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Committee on Subsidies and Countervailing Measures

MINUTES OF THE REGULAR MEETING HELD ON 8 MAY 2003

Chairman: H.E. Mr. Milan Hovorka (Czech Republic)

1. The Committee on Subsidies and Countervailing Measures (the "Committee") held a regular meeting on 8 May 2003.

2. The airgram convening the meeting was circulated in WTO/AIR/2080.

3. Before asking whether any Member wished to raise any item under "other business", the Chairman stated that he had to provide a very brief and factual explanation about one aspect of the proposed agenda for this meeting. Items A-O on the Committee's agenda for this meeting deal with the review of new notifications of countervailing duty legislation and/or regulations. Members would recall that the Committee's last regular meeting in autumn 2002 had been suspended with respect to item A, relating to the review of the national countervailing duty legislation of certain Members. Members would note that the legislative notifications listed in the airgram convening this meeting included certain of the legislations that had been listed in that suspended agenda item. To be more specific, these were the legislative notifications listed in items A, B, C, H, I and N of the airgram – that is, those of Antigua and Barbuda, Argentina, Brazil, Grenada, Japan and Turkey. The Chairman stated that he wanted to clarify the circumstances that had led to this situation. During the weeks prior to this meeting, he had been approached by certain of the delegations concerned, who requested the placement of their legislative notifications on the agenda of this meeting for review. On this basis, and taking into account both the situation that led to suspension of the agenda item last autumn, and the fact that consultations to find a solution to this problem were still on-going in other fora, the Chairman held consultations with other concerned delegations. In placing these particular notifications on the agenda of this meeting, the Chairman had been guided by the interest of the proper functioning of the Committee. In particular, in moving some of these other notifications forward, the clear understanding was that the regular autumn 2002 meeting of the SCM Committee remained suspended with respect to the sub-item dealing with the review of one legislative notification – that of Chinese Taipei – and that this way of proceeding did not prejudice any Member's views as expressed at the Committee's autumn 2002 meeting, which would resume once there was a resolution of the issue.

4. The Committee adopted the following agenda:

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A-O. REVIEW OF NEW LEGISLATIVE NOTIFICATIONS

5. The Chairman stated that items A-O on the Committee's agenda dealt with the review of notifications of countervailing duty legislation and/or regulations, in accordance with the procedures adopted by the Committee at its special meeting in April 1996.¹ As indicated in the airgram, due to the volume of material involved, delegations had been asked to bring their own copies of the notifications.

6. In order to facilitate the Committee's discussions, the notifications which had been already reviewed at the autumn 2002 Anti-Dumping Committee and which were on the agenda of the autumn 2002 regular meeting of this Committee were examined first: Antigua & Barbuda; Argentina; Brazil; Grenada; Japan; and Turkey. With respect to each of these notifications, the Chairman asked whether any Member wished to make any comments. There were no comments or questions regarding any of these notifications.

7. The Committee turned to the remaining new legislative notifications. Questions concerning the remaining new notifications of legislation were to have been submitted to the Member concerned and the Secretariat no later than three weeks before this meeting; that is, no later than 10 April 2003. As provided for in the agreed procedures, Members receiving written questions were to respond orally to timely-submitted questions during the meeting. They were also subsequently to submit written versions of their answers to all written questions received. The Chairman reminded Members that follow-up questions could be asked in this meeting. If a Member posed a follow-up question and wanted to receive a written answer, the follow-up question had to be submitted in writing no later than 15 May 2003. Written answers to all written questions were to be submitted no later than 3 July 2003. The Chairman noted that most of the questions had been submitted either on time, or only a few days late. The Chairman stated that he hoped Members would be attentive to deadlines in the future.

8. The Committee turned to the review of the first such legislative notification, that of China. The European Communities and the United States had posed written questions. These questions and China's replies could be found in G/SCM/Q1/CHN/20 and 21.

9. The delegate of the European Communities thanked the delegation of China for the written replies. The European Communities submitted written follow-up questions, in document G/SCM/Q1/CHN/22. China's replies were circulated in document G/SCM/Q1/CHN/23.

10. The delegate of the United States stated that his delegation appreciated the efforts made by China to respond to the questions posed by his delegation. The United States found it particularly helpful that the answers were provided in writing in advance of the meeting and thanked China for doing that. He asked when the delegation of China foresaw notifying laws and regulations which had been referred to but had not yet been notified because they were still in translation or for some other similar reason. In addition, the US delegate wished to raise an issue with respect to China's subsidy notification obligation. The US delegate stated that China had not yet made its first annual subsidy notification required by Article 25.1 of the Agreement, which was due to the Committee in June 2002. The US delegate stated that his delegation would like China to confirm that it would meet this year's deadline of 30 June for its subsidy notification. The US delegate stated that China's failure to participate in the notification process undermined the transparency that Members had worked to develop and hampered the ability of Members to confirm that China was complying with its obligations under the Agreement.

