wheat, oilseeds. The representative of the secretariat believed that this would not be of great interest to the contracting parties, nor was it indispensable for them to notify this annually nor for a group on subsidies to discuss this annually or biennially. For example, he did not consider that it would be interesting to examine the indirect subsidies that Switzerland granted in order to support prices or income to sugar beet producers, since Switzerland did not export sugar. However, when there was exportation, when certain countries had exports that were extremely diversified, at that moment it was indispensable to know to what extent price support, which was granted for socio-political

reasons to this production, had engendered a certain volume of production, which necessarily would find an outlet at one moment or another on the world market. Finally, he referred to the previous discussion regarding Article XVII. It was clear that on certain occasions and in certain countries, State trading or para-State trading intervened in the conditions of competition, and this not in a negligible manner. There had never been a periodic review of the operation of Article XVII. As a consequence, he wondered whether it would not be a bad thing, if the Committee were to decide one day to establish an annual review of the obligations of Article XVI, to join to this on the same occasion, a review of the obligations under Article XVII, to the extent that they had an influence on export trade.

29. The representative of Japan stated that all contracting parties should notify according to the obligations of Article XVI:1. To establish a system of reverse notifications as a first stage might prevent contracting parties from notifying. He agreed with the Canadian view that the Committee should seek balanced solutions as regards the level of rights and obligations; for example, if solutions were to be found on export subsidies, the status quo as regards importation under Article XXIV and Article XXV should also be modified. He pointed out that the domestic price support of his country was only related to imports and not to exports, since Japan for the most part did not export agricultural products .

30. The representative of Canada did not share the view of New Zealand that price support or deficiency payment systems were less disruptive than export subsidies. Government support measures had an impact at the farm level, an economic impact as well as an effect on production. He noted the suggestion for drawing up an illustrative list of subsidies, as well as the view of others that such a list would never cover all measures. He suggested that under Article XVI:1 all contracting parties could be asked to notify the sum total of their direct payments from government treasuries to the agricultural sector. He recognized that this would then include subsidies that had been called subsidies of the second or third degree, like grants to research. However, rather than leaving the choice to governments of what subsidies to notify, they should notify all their expenditures related to agriculture. This should be a reasonably easy task to fulfil, he thought, given that these expenditures were available through the normal government budgetary review process. He observed that notification was a means to an end and not an end in itself. The substance of paragraph 1 of Article XVI was to determine whether or not a subsidy was causing serious prejudice to another contracting party. He recalled that such an examination would take place after the subsidization had had such an effect. When prejudice occurred, it did not come suddenly, but over a number of years after the true economic impact of agricultural policies became discernible. Once a country realized that its trade was being affected seriously and sought recourse to a panel, which in turn agreed that serious prejudice was occurring, it would then be difficult to modify those farm programmes. They would have been in place for a number of years and would have become an integral part of the political fabric. Therefore, he thought it desirable to have guidelines on subsidies in advance rather than after the fact.

31. The representative of New Zealand stated that he had not suggested that deficiency payments or other price support did not have an impact on the exporting competitiveness of the country in question. Certainly he felt that the Committee should look at the importance of these domestic support and production measures. What he had been suggesting was that a distinction should be made, at least from the point of view of the exporting countries, between the effect of direct subsidies on trading opportunities in third country markets as opposed to the situation within the domestic market concerned. He still believed that such a distinction was valid.

32. The Chairman however pointed out that the domestic market was an international market for another country.

33. The representative of Australia recalled that his delegation had suggested that an annual review take place of the notification of subsidies. Notification was not envisaged as an end itself, but action could be foreseen towards limiting the subsidy in question. Australia had viewed this not as a theoretical discussion but for the purpose of limiting the subsidy. That being said he took note of the problem raised by Canada of examining the ex-post effects of subsidies. Perhaps the review process that Australia had proposed would provide an early warning of measures that were going to have a disruptive effect on other countries' trade.

34. The representative of Chile stated that if it was considered that deficiencies existed in the present questionnaire, it should be reviewed and perhaps modified, so as to make it more specific and complete with regard to agriculture. Moreover, countries might be asked as well to report on what their policies would be in the year ahead. He hoped that a review of the questionnaire as well as the review of the notifications themselves would work towards averting problems that could surge up.

35. The representative of Poland stated that to assist the Committee as it was trying to determine the various degrees of subsidization, it might be worthwhile for it to refer to the wide body of economic and legal literature which appeared to indicate a certain consensus on defining a subsidy. In this connection, a subsidy was defined as a transfer of government resources to a specific area of economic activity in a way which may be discriminatory to alternative potential domestic recipients of this type of transfer. In his view such a definition clearly left out the vast number of marginal users of what otherwise might be considered a subsidy. For example, a road built in a rural area which was not designed to benefit one specific user would then not fall under the definition of the subsidy, in his view. Similarly, vocational training to agricultural colleges would also not be considered a subsidy, seeing that similar arrangements for training existed as well to engineers, for example, which were trained free of cost. The latter might be considered a subsidy that was prohibited under Article XVI.

36. The Chairman stated that there appeared to be a large measure of agreement in the Committee that more complete notifications were necessary on direct and indirect subsidies which influenced trade. Moreover, there appeared to be agreement that regular review was needed, perhaps every year or so, of the notifications. It had also been pointed out that it was necessary to review and re-shape the questionnaire.

Article XVI:1 second sentence: "it is determined", "prejudice" and "the possibility of limiting the subsidization"

37. The Chairman next raised whether the obligation to discuss the possibility of limiting the subsidization under Article XVI:1 second sentence, implied that the subsidizing contracting party must take action to limit the subsidy in question.

38. The representative of the European Communities agreed with the view of Australia that notification was not an end in itself, but a first step towards something else. That next step was Article XVI:1 second sentence. He considered that the drafters had written the provision well. However, there had been a certain deviationism in applying the provision. The first difficulty appeared to be in the first clause of the sentence which stated "in any case in which it is determined". The provision did not specify who was to make the determination. The secretariat document had referred to the conclusions of a GATT working party in 1948 in this connection. The representative recalled the complaints that had been made against EC policies on sugar. The panels had found that the EC had not taken more than an equitable share of trade, but nevertheless a number of the contracting parties continued to believe that it had. It was difficult to elaborate a principle, which was based on subjectivity rather than facts. The second question the representative of the EC raised with regard to this provision was that of the prejudice. It was evident in his view, that Article XVI:1 stipulated that the subsidy must be determined to cause or threaten to cause prejudice. It was important that elements of fact and not subjectivity were present in this determination. The aim of the exercise was to have the contracting party that was granting the subsidy discuss the possibility of limiting the subsidization; and this, in order to avoid prejudice. He did not agree with the views of Australia and Canada which implied that one could engage such a discussion, if it were felt that a subsidy could cause prejudice. Rather, the subsidy must be determined to cause or threaten to cause prejudice, so that an appropriate correction could be made. There was a certain difficulty with Article XVI:1 second sentence, in the sense that contracting parties had already admitted in paragraph 2 that export subsidies either direct or indirect, could cause prejudice. As a consequence then, the contracting parties had established a limit on those subsidies in the form of the equitable share obligation. This was, in his view, how paragraphs 1, 2, 3 of Article XVI should be read. There was a link between Article XVI:1 second sentence and paragraphs 2 and 3. He noted that the sugar panel had found it amusing to state that the subsidy policies of the EC were in principle prejudicial. This had not led to much progress and the time had come to put things on the right track.

39. The representative of Argentina asked the Community whether there was a different reading of Article XVI for industrial products, as opposed to agricultural products.

40. The representative of the European Communities stated that there was one objective reading of Article XVI; however, paragraph 3 did not concern industrial products.

41. The representative of Canada did not share the EC view that the limit of what constituted serious prejudice was equitable share. Article XVI:1 spoke of subsidies on both exports and imports. The equitable share obligation did not mean that serious prejudice could not occur, before equitable share had been obtained.

42. The representative of the European Communities stated that Article XVI:1 provided that where prejudice was determined the contracting party should discuss the possibility of limiting the subsidization. Subsidization here encompassed any subsidy which operated directly or indirectly to increase exports or to reduce imports. The drafters had then added additional provisions on export subsidies. Subsidies affecting imports, therefore, were only covered by paragraph 1, and not the subsequent paragraphs of Article XVI. Paragraph 2 stipulated that direct and indirect export subsidies, in principle, might have harmful effects. Paragraph 3 stated that "accordingly" governments should seek to avoid the use of export subsidies. Moreover, if a contracting party did subsidize, then it must respect the equitable share principle. The representative believed, therefore, that if a country were to obtain a share that was more than equitable, prejudice would be caused. However, if it were determined that one did not exceed more than one's equitable share, one was in the clear. He also referred to the fact that the Subsidies Code had added to the rule of equitable share, the concept of price undercutting.

43. The representative of New Zealand stated that, if it was determined that prejudice was being caused, it did appear possible to take refuge in a strict literal interpretation of the obligation under Article XVI:1 second sentence to discuss the possibility of limiting the subsidization. However, he also believed that there was a basis for arguing that the offending subsidizing country should feel a sense of obligation not only to discuss but to act. Paragraph 2 of Article XVI stated that export subsidies were potentially a damaging and trade distorting factor. Generically they were a bad thing, although certain mitigating circumstances could be recognized as necessitating their use. The starting point was that they should be avoided, and this applied to subsidies on industrial as well as agricultural products. What paragraph 3 of Article XVI did, in his view, was to recognize the prevalence of agricultural export subsidies without condoning them. Where they did exist, the Article attempted to establish a rule aimed at obviating injury to trading partners. The equitable share obligation represented the best way the drafters could find to define injury. Given the thrust of Article XVI that subsidies should clearly be avoided, in a case where it had been determined that the prejudice existed, he believed that a contracting party had not only to consult upon request but also had to take steps to remove the injury. Otherwise, the contracting parties would not be operating consistently with the intent of the Article on the whole. He did note the distinction between "must" and "should", and so long as an obligation was not explicit, contracting parties were likely to interpret it to meet their own interests. However, he felt that more emphasis should be placed on the intent of the Article and, in this connection, the Committee might wish to return to the question of improving the language of the provision in line with its intent.

44. The representative of Australia observed that it was inevitable that he and the EC shared different opinions on the sugar case. In general, he felt that a country granted a subsidy in order to gain a share of trade that otherwise it could not obtain. If there was a finding of prejudice, or threat of prejudice, as there had been in the sugar case, the next step was for the subsidizing contracting party to discuss, upon request, the possibility of limiting the subsidization. A simple exercise of discussion did not resolve the case, and ran the risk of seriously eroding the General Agreement. In the Australian view, prejudice did constitute nullification and impairment under Article XXIII:1 paragraph b, as well as under Article 8 of the Subsidies Code. Therefore, the onus should be on the party against which the complaint had been brought, to rebut the charge. Implicit in paragraphs 1, 2, 3 and 5 of Article XVI was that subsidies inherently had a de-stabilizing effect on the trading interests of others. Therefore there was an obligation to take action to prevent those effects. The discussion had shown that there were clear differences of interpretation as to the meaning of the obligation. There was a deficiency in the Article. The Committee needed to focus on the problem.