¹ Document G/SCM/W/293

11. The delegate of China stated that, with regard to the comments of the US delegation, due to internal re-organization, legislation rules and laws on anti-dumping, countervailing and the safeguard measures investigations would be amended this year. After the amendment of these laws and regulations, China would notify them to the relevant Committee(s). At the same time, China would notify to the Committees as soon as possible other laws, regulations and rules related to anti-dumping, countervailing duty and safeguard investigations. As for the subsidy notification, the Chinese authorities were collecting information on subsidies. He stated that subsidy notifications were a heavy burden for developing Members. He also stated that China was a new Member of the WTO. China would try its best to get as much information as possible and notify the Committee as early as possible.

12. The Committee moved on to review the notification of Costa Rica. The delegation of Costa Rica had responded to questions on its legislation on subsidies and countervailing measures at the Anti-Dumping Committee meeting of 1-2 May 2003, and these responses had been circulated in G/SCM/Q1/CRI/6. There were no further comments or questions regarding this notification.

13. The next legislative notification for review was that of the Dominican Republic. The Chairman noted that the delegation of the Dominican Republic responded to the questions from the United States on its subsidies and countervailing measures legislation at the Anti-Dumping Committee meeting of 1-2 May 2003.² Those responses are contained in G/SCM/Q1/DOM/3. There were no comments or questions regarding this notification.

14. There were no comments or questions regarding the notifications of the European Communities, Lithuania, New Zealand and Nicaragua.

15. Turning to the notification of Pakistan, the Chairman noted that the delegation of Pakistan had responded to the European Communities' questions (in G/SCM/Q1/PAK/7) on its countervailing measures legislation at the Anti-Dumping Committee meeting of 1-2 May 2003. These replies were circulated in document G/SCM/Q1/PAK/8. There were no further comments or questions regarding this notification.

16. The final legislative notification on this Committee's agenda was that of Zimbabwe. The United States had posed questions to Zimbabwe in G/SCM/Q1/ZWE/7. **No written answers have yet been received.** There were no additional comments or questions regarding this notification.

17. The Chairman stated that, pursuant to the Committee's procedures for review of notifications of legislation, in order for a previously reviewed notification of legislation to appear on the agenda of the Committee's regular meeting in October 2003, questions regarding such notification had to be submitted to the Secretariat, and to the Member whose notification was in question, no later than 11 September 2003. As was its practice, the Secretariat would issue a reminder note of relevant deadlines for this Committee, its subsidiary bodies, and the Committees on Anti-Dumping Practices and Safeguards, in the course of the next few weeks.³ He expressed his continuing concern over the failure of some Members to submit any notification at all concerning legislation or regulations relevant to countervailing measures. For many, if not most, of these Members, it was likely that a single "nil" notification, indicating that there was no such legislation or regulation currently in effect, would be all that was required. This seemed to be a relatively simple matter. For those Members who conducted countervailing duty investigations but had not yet notified their legislation, it was obviously important, from the point of view of all Members, that such legislation be notified, in the interest of transparency and better understanding. He encouraged Members who had not yet done so to make their notification of legislation promptly.

² Document G/SCM/Q1/DOM/2.

³ Circulated as document G/ADP/W/432-G/SCM/W/525-G/SG/W/194.

18. The Committee took note of all of the statements made.

P. SEMI-ANNUAL REPORTS OF COUNTERVAILING ACTIONS (ARTICLE 25.11)

19. The Chairman stated that a request for the semi-annual report for the period 1 July–31 December 2002, to be submitted not later than 5 March 2003, had been circulated to the Members in G/SCM/N/93, dated 13 January 2003. As was unfortunately almost always the case, a number of the semi-annual reports had been received late. He reminded Members that semi-annual reports were *always* due at the end of August for the period January through June of the current year, and at the end of February for the period July through December of the previous year. He again urged all Members to take the necessary steps to submit these notifications on time. Particularly for those Members who had taken no actions, these notifications should be purely a matter of routine, as all that was required was a one-sentence letter stating that no actions had been taken. Members who had submitted semi-annual reports of countervailing actions were identified in paragraph 1 of document G/SCM/N/93/Add.1, dated 1 May 2003. These Members were: Australia, Brazil, Canada, the European Communities, South Africa and the United States. To the extent possible, the semi-annual reports had been translated and circulated to the Committee, and were included in the documents made available for this meeting. In addition to the Members who had submitted semi-annual reports of countervailing actions, 42 Members, listed in paragraph 2 of document G/SCM/N/93/Add.1, had notified the Committee that they had not taken any countervailing actions during the period in question. While Members who took actions appeared generally to comply with this requirement, there remained a significant number of Members who had not responded to the request for semi-annual reports, and had therefore failed to comply with this important requirement set forth in Article 25.11 of the Agreement. These Members were identified in document G/SCM/N/93/Add.1., paragraph 3.