45. The representative of the United States stated that seriously prejudiced contracting parties should have a reasonable expectation that a subsidizer would take remedial steps rather than continuing to cause serious prejudice. He noted that both sugar panels that had been referred to, had concluded that the EC system for subsidizing the exports of sugar constituted a threat of prejudice in terms of Article XVI:1. Subsequently, the Director-General had organized a working party between the EC and the contracting parties on the possibility of limiting EC subsidization of sugar exports. In this working party, the EC had reviewed the measures it was taking in its sugar regime which in the EC's opinion, would bring it into compliance with Article XVI:1. Other participants however, believed that the EEC system would continue as an open-ended one, and would constitute a threat of prejudice in terms of Article XVI:1. The US representative noted that none of the participants in this working party however, had denied the need to take action: the issue had been one of how extensive the action should be. He also referred to the report of the London Preparatory Committee of the Havana Charter wherein it was noted that the word "limiting" meant not only maintaining subsidization at as low a level as possible but also a gradual reduction in the subsidization where appropriate. The US considered that clearly a reduction in subsidization would be appropriate in the case where subsidization was adversely affecting the interests of contracting parties.

46. The representative of Switzerland stated that, based on the Committee's discussions, the term prejudice as used in Article XVI paragraph 1 second sentence appeared to include competition among exporters on third markets. However, he believed that importers could also be hurt by subsidies accorded by other countries as regards the disposal of products on the importers' domestic market. Similarly paragraph 2 of Article XVI referred to the harmful effects of subsidies on both importing and exporting contracting parties. This also existed in Article 8:3 of the Subsidies Code. It was not clear to him however, to what extent paragraph 3 complemented the previous obligations or provisions, or replaced them, as regards exports on primary products.

47. The representative of the European Communities asked how the EC could have measured the limitation it was supposed to make on its subsidization, given that the two sugar panels had not established the level of prejudice that the EC had allegedly caused. Some countries had asked for a total ban on EC export subsidization. He felt that this went further than the obligation under Article XVI:1 to discuss the possibility of limiting the subsidization. The provision did not mean that a contracting party would have to take such action which would prevent it from exporting any longer. He also noted that the Subsidies Code had introduced the rule of undercutting. Therefore, if a contracting party respected this rule, it no longer depressed prices on the world market. He also mentioned that the EC had changed its system on sugar and therefore had fulfilled its obligations under Article XVI. The Community would never accept the position that the granting of subsidies in principle meant that a country had more than an equitable share of world export trade.

48. The representative of Argentina did not share the EC view that if a contracting party did not reach the limit of more than an equitable share of world export trade, it was in the clear. He found that the debate over past cases was turning too theological or technical. He hoped that the Committee would pass this stage and move towards a political stage, in order to find a pragmatic solution on the question of subsidies.

49. The representative of Chile observed that Article XVI:1 had been drafted, and incorporated into the GATT, by the fathers of the GATT. The remaining paragraphs 2 through 5 of Article XVI had been drafted by the fathers but incorporated by their sons, so to speak. It was important to note that Article XVI:1 had existed alone until 1955, at which time Section B had been added. One should realize then that paragraph 1 had been intended to be self-sufficient. The secretariat document had shown that the question of who determined prejudice under Article XVI:1 remained open. It could be an affected country that made this determination. In this case, such a determination would be subjective, and could be subject to a contrary view. Therefore the discussion could be oriented towards deciding whether or not a prejudice existed, rather than towards a direct solution of limiting the subsidization. However, when the contracting parties, either through a panel or working party, determined that prejudice existed, this could not be put into doubt. In this context then, it was not a matter of simple discussion or consultation, but it was expected that the contracting party would take the necessary steps to remove the prejudice or threat thereof. Moreover, he considered that prejudice was not simply obtaining more than an equitable share of the market. There could be other possibilities of a prejudice existing, which were not covered by Article XVI:3; for example, where the value of a concession granted had not been taken into account, or the depressing effect on prices as a result of stocks.

Article XVI:3: "equitable share"

50. The Chairman next raised the questions as to whether the equitable share principle embodied in Article XVI:3 was sufficiently well-defined or interpreted and whether this provision was an effective discipline on export subsidies.

51. The representative of the United States stated that the rules were imprecise, in that they prohibited the effects of subsidies rather than limiting their use. He also pointed out that the case-by-case application of the rules had been unsatisfactory since panels had been reluctant to make clear legal findings. Therefore, in the opinion of the United States, the equitable share principle was not providing an effective discipline on the use of export subsidies. The other concepts contained in Article XVI:3 needed more precision as well; for example, a determination regarding equitable share permitted certain special factors to be considered. In looking at the trade effects caused by subsidies, he believed that one should consider whether those effects would have otherwise occurred in the absence of export subsidies. In practice, the subsidizing exporter had tried to show that its increased market share had resulted from some special factors rather than its subsidies; such as, as a result of a crop failure or other natural disaster or a strike experienced by a competitor. However, the US representative stated that an increased market share resulting from a special factor did not give the subsidizer a proprietary right to maintain such a share, when the special factor no longer existed. In his opinion, this was an example of where the equitable share principle needed tightening. There were certainly other areas as well which were imprecise. He hoped that the focus of the Committee's more technical discussions would be on the need to limit the use of subsidies, and not merely to mitigate their effects.

52. The representative of Canada referred to the growing distortion caused by government intervention, and its consequent effect on trade patterns. In this context, he asked whether it was possible for any panel to determine whether a subsidizing country is gaining more than an equitable share of the market. In the past, where a panel had made such a finding the trade environment was less distorted than was the case now.

53. The representative of the European Communities believed that there should be a better definition or clarification of the concept of equitable share. One question that should be addressed was the scope of the term "world export trade": whether this was limited to commercial transactions or also extended to non-commercial transactions. Related to this question was whether trade on the world market on the whole should be considered, or also on an individual market, in determining whether more than an equitable share had been obtained. He noted that the Subsidies Code had tried to solve this problem and suggested that the Committee discuss whether the Code had indeed succeeded. The wheat flour panel had shown that there had been a great divergence of views between the US and the EC as to what constituted an equitable share. The question of special factors should also be considered. He asked the secretariat to comment as to how Article XVI:3 could be clarified.

54. The representative of the secretariat stated that he had always been struck by the lack of symmetry between the GATT provisions on imports and those on exports. Article XI:1 prohibited quantitative restrictions. Paragraph 2 authorized under certain conditions exceptions to this prohibition. As regards Article XVI, however, the drafters had not proceeded in the same manner. They had provided a

certain tolerance for export subsidies, and around this tolerance a very complicated and confused jurisprudence had been built. Given that conditions had changed since 1947 one could imagine that now, or in 1985, the symmetry between the provisions on export and on imports could be re-established. This would mean that subsidies on the export of primary products would be prohibited, just as quantitative restrictions are prohibited. Subsequent paragraphs of Article XVI therefore, could institute a certain number of limited and precise exceptions. He had been struck by the small number of cases where Article XI:2 had been invoked in the notifications under Exercise A. This provision contained the derogations to the ban on quantitative restrictions. He hoped that the invocation of exceptions to Article XVI would also be as limited. Whatever the case, the contracting parties from the beginning had organized things inversely by saying more or less that export subsidies should not be considered as something well and good, but establishing a tolerance for them. Here was where one found the famous equitable market share. The history described in the secretariat document showed clearly that the different panels which were established to resolve particular disputes had had truly disorganized opinions as to the interpretation of the various provisions of Article XVI:3. It was extremely difficult to grasp a general line of case law in the decisions of the panels. In his view, the extreme limit had been reached in the panel on wheat flour, where the panelists had stated lucidly and courageously, that the provisions of Article XVI had been interpreted so divergently, that they did not feel authorized to side one way or the other, or to add a new interpretation to what existed already. This proved that a limit had been reached, in terms of the history of law, when judges stated that they were no longer capable of interpreting the law. As regards equitable market share, panels had in the main followed a two-step approach. In examining each particular case, panels had tried to gather together a certain number of facts, trying to collect a bundle of presumption. First, they addressed themselves to whether a subsidy existed. In general this was the easiest question for panels to determine. Secondly, they saw whether there was an increase in the share of the country in question on the market in question. Here again this was fairly easy to establish because this involved statistics. Thirdly, they examined whether there had been a decrease in the share of the competitors in this market. In the main again, statistics helped to answer this question. Had sales taken place at a price which was on the whole below the price existing at that particular time on the world market? This became more difficult to answer as it was very difficult at least for certain products to determine a world market price. Certain points of reference had been lacking, for example, how did one establish the world market price for wheat flour. Was it the price published in the United States market price list or a price derived from the price on the Chicago market for wheat, adjusted by processing co-efficients or the price or the prices in tendering operations that had been presented by certain complainants? Nevertheless, the panels had tried to establish a certain presumption in general. Presumption was not proof. What had always been lacking in order for the panels to truly establish that there had been an infraction or else to acquit the guilty party - the accused party if you will, was establishing the causality between the subsidization and the different elements of

presumption. Here was where the special factors came in. We had witnessed in a number of panels the amplification of the role of these special factors, which completely put into question the relationship which must necessarily exist between the granting of a subsidy on exports and the increase in the market share, which was the subject of a complaint. In numerous, if not the majority of cases, it appeared extremely difficult for the panels to establish this causal relationship, even when panels found that a subsidy was being granted without a shadow of a doubt, which permitted country X to increase its share of the market while the shares of others decreased at the same time that the sale was being made, and at such a price which appeared to be below that of the world market. Panels could not supply the proof, could not establish with certitude that because of a subsidy that a country was granting, it maintained more than its equitable share of the market. This was because at the same time a dozen, or two dozen, special factors had intervened in the game, so confusing matters as to destroy any possibility to pass judgement. Further complicating matters in the five panels was the fact that the notion of commercial prejudice was not clearly established. In certain cases, trade prejudice was not even complained about nor invoked, as the volume of trade involved was extremely small. Rather, what had been invoked in some cases was a sort of moral prejudice stemming from the fact that GATT provisions had been violated, in the view of the complaining party, and this could open the way to more important prejudice on trade. Contrary to what had been believed for a long time, it appeared from the panels that it was not necessary to have a trade prejudice established or in evidence to have recourse to action under Article XXIII. The representative of the secretariat considered that the notion "equitable share" was extremely ambiguous because of the word "share". One could imagine that market shares which had been negotiated were inevitably equitable, but this might not necessarily be true. A certain number of international commodity agreements set something which resembled an equitable share. For example, when export quotas were fixed under the international agreement on coffee or sugar, this did not entail the sharing of individual markets but the fixing of the maximum contribution by each participant towards the supply of the world market. Thus there was nothing extraordinary in the concept of equitable market share. As opposed to international commodity agreements, market shares were not negotiated nor probably negotiable in the GATT. As a consequence all panels established to determine what was equitable or not must necessarily and largely refer to subjective notions. That was how we had arrived at having panels with divergent interpretations or no interpretations at all. At this stage of the discussion, it was difficult to imagine how the concept could be modified or improved in order to make it more compact and less subject to debate. As it stood now, it was obviously open to a variety of interpretations, because of its imprecision, and because of the role that special factors were called to play more and more in its definition.