20. There were no comments or questions regarding the semi-annual reports of Australia, Brazil, Canada, the European Communities and the United States.

21. The Committee took note of the statement made.

Q. NOTIFICATIONS OF PRELIMINARY AND FINAL COUNTERVAILING ACTIONS

22. The Chairman stated that lists of the notifications of preliminary and final countervailing duty actions received by the Committee were circulated to the Committee in documents G/SCM/N/91, 94 and 96. Since the last meeting of the Committee, preliminary and final countervailing actions had been notified by the European Communities, South Africa, and the United States. There were no comments or questions with respect to any of these notifications.

23. The Committee took note of the statement made.

R. SUBSIDY NOTIFICATIONS

1. Review of 2001 new and full subsidy notifications and related documentation under the procedures adopted by the Committee at its May 2001 meeting (G/SCM/W/441)

24. With respect to the review of 2001 new and full subsidy notifications under the Committee's agreed procedures, the Chairman stated that the notifications and related documentation of Bolivia, Estonia, Grenada, Malawi, Norway and Thailand were on the agenda for review under this item. He reminded Members that, as decided by the Committee at its October 2002 meeting, and as recalled by his fax to Members of 15 January 2003, those 2001 new and full subsidy notifications received too late to be reviewed at the Autumn 2002 meeting, would, if possible, be reviewed during this Spring

2003 meeting according to the Committee's agreed procedures. Pursuant to the Committee's decision, 2001 new and full notifications distributed in all three working languages not less than 19 weeks before this meeting could be reviewed at this meeting. The review of subsidy notifications was to be conducted on the basis of written questions and answers provided before the meeting. Written questions regarding these notifications were due to the notifying Member and to the WTO Secretariat no later than 15 weeks before the meeting, i.e., by 22 January 2002. Written answers to written questions were due no later than 6 weeks before the meeting, i.e., by 26 March 2002. All written questions and answers which were available in time were included in the document package available from the documentation centre. Not all of the questions and answers were available in all languages, partly due to late submission of documentation and partly due to translation delays.

25. The first notification on this Committee's agenda was that of Bolivia, which could be found in document G/SCM/N/71/BOL & Corr.1. The Chairman stated that the United States had submitted questions, contained in G/SCM/Q2/BOL/1. **No written answers have yet been received.**

26. The notification of Estonia can be found in document G/SCM/N/71/EST. Australia had submitted written questions, contained in G/SCM/Q2/EST/1. Estonia's written replies were circulated as document G/SCM/Q2/EST/2.

27. The next notification on the agenda was a supplementary notification of Grenada, which can be found in document G/SCM/N/71/GRD/Suppl.2. The original subsidy notification of Grenada had also been subject to review, and questions and answers had been exchanged, in the context of the Committee's Article 27.4 exercise last year. There were no comments or questions with regard to this supplementary notification.

28. The next notification on the agenda was the "nil" notification of Malawi. There were no comments or questions with respect to this notification.

29. The next notification on the agenda was a supplementary notification of Norway, which can be found in document G/SCM/N/71/NOR/Suppl.1. There were no comments or questions with respect to this notification.

30. The last notification under this item on the agenda was the supplementary notification of Thailand. The Chairman recalled that the original G/SCM/N/71 subsidy notification of Thailand had also been subject to review, and questions and answers had been exchanged, in the context of the Committee's Article 27.4 exercise in 2002. Australia had submitted written questions on Thailand's supplementary notification, in G/SCM/Q2/THA/14. Thailand's written replies to Australia's questions were circulated as document G/SCM/Q2/THA/15.

31. The Chairman reminded Members that any written follow-up questions should be submitted to the Member concerned and to the Secretariat no later than 16 May 2003. Written responses to any such follow-up questions should be submitted by 13 June 2003.

32. The Committee took note of the statements made.

2. Review of 2001 new and full subsidy notifications received too late to be reviewed at the spring 2003 meeting under the Committee's previously-agreed procedures

33. The Chairman recalled that, through his faxes of 15 January and 17 February, and from the draft annotated agenda sent to Members in late March 2003, he had informed Members that the 2001 new and full subsidy notification of New Zealand (G/SCM/N/71/NZL), as well as documentation received from the United States (G/SCM/N/71/USA/Suppl.1), were received too late to be reviewed under the Committee's previously-agreed procedures. However, as no Member objected to the

Chairman's proposal to review this notification and documentation at this Spring 2003 meeting by the deadline he had indicated – 14 March 2003 – he intended to conduct the review of these notifications at this meeting. As Members were informed, written questions were to have been submitted by 24 March, and written responses by 28 April 2003.