55. The representative of New Zealand stated that the secretariat documents and remarks had highlighted the dilemma and problems of interpreting Article XVI:3. He still felt that the Committee should formulate an agenda for bringing clarity to the provisions on equitable share, a criterion for assessing whether injury had taken place. In his

opinion, the trouble with equitable share was that it was a false precision. It sounded scientific but just meant fair. Article 10 of the Subsidies Code had been a recent attempt to bring precision to Article XVI. Its paragraph (a) contained the notion of displacement. Its paragraph (b) provided that a given market share pattern should be carried over into new markets. He wondered whether this was really equitable, when in the absence of subsidies, a different allocation of the market would have taken place. In other words, it provided a static basis for assessing what was equitable. In this connection, he queried whether Article 10(b) of the Code was at odds with the principles of GATT Article XVI:1, where there was a broader picture of possible prejudice. Moreover, Article 10:3 of the Code had grappled unsatisfactorily with the concept of price impact of export subsidies. This was a new thing, separate from equitable share, and not in Article XVI. Article 10:3 prohibited signatories from granting export subsidies resulting in prices materially below those of other suppliers to the same market. Such a provision made no sense in situations when a product was not in oversupply, seeing that the exporter would not deprive himself of available returns. But if the product was in oversupply the subsidizing exporter would take a part of the market from his competitors and this went back to the question of equitable share. Another case that interested New Zealand in particular which had not been addressed in Articles XVI or 10, was where subsidies lowered the overall price levels on the market and other suppliers had to reduce their prices to protect their market share. This was a problem that should be on the Committee's agenda for subsequent discussion. In this situation, subsidies were depriving suppliers who could sell without subsidies, the benefits of their comparative advantage, and the returns they could hope to obtain from the market in the absence of subsidies or with reduced subsidies. Article 10 of the Subsidies Code had fallen short of the clear guidance as regards Article XVI that its drafters hoped they would achieve. This pointed to the subsequent work that the Committee should focus on.

56. The representative of the European Communities felt that the Committee was sliding away from what the Ministers had requested. The Ministers had not asked the Committee to write new disciplines. The position of New Zealand was that Article XVI:3 led to divergent interpretation, and therefore it should be rewritten by establishing new disciplines. What worried the EC representative was that the New Zealand position started from a reasoning which was not the GATT's. As the secretariat had pointed out there was a difference between Articles XI and Article XVI. The former prohibited and provided exceptions. The latter was not a prohibition but a tolerance. Of concern to him as well was the New Zealand view that maintaining a share with subsidies meant that one had more than an equitable share. The EC representative did not agree with this opinion. Maintaining a share with subsidies was not necessarily inequitable. He referred to the interpretative note to Article XVI:3 wherein it was stated that "the fact that a contracting party had not exported the product in question during the previous representative period would not in itself preclude that contracting party from establishing its right to obtain a share of the trade in the product concerned." For example, the United States in the past had not exported dairy products. The GATT did not prohibit the United States

from subsidizing exports of butter in order to obtain its share of the world market. That was the reality of the GATT. A country which did not subsidize in the past but which decided to grant a subsidy to maintain a share in the world market was not guilty under the GATT. That was the rule and it could not be changed. He agreed with New Zealand that Article XVI:3 had led to different interpretations and therefore was badly written. The Community was ready to write it to make it clearer but did not agree to write it by adding new disciplines. This would go further than what the Ministers had requested. He did not agree with the view that the fact of granting a subsidy was in itself a factor that created an inequitable share. This was another question and would mean a new rule in the GATT. Experience had shown that politicians and big bosses should never be left alone. This had led to the drafting of Article 10 of the Subsidies Code. Not that this Article was absurd, but he was sure that the participants here working together could have written it differently. He also considered that discussions on subsidies should continue between this meeting and the meeting of the Committee in March.

57. The representative of Argentina agreed with the statement of the secretariat as regards the importance of special factors in determining equitable share. Nevertheless, he felt that the Committee should not go too deeply into these problems and lower the level of the discussion to a technical level. The Committee had been asked by the Ministers to examine the effectiveness of Article XVI in promoting the objectives of the General Agreement and avoiding subsidization seriously prejudicial to the trade or interests of the contracting parties. The ultimate goal of the Committee was to make recommendations with a view to achieving greater liberalization in the trade of agricultural products. He did not believe that greater liberalization could be achieved via a greater use of export subsidization. Therefore he thought the Committee should focus on proposals for fixing the parameters for limiting these practices.