34. The Chairman stated that, unless any Member had any comments, he would draw the Committee's attention to the 2001 new and full subsidy notification from New Zealand, to be found in document G/SCM/N/71/NZL. Australia and the United States had posed questions, in documents G/SCM/Q2/NZL/9 and 10. New Zealand's replies to the questions posed by Australia and the United States were circulated as document G/SCM/Q2/NZL/11.

35. The delegate of the United States expressed his appreciation for the replies received from New Zealand. He stated that it was really a model set of answers with respect to notification questions. In particular, he noted the answers received with respect to the distribution of benefits under the programmes. This was often the most difficult information to put together and it was very clear a lot of hard work and effort had gone into putting together the answers.

36. There were no comments or oral questions with respect to the supplementary notification of the United States in G/SCM/N/71/USA/Suppl 1.

37. The Chairman reminded Members that any written follow-up questions should be submitted to the Member concerned and to the Secretariat no later than 16 May 2003. Written responses to any such follow-up questions should be submitted by 13 June 2003.

38. The Committee took note of statements made.

3. Working Party on Subsidy Notifications – Chairman's Report on 8 May meeting

39. The Chairman stated that the purpose of the Working Party meeting was to continue the discussions on further possible steps to facilitate notification by Members, including possible follow-up on the very successful subsidy notification seminar for capital-based officials held on 29 and 30 October 2002. First, he sought delegations' views on the possible changes to the notification format in G/SCM/6, on the basis of the proposals annexed to the note prepared by the Chairman last year, in document G/SCM/W/505. He took note of the constructive discussion and stated his intention to ask his successor to consider continuing the consultations with Members on this issue of revising the agreed format in order to facilitate Members' subsidy notifications. He also indicated his intention to ask his successor to consider consultation on other notification-related issues, such as the possibility of enhancing the know-how and capacity of notification on a regional basis.

40. The timing and emphasis for submission of notifications and procedures that would govern the Committee's review of 2003 new and full subsidy notifications and the draft procedures circulated in document G/SCM/W/524 in respect of procedures for the review of 2003 new and full subsidies notifications had also been discussed. However, the Chairman said that he would not go into substance with regard to those two issues because they would be taken up by the Committee in the next two agenda items.

41. The Committee took note of the Chairman's statement.

4. Timing and emphasis for submission of subsidy notifications

42. As indicated in the Chairman's 17 February 2003 fax to Members, and in the annotated agenda for this meeting, the Chairman recalled the understanding concerning the timing and emphasis for submission of subsidy notifications reached at the Committee's special meeting in May 2001

(G/SCM/M/30), including the need to review the situation after a trial period of two years (i.e. in 2003). The Chairman further recalled that, at that special meeting in 2001, the former Chairman's perception of Members' views had been that Members believed that their resources would be best utilized by giving maximum priority to submitting new and full notifications, every two years, and by de-emphasizing the review of the annual updating notifications. In respect of new and full notifications, Members could focus, in alternating years, first on making their own notifications, and then on reviewing other Members' notifications. It was expected that this would have the effect of increasing transparency, which was the objective of the obligations in question, but none of the steps suggested was intended to add to or detract from Members' rights and obligations. It had been the Chair's sense that Members would want to see whether in practice an intensified effort in respect of new and full notifications was effective in improving compliance, and therefore that they would want to review the situation after a trial period of two years, that is, now, in 2003. Thus, Members needed now to consider whether to continue these arrangements concerning the timing and emphasis for the submission of subsidy notifications for a further trial period.

43. The Chairman noted that, while the Article 27.4 process within the Committee during 2001-2002 resulted in the notification of subsidies by certain Members which had not previously submitted a subsidy notification, the overall record of Members' compliance with the obligation in Article 25.1 to submit subsidy notifications remained extremely poor. As of 31 December 2002, 54 Members (counting the European Communities as a single Member) had submitted a 2001 new and full notification, including 15 which notified that they provided no notifiable specific subsidies. This meant that 75 Members had not submitted a 2001 new and full notification. He recalled that a primary motivation for the trial arrangement from 2001-2003 had been to encourage all Members to comply with their transparency obligation to submit a new and full subsidy notification. The Chairman stated that it was his sense that Members' views in this connection remained largely the same as those described by the Chairman in 2001. That is, he understood Members to believe that their resources would be best utilized by giving maximum priority to submitting new and full notifications, every two years, and by de-emphasizing the review of the annual updating notifications. It would be expected that this would have the effect of increasing transparency, which was the objective of the obligations in question, but none of the steps suggested was intended to add to or detract from Members' rights and obligations. Thus – and notwithstanding the continued poor record of compliance – as he had indicated in his 17 February fax to Members as well as in the annotated agenda for this meeting, it was the Chairman's understanding that the Committee would find it acceptable to continue the existing arrangement for a further trial period of two years in order to encourage the submission of new and full subsidy notifications by all Members, and that the Committee once again review this arrangement in two years, i.e. in 2005.

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

5. Procedures for review of 2003 new and full subsidy notifications

45. The Chairman stated that Members had already been reminded several times in the course of this meeting that, in accordance with Article 25 of the Agreement, 2003 new and full subsidies notifications by all Members were due by 30 June 2003. An invitation for Members to submit their 2003 new and full subsidy had been circulated in document G/SCM/N/95 in February 2003. However, the Committee needed to adopt procedures with respect to the Committee's review of these subsidy notifications. Therefore, the Chairman asked Members to consider whether the Committee could adopt the draft procedures circulated in document G/SCM/W/524 in respect the review of 2003 new and full subsidies notifications. He stated that the proposal put before the Committee contained the timeframes as originally submitted, and that, based on his understanding of certain delegations' positions as indicated in discussions in the Working Party, he was no longer proposing the possibility of abbreviating those timeframes. The Chairman asked whether this way of proceeding was acceptable to Members.

46. The Committee took note of the statement made by the Chairman and so agreed.

S. ARTICLE 27.4 EXTENSIONS OF THE EXPORT SUBSIDY TRANSITION PERIOD OF CERTAIN MEMBERS' ELIGIBLE PROGRAMMES

1. **Deadlines for submission of notifications and questions and answers for the Committee's review of transparency and standstill obligations in the decisions in G/SCM/50-102 relating to the Article 27.4 process (extension of export subsidy transition period of certain Members' eligible programmes)**

47. As he had indicated in his 7 March 2003 fax to Members concerning the 6 March informal consultations he had convened on this topic, the Chairman proposed that the Committee agree to the following dates for the Committee's mandated review of the standstill and transparency commitments contained in the decisions adopted by the Committee in November and December 2002 relating to the extension of the transition period for certain Members' export subsidy programmes (documents G/SCM/50-102): the Members concerned would submit the required notification by 30 June 2003, i.e., the same deadline as applicable to the submission of 2003 new and full subsidy notifications. This would allow for an exchange of questions and answers, to the extent necessary, in advance of the autumn 2003 meeting of the Committee (currently scheduled to take place during the week of 27 October 2003). Any written questions would be due by 1 September 2003 and any written answers would be due by 6 October 2003.

48. By way of clarification, the Chairman stated that, while he was proposing that the Members concerned submit the required notifications by 30 June 2003, he wished to underline his expectation that this would be the *latest* possible date and would strongly encourage the Members concerned to submit their notifications as much in advance of that date as possible. This would facilitate an effective exchange of information. By way of further clarification, this deadline related to notifications in connection with the standstill and transparency commitments contained in the Committee's decisions taken last year. He stated that, as no Member had expressed any difficulties with these proposed procedures by 15 April – the deadline indicated in his 7 March fax for them to do so – he assumed that this approach was generally acceptable to Members.

49. The Committee took note of the statement made by the Chairman and so agreed.

2. **Information of Thailand referred to in the Committee's decisions in G/SCM/101 and G/SCM/102**

50. The Chairman recalled that the Committee's decisions in documents G/SCM/101 and /102 referred to certain information to be submitted by the delegation of Thailand. Document G/SCM/101, dealing with the Industrial Estate Authority of Thailand (the "IEAT"), noted the "commitment of Thailand to submit a corresponding modified work plan of the IEAT Act amendment to the Committee not later than 31 March 2003". In this respect, he referred to document G/SCM/101/Suppl.1, submitted by Thailand, dated 28 March 2003, and recalled that the United States submitted questions with respect to this notification, circulated in document G/SCM/Q3/THA/19. With respect to the BOI programme, the Chairman recalled that that decision contained in document G/SCM/102 noted the commitment by Thailand to make every effort to submit as soon as possible, and not later than 15 April 2003, for the consideration of the Committee at its Spring 2003 meeting, all of the additional information referred to in document G/SCM/Q3/THA/18. As Members would recall, document G/SCM/102 contained questions posed by various delegations in respect of the BOI programme. In this connection, he drew Members' attention to the submission by Thailand, circulated as document G/SCM/Q3/THA/20, dated 23 April 2003. Follow-up questions and a list of missing

information had just been submitted by a group of delegations.⁴ The Chairman invited the delegation of Thailand to take the floor to introduce its paper and to respond to the questions raised by the delegation of the United States concerning the IEAT programme.

51. The delegate of Thailand stated that, after Thailand's request for extension under Article 27.4 of the SCM Agreement was granted last year, as contained documents G/SCM/101 & Suppl.1 on the IEAT programme, and G/SCM/102 on the BOI programme, Thailand had taken steps to review its database and explore ways and means to see what had to be done with a view to implementing the decisions in an appropriate and constructive manner, bearing in mind the economic disaster during 1997-2000 in Asia which had driven Thailand to unsuccessfully do away with export subsidies. Apart from that, Thailand had spent a lot of time working on several documents, including G/SCM/Q3/THA/18, which contained questions posed by various delegations, in order to make sure that Members would receive relevant information prior to this Committee meeting.