58. The representative of Canada referred to the EC contention that the basic rules of the GATT could not be changed and that the mandate given by Ministers of the Committee did not include envisaging a change in the GATT rules. He believed, however, that this was an incorrect interpretation of the facts. At their meeting, it was clear that the Ministers had recognized that the state of trade in agricultural products was reaching a disastrous situation. They had asked officials not just to examine the problem, but to come up with concrete recommendations. Moreover, the wise men that had drafted Article XVI recognized that this Article might not be effective. This was evident in that they had provided in Article XVI:5 a review of the operation of the provisions with a view to examining its effectiveness. The problem with the Subsidies Code as it related to agricultural trade was that the two major protagonists having not agreed on the substance of the problem drafted around the basic problems. He referred to the incipient trade war between the European Community and the United States, as well as the fear of other countries to be caught in the middle. At the Ministerial meeting the Minister from Australia had made a valid point, in asking whether it was necessary to have a trade war before countries were prepared to come up with new rules, if such rules were required. In the

view of the Canadian representative, that was what the Committee should be getting into. The observations of the secretariat as regards the history of the evolution of equitable share led one to believe that it would appear virtually impossible to come up with an elaboration or a clarification, or a drafting around the problem of the equitable share principle, which was a subjective concept, thereby translating it into something operationally meaningful and quantifiable. This suggested to him that it would not do by saying that Article XVI:3 was the status quo, could not be changed, or could be clarified only by drafting around the problem. The basic problem remained the domestic support policies which existed in all countries. Until the Committee tackled that problem he was afraid that it would not get very far.

59. The representative of Hungary stated that he recognized the great importance attached to understanding and interpreting well the Articles of the GATT. Similarly he agreed that interpretation as such was not for the Committee, but for contracting parties to do. This of course did not preclude, in his view, that interpretations given by the Committee could be endorsed by the contracting parties. Experience had shown to him that the only equitable share was the lion's share. This did not satisfy small suppliers like Hungary but it was a fact of life. He was worried that the Committee was putting the cart before the horse by discussing concepts before it had reviewed what it would do with these concepts. It was important, in his view, to have a sort of moral guarantee or at least, a not unfounded expectation that if the Committee did come to an agreement, this would result in action being taken.

60. The representative of New Zealand agreed with the Canadian view that the Committee was not precluded by its Ministerial mandate from looking searchingly at the contents of the provisions of Article XVI and considering what changes might need to be made thereto. He also agreed however, with the EC implication that it would be a hopeless and time-wasting task to try to bring about a root and branch revision of Article XVI. Certainly he did not want to appear as suggesting that. It was important, he believed, for the work in the Committee to go beyond the relatively narrow parameters of the concepts contained in Article XVI.

61. The Chairman of the Committee stated that he would not attempt a summary of the Committee's discussion on equitable share. The secretariat had commented on the fact that Article XVI was difficult. The Subsidies Code existed on which he would pass no judgement. There had been a feeling however that panels were not able to come to conclusions anymore. Therefore, he believed that the Committee should look at Article XVI not to scratch it off nor to prohibit altogether subsidies, but rather participants should explain to one another what should be the limits on subsidies or the future possibilities of having subsidies, on the domestic market as well as on exportation in order to avoid trade wars.

"Primary product" and Article XVI:4

62. The Chairman next raised the questions as to what constituted a primary product and what were the obligations of contracting parties as regards the subsidization of the primary product component of a processed product.

63. The representative of the European Communities stated that there were two problems - one was the definition of a product other than a primary product and secondly in what form a primary product could be presented. He referred to the fact that a definition of primary products was included in the Notes and Supplementary Provisions to Article XVI. When contracting parties had approved this definition, it was more or less understood that any problems that might arise would be handled on a case-by-case basis. He thought it would be difficult to go further in clarifying this definition and considered that really the problem did not lie here. The real problem in his view was whether Article XVI:4 in light of past practice could be read as stipulating that contracting parties could not grant subsidies on a primary product, if that primary product was incorporated into another primary product or processed. He referred to the dispute between the EC and the US on subsidies on pasta. In this case, the EC had not been subsidizing pasta but the primary product incorporated in the pasta, as had been the practice all the time. The United States had shown the way for this when in 1958 and 1961 it had made an interpretative declaration as regards the subsidization of cotton and of cotton in textile products. In its notifications under Article XVI:1, the Community had always clearly stipulated that it subsidized processed products. This had never been the subject of discussion nor to dispute. Similarly, Australia had subsidized the sugar incorporated into candy. This had not been contested until the United States, upon a complaint, had imposed a countervailing duty on Australian candy. Although it did not use the same jargon, but referred to equalization, Switzerland did subsidize the export of processed agricultural products, as did the Nordic countries as well. The practice had never been challenged until the United States woke up on the question of pasta. The question was therefore was it permissible to subsidize wheat. In its natural form, the answer was yes, once processed, some said no. The reading of Article XVI:4 did not say so. Supposing it was clearly established that the granting of the subsidy on a primary product was permissible in its natural form as well as processed, the third question that could be raised was which rule would then apply to the subsidy. The concept of equitable share existed. It applied on the primary product in its natural form, but would it apply to the primary product component or to the processed product? Seeing that it was not clear what rules should apply, and if the United States had been more reasonable a year and a half ago, there could have been discussions on what disciplines should apply on processed products. The equitable share concept could apply to those processed products for which there was a world market; for example, wheat flour or barley malt. However, to apply an equitable share on the primary components such as wheat and wheat flour or sugar incorporated into candy would seem difficult, if not absurd. A rule needed to be found. Saying things must be clearer, did not mean that one was going further than the actual rule. One could discuss, for