52. Concerning the IEAT, the delegate of Thailand stated that, in accordance with G/SCM/101, Thailand was obligated to reduce export requirements under the programme to no more than 20 per cent as from the 1 January 2003 and to no more than 10 per cent as from 1 July 2004 and to so notify all investors no later than 31 January 2003. The Board of Directors of the IEAT had decided, on 4 February 2003, to eliminate all export requirements retroactively as of 1 January 2003, in order to comply with the Agreement and the commitment Thailand made in G/SCM/Q3/THA/17/Suppl.1. Thailand had already notified its action, as envisaged in G/SCM/101/Suppl.1. The delegate of Thailand emphasized that the amendment relevant to IEAT's export requirement was contained in paragraph 1 of clause 10 of Announcement No. 1/2003. The other parts of clause 10 remained unchanged, such as subparagraphs 10.1 and 10.2. In the same notification, Thailand also attached its revised work plan to shorten the period of its legislative amendment so as to ensure the elimination of export subsidies as required by the same Decision. With respect to the present status of the work plan on IEAT legislative amendment, he stated that stage 4 of the notified work plan was being reached. As Members were aware, the IEAT imposed its export requirement of 100 per cent in 1988. Subsequently, its export requirement was reduced to 40 per cent in 1995 and Thailand took a major step in eliminating its export requirement to 0 per cent in January of this year. Relevant announcements were also attached in the mentioned document. All operators in Export Processing Zones had already been notified by the IEAT Announcement no. 1/2003. The translation of the Announcement was provided in the document submitted. This information could clarify some concerns expressed, mainly by the United States, in document G/SCM/Q3/THA/19, dated 22 April 2003. The decision of the IEAT's Board showed Thailand's sincere effort to eliminate export subsidies and to strive to comply with the obligation under the Agreement.

53. With regard to the BOI programme, the delegate of Thailand first stated that Thailand remained committed not to approve any new projects involving the provision of export subsidies and not to modify the programme so as to make it more favourable, including with respect to scope and intensity of benefits during the extension period and the final two-year period. Secondly, Thailand was also committed to providing additional information listed in G/SCM/Q3/THA/18 and to implementing the standstill commitment and elimination of export subsidies under the BOI programme. Thailand wished to reiterate that the BOI abolished its export requirement scheme in August 2000, which resulted in no export subsidies being granted to new operators since then. However, there were still a number of investors benefiting from investment incentives granted before the said period, as reported in G/SCM/Q3/THA/17. The BOI Board of Directors, chaired by the Deputy Prime Minister of Thailand, had decided that those export requirements granted be removed. Thailand wished to clarify that export subsidies for 101 projects out of 178 would be eliminated by 2005 and the remaining 77 projects, while they were scheduled to expire by the end of 2011, were

⁴ Circulated in documents G/SCM/Q3/THA/21 and /22. Thailand's responses to these were subsequently circulated in G/SCM/Q3/THA/23.

currently being reviewed by a working group set up by the BOI regarding potential determination of export requirements. Relevant information was also reflected in G/SCM/Q3/THA/20 so as to respond to questions posed by various delegations pursuant to the request for an extension. He indicated that paragraph 2 of Thailand's response to question 1 should read as follows: "The export subsidies for 101 projects out of 178 projects will be eliminated by 2005 and the export subsidies for the remaining 77 projects are currently scheduled to expire by the end of 2011." In response to questions posed by Members, Thailand had sent out questionnaires to investors for the purpose of obtaining information that was not available in its database. It should be noted that failure to react to certain questions was subject mainly to lack of response from the respondents. In fact, investors were reluctant to provide information to the BOI for fear of potential negative consequences for their business. Nevertheless, the BOI had still managed to procure most of the requested information.

54. The delegate of Thailand expressed his appreciation to other Members who had supported Thailand's request for extension. Thailand wished to emphasize that, since January 2003, Thailand had done more than was required under the decisions of 19 December 2002 with regard to the elimination of export subsidies. Thailand would continue to do its best to ensure that prohibited export subsidies would come to an end with the minimum impact on Thai and non-Thai companies. This required cooperation from Members whose nationals were investors in Thailand to respond to questionnaires sent out by the BOI. The delegate of Thailand stated that Thailand was ready to work with Members in a constructive manner. Two officials from capital were present in the meeting to clarify concerns of Members and also to respond to any questions that Members might have.