example, whether the rule should be that no subsidy should be granted on the exports of processed products that was higher than the equivalent of that on the primary product component. He also recalled that Article 10 of the Subsidies Code had been written on a tablecloth at the Hotel Intercontinental in Geneva at a meeting between Messrs. Strauss and Gundelach. The agreement was not very good and therefore showed that a problem or solution that is not ripe should not be brought into the hands of politicians. He hoped that the discussions on subsidies would be taken as far as they could in the Committee. He doubted whether the Committee could fulfill well its Ministerial mandate, in the way that other speakers had indicated, if it did not continue to discuss things as it was doing now informally, and if it did not prepare beforehand the matter, before placing it at the political level. He observed that it was GATT practice for the Chairman of a group to consult with delegations. He thought such a formula would be advisable, rather than for the Committee to go directly into the subject of subsidies in March.

64. The Chairman agreed that now was not the time to put formal proposals on the table.

65. The representative of the United States stated that he would begin his remarks with a question: was a sandwich a primary or a non-primary product? The Chairman as well as the EC had asked what were the obligations of contracting parties as regards the subsidization of the primary product component of a processed product. He considered that the way this question was framed presumed that it might be permissible to subsidize a processed product, by claiming that the subsidy was on the primary product component thereof. Article XVI:4 made it clear that it was not permissible. The rule was clear, the problem was that the Community did not like the rule. The obligations under Article XVI:4, for the contracting parties bound by the paragraph, were to cease to grant either directly or indirectly any form of subsidy on the export of any product other than a primary product. The panel established under the Subsidies Code to examine the EC subsidies on the export of pasta had considered every aspect of this issue, and had correctly concluded that export subsidies on such processed products were prohibited. He characterized the Panel's report as correct, well-reasoned, and clearly stating the rule, leaving no question as to the obligations of the contracting parties under this provision. The United States did not intend to re-argue the pasta case in this Committee. He emphasized however that they were not here to negotiate either Article XVI:4 or Article 9 of the Subsidies Codes so as to lessen the obligations of the contracting parties.

66. The representative of Chile observed that there was one category of goods on which all appeared to agree constituted primary products, and another category which all recognized as not primary products. He felt that the Community had quite rightly drawn attention to the grey area of certain products, in particular wheat flour, which were inbetween primary and non-primary products. He thought that a solution could be found for this. Secondly, there was the question of the meaning of the rules on the subsidization of the primary product component of a processed product. The history of the GATT demonstrated that the rule was clear. Article XVI:4 prohibited subsidization of processed

products. This rule had been reproduced in the Subsidies Code. When the United States had made its unilateral interpretation about subsidizing cotton in textiles, there were those who did not accept this, including Mr. Gundelach, as well as representatives of Sweden and Denmark. What we were confronted with was a rule that was perfectly clear, and certain practices. He could not accept the argument that because practices had been enforced which had not been contested, this meant that a new rule was in place that had been accepted by all contracting parties. Thirdly, he considered that the Community had quite rightly posed the question of whether by chance or otherwise it was determined that it was possible to subsidize the primary product components of a processed product, what kind of disciplines should apply. It was evident that the concept of equitable share could not apply. Therefore the debate in the Committee, in his view, should cover the fact that certain practices existed, some of them had been notified, and that it would be important to determine to what discipline or control they should be subjected. If these practices were considered legitimate, Article XVI would have to be redrafted to provide a specific paragraph concerning the disciplines on processed products. He considered this to be an interesting hypothesis because by reopening the question of redrafting or examining the scope of Article XVI, contracting parties would be embarking in a complete renegotiation of that Article. He stated that he would prefer to see that the practices in question be replaced by those that were legitimate under the GATT or altogether eliminated.

67. The representative of Switzerland stated that the Community had appeared to imply that Switzerland had been secretive about its equalization systems on processed agricultural products. The representative of Switzerland referred to the last complete notification under Article XVI:1 furnished by his country (L/5102/Add.9). In that notification it was stated clearly that in order to place the Swiss foodstuffs industry on an equal footing with foreign competitors in respect of the cost of agricultural commodities used in the preparation of processed products, a Federal Law authorized Switzerland to charge variable elements on imports and to grant contributions on exports. The contributions on exports as well as the variable elements on imports were calculated periodically on the basis of the difference between Swiss and foreign prices of agricultural commodities. By replacing the words "contributions on exports" with "export restitutions" he suggested that the system then would describe the EC system on processed products. The Swiss notification also specified that contributions on exports had been granted for dairy products, preserved eggs, cereal products and sugar and molasses, when these commodities were exported in the form of processed foodstuffs such as chocolate, biscuits, infant food, confectionery, macaroni, spaghetti and the like, soups, sauces etc. The amounts of the contributions to exports were also indicated under the title "Amount of Subsidy", which showed that Switzerland was not hiding the fact that this system did involve a subsidy. It was also noted that the subsidy allowed Swiss undertakings to be placed on foreign markets in the same competitive conditions as foreign undertakings in respect of the cost of purchasing the principal agricultural commodities. Through its notification, Switzerland was recognizing implicitly that its system was compatible under its obligations under Article XVI, as well as the Subsidy Code. His delegation was ready however, to examine the rules applicable on the granting of subsidies on processed agricultural products because it seemed that there was a lacuna in the GATT in this regard.