55. The delegate of the United States stated that his delegation appreciated the information provided by Thailand on the IEAT and looked forward to receiving responses to the US questions.⁵ The United States recalled that it was the firm intention of Thailand to not request any further extension of the transition period for this programme and to make every effort to ensure that the elimination of export subsidies occurred no later than 31 December 2005. To this end, the United States was pleased to note that Thailand had revised the IEAT legislative active plan, with the objective of completing the legislative process by March 2004 and having full enforcement of the new Act by September 2004. The United States welcomed a report from Thailand on the current status of the legislation as well as legislative updates at future SCM Committee meetings.

56. The delegate of the United States stated that the situation with respect to the BOI programme remained unclear. He recalled that, as a condition of granting the extension for 2003, Thailand had committed to make every effort to submit as soon as possible, and not later than 15 April 2003, for the consideration of the Committee at this meeting, all the additional information sought by various delegations, including the United States, the European Communities, Japan, Canada, Australia, Switzerland, Venezuela and Peru, as contained in document G/SCM/Q3/THA/18. These questions were designed to allow the Committee to assess the scope of the BOI programme, including the sensitivity of the sectors involved and the trade distorting effects that were being caused by the provision of export subsidies. While the United States appreciated the efforts made so far by Thailand to respond to the questions, his delegation was disappointed that the answers were incomplete and inadequate to form the basis for an informed assessment of the BOI programme as required by the Decision for this meeting. The United States had joined the various other delegations which originally submitted questions to Thailand to prepare a comprehensive document identifying missing items and follow-up questions.⁶ The United States looked forward to receiving responses to this comprehensive document in the near future. It might be useful to consider reverting to this item after additional responses were received at an informal session of the Committee. The United States delegate noted that the Rules Negotiating Group had rescheduled its 20 June session, which might present an opportunity for a meeting with the participation of capital-based experts. From the

⁵ Thailand subsequently submitted document G/SCM/101/Suppl. 2.

⁶ Document G/SCM/Q3/THA/21.

information that was available, the United States was troubled that many of the projects extended far beyond 2005, in some cases with subsidies being provided as far into the future as 2011, with export requirements expiring even later. The United States noted that a working group had been established by the Government of Thailand to study the economic impact that would result from the elimination of the export requirement for the remaining projects by the end of 2005. It should be recalled that the Committee had dealt with many requests from Members to extend the transition period to eliminate export subsidies. The possibility of a continuation of extensions for five years, plus the two years provided by Article 27.4, was the maximum period that had been granted, and only to those developing country Members with a small share of global trade. Many of Thailand's projects currently envisioned expiration far beyond such dates and this Committee did not have the authority to grant multi-year extensions. If the Thai working group did not recommend elimination of the export requirements, the United States was interested to know how Thailand intended to satisfy its WTO obligations.

57. The delegate of the European Communities thanked Thailand for the documents it had presented to the Committee on both the IEAT and the BOI schemes and for the further information it had presented orally in the course of the Committee's meeting. On the IEAT scheme, the European Communities shared the questions which were posed by the United States⁷ and looked forward to seeing the answers to those questions in writing. The European Communities was not able to understand from the text submitted how the outcome claimed by Thailand was achieved.

58. On the BOI scheme, the delegate of the European Communities noted that the authorities of Thailand had taken certain actions to remove certain export requirements. However, the European Communities regretted that not all of the information sought in document G/SCM/Q3/THA/18 had been provided. This lack of information hampered the European Communities' ability to assess the scale and trade-distorting effects of the projects for which export requirements had not been removed. The European Communities recalled the statements which both it and Thailand had made at the meeting of the Committee on 19 December 2002. The European Communities confirmed its intention to pay considerable attention to this issue while it remained under consideration by the Committee. The European Communities attached considerable importance to Thailand's confirmation in December of its intention to meet its WTO obligations. It appeared from the documents so far provided that Thailand had not identified, at the time of the Committee meeting, the means by which it intended to meet its obligations in respect of the BOI programme. The European Communities associated itself fully with the observations made and follow-up questions posed and looked forward to working further with Thailand and other delegations to examine this issue further.⁸ The European Communities was open to the suggestion made by the United States in terms of timing for any further process.

59. The delegate of Canada stated that a key requirement of the extension decision for the BOI programme granted in December 2002 was that Thailand would provide additional information on this programme. Canada had been pleased to receive the information in April 2003 and, although the information was useful, Canada considered it incomplete to fulfil the requirements of the extension decision. For this reason, Canada had joined with other Members in submitting additional questions which Canada considered were necessary to satisfy the requirements of the extension decision.⁹ Canada supported the statements made by the European Communities and the United States and looked forward to working further with Thailand to receive the additional information. Canada supported an informal meeting, as suggested by the United States.

⁷ Document G/SCM/Q3/THA/19.

⁸ Document G/SCM/Q3/THA/21.