68. The representative of Finland stated that the Nordic countries had made clear their position on the question relating to the subsidization of exports of processed agricultural products. To them, this was a very important issue which had ramifications well beyond the concrete case which had been discussed in the Committee on Subsidies and Countervailing Measures. The Nordic countries did not believe that the long-standing practices that had prevailed before the Tokyo Round negotiations had been changed by the negotiation of the Subsidies Code. Such a change would not have taken place without explicit discussion and agreement among the negotiators. He added that the representatives from Nordic countries had taken an active part in the negotiation of the Code. It should be clearly recorded that the Nordic countries did not accept the interpretation that the primary product component of the processed agricultural product could not be subsidized. This was allowed, in their view, as long as the subsidy did not exceed the level needed to compensate the difference between the higher domestic price and lower world market price for the agricultural raw material component used in the manufacture of the processed product. Like the representative of Switzerland he hoped that the Committee could come to a consensus on the matter but he thought the task was difficult.

69. The Chairman asked the secretariat to comment on the issue.

70. The representative of the secretariat stated his view that the fact that this question was before another group should not stop the Committee from reflecting as to the best way to find a satisfactory solution to the matter. Having spent a long time on the pasta case, he wished to stress at the outset that the opinions that followed were strictly personal. It seemed to him that the subsidization of the primary product component raised four major economic or trade inconveniences. Firstly, one did not know where the subsidization should stop. Trees, for example, were a primary product - planks were the object of a first processing and furniture of the second processing. It was difficult to know where to stop the subsidization in this scheme of things. If the wood that was incorporated into furniture could be subsidized, he did not see what was left not to subsidize, perhaps the nails or the screws. The second inconvenience was that the processed product, which all would agree was a non-primary product, escaped from the rules of Article XVI:3, as the EC had pointed out. He saw with difficulty how the contracting parties could negotiate what constituted the equitable share on a particular market for biscuits or petit-fours. Thirdly, the subsidization of a primary product component involved an extraordinary bureaucratization at the border. He had always wondered how one could calculate how to grant a subsidy on the unnatural sugar incorporated into fruit juice, given that the natural sugar content of fruit juice varied year to year with the sunshine. A fourth inconvenience was that it was probably known that the subsidization of the primary product component led to fraud and contraband. It was not the EC Commission's civil servants who would deny this point, given in particular the rather loose definition they had given of inward processing arrangements. Apart from the fact that this technique costed a great deal at the border, since sometimes as much as 50 per cent of the value of the product was in question, he had wondered whether a possible solution might come from comparing, or by analogy with, what

existed under rules of origin, wherein the added value played an essential role in the final determination of the origin of the product. Although they had been completely free to do so, he thought it was a pity that the experts who had studied this question had tried to resolve it according to essentially legal criteria. He referred to the fact that one or two years ago the United States had decided to implant a network of bakeries in the Republic of China. He asked whether indeed this was the good way out. If a country truly considered that it faced unfavourable conditions of competition on its exports of a primary product but nevertheless wished to conquer foreign markets, it was up to that country to do what was necessary; i.e., to invest in the industrial manufacturing process in the countries whose markets it wanted to conquer. It seemed to him that it was not beyond the efforts of the contracting parties to agree to a list of products which constituted a primary product, provided that all parties brought with them a certain amount of common sense. Another solution would be to prohibit purely and simply the subsidization of the primary product component of a processed product. A third solution would be to subject the products so subsidized to at least the same or equivalent disciplines to be found under the equitable market share provisions of Article XVI:3. In the strictly legal considerations of the pasta panel in the elaboration of its conclusions, what it had judged open to criticism was not the fact that the primary product component was subsidized, but rather that the subsidy was granted to the processed product. Given the ingenuity as well as the number of civil servants in Brussels, he thought it would suffice for them to modify around 250 Commission regulations to render the EC system less prone to attack, by transferring the stage of the subsidy from the processed product to the primary product. He did not know whether there was any future in such a path, and whether the formal respect of the GATT provisions in this case would necessarily benefit agricultural trade.

71. The representative of Hungary observed that the solution for a country to introduce itself into the industrial process everywhere in the world was only available to those countries who had unlimited means to do so. Only the big rich countries could afford this. He characterized as interesting the secretariat suggestion for using a method similar to that employed for rules of origin. Another method, more closely related to exportation, was the drawback system. This permitted the production and exportation of the paid tariff content of the product, and this was passed on at whatever stage of manufacturing. He wondered whether such a refund system which was allowed under GATT rules could be assimilated to this question of refunding the primary product content of a processed product.

72. The representative of the United States stated that the issue in the pasta case was not whether pasta was a primary product or not. Quite frankly, no known definition of a primary product was needed in his view. The Panel had found that the EC subsidies were paid on pasta and not on durum wheat. The problem was not whether the product in question was primary or not, but rather that those countries which subsidized non-primary products, in contravention of the GATT and the Subsidies Code, wanted a new rule that made that practice permissible. The secretariat idea for a new list would require, as noted, a renegotiation of Article XVI.

73. The Chairman agreed that this would involve changing Article XVI but that this did not mean necessarily that the Committee could not make recommendations to do so if it so wished. He did not wish to summarize this the Committee's first discussion on subsidies. Of course, the Committee would continue its discussion, in particular on the question of what constituted a primary product, and the question of subsidizing a primary product component. The Chairman, in co-operation with the secretariat, would be presenting further ideas to assist the Committee at a future meeting.