⁹ *Ibid.*

60. The delegate of Australia thanked Thailand for its notification in document G/SCM/101/Suppl.1 with respect to the IEAT programme. However, Australia asked for further clarification and explanation of how the fourth amendment of the notified announcement achieved the stated objective. In line with this question, Australia endorsed the US questions contained in G/SCM/Q3/THA/19. Australia also thanked Thailand for its responses to questions posed in the context of the 2003 extension granted in December 2002 to their BOI programme. Australia had a number of follow-up questions found in the document jointly submitted by various delegations.¹⁰ Australia also posed additional follow-up questions which are contained in document G/SCM/Q3/THA/22.

61. The delegate of Peru expressed the gratitude of her delegation with respect to the efforts made by the delegation of Thailand to respond to the questionnaire contained in G/SCM/Q3/THA/18 on the BOI programme. Although the Committee did not receive these replies within the deadline established, Peru, jointly with other Members, had posed some additional questions.¹¹ Her delegation associated itself with the comments made by the delegations which had posed these questions, since Peru considered that the information provided by Thailand was insufficient to give a clear idea of the structure of the programmes and the plans for dismantling them. Peru expressed concern at the timeframe established for the dismantling of the BOI programme. It went as far as 2014 in some instances, whereas the extension granted by the Committee covered until 31 December 2002, as provided for in document G/SCM/102.

62. The delegate of Switzerland first thanked Thailand for the information provided about both programmes – the IEAT and the BOI – since the Committee's last meeting, as well as for the very comprehensive introduction and presentation given during this Committee's meeting. Regarding the IEAT, Switzerland understood from the document distributed by the Thai delegation that the export requirement in the IEAT programme had been lifted. This being the case, Switzerland welcomed this change made by Thailand in advance of the timeframe decided by the Committee and thanked Thailand for its efforts in doing so. However, the Swiss delegate stated that his delegation had faced difficulties in understanding the exact scope of the Announcement of the IEAT reproduced in G/SCM/101/Suppl.1. Hence, Switzerland welcomed the questions submitted by the United States¹² in this regard, as well as the proposal made during the meeting that Members could have additional updates regarding the evolution of the legislative work programme. Switzerland considered that this, as well as the answers that would be provided to the US questions would be very interesting. Regarding the BOI programme, Switzerland thanked Thailand for the additional information Thailand had submitted in responding to questions various delegations had posed in the Article 27.4 process, contained in document G/SCM/Q3/THA/20. Switzerland would need more time to study these answers. In the meantime, and like other delegations, Switzerland had co-sponsored a set of additional questions, as Switzerland still had not managed to reach a clear and full picture as to the nature of this programme.¹³ Moreover, Switzerland understood from the reply to question 1 in document G/SCM/Q3/THA/20 that Thailand would still have projects under this scheme going beyond the extension granted for the elimination of these export subsidies. The Committee had granted an extension of the deadline until the end of 2002, plus the additional two-year phase-out period. Therefore, the Swiss delegate urged Thailand to make every effort possible to adapt the programme in such a manner that it respected these deadlines. Switzerland looked forward to continuing this process in this Committee and remained open to various possibilities as to how to proceed.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Document G/SCM/Q3/THA/19.

¹³ Document G/SCM/Q3/THA/21.

63. The delegate of Venezuela thanked the delegation of Thailand for the new responses submitted to the Committee. Venezuela echoed what had been stated by other delegations previously and endorsed the list of follow-up questions submitted on behalf of a group of countries.¹⁴ The delegation of Venezuela followed the process with great attention, not only because of trade concerns, but also for systemic reasons. While acknowledging the very difficult circumstances that Thailand had gone through and which have been described by the Thai delegation, the Venezuelan delegation considered that no further extension should be granted for the submission of remaining responses and other very relevant information not yet submitted by Thailand because, as other delegations had said, the submission of that information was one of the conditions for granting the extension of this exemption. The delegate of Venezuela stated that the granting of that extension might affect the orderly and harmonious working of this Committee. The delegation of Venezuela encouraged Thailand to continue its efforts to supply full replies on very important points including, *inter alia*, the description of the process of the elimination of export requirements (e.g. the different categories referred to in the document, by sectors, by product and by status of the projects), as well as information about the legal effectiveness of the decisions taken by the BOI for the dismantling of these export requirements. The Venezuelan delegate stated that Venezuela remained flexible with respect to the ways in which this further information could be submitted in the future and welcomed the proposal made by the United States regarding a future date so as to continue following up this matter very closely.

64. The delegation of Japan thanked the Thai delegation for providing information and comprehensive explanations in the course of the Committee meeting. Since enhancing the transparency of the programmes was at the core of the exercise of this Committee, Japan was pleased that Thailand had made it clear in December 2002 that it would make every effort to provide the information regarding all the outstanding questions on the BOI programme. That was a condition for its extension for the year 2003. Concerning the IEAT, Japan thanked Thailand for its notification that the export requirement under the IEAT programme had been eliminated as of 1 January 2003. The Japanese delegation associated itself with the questions posed by the United States and with the interest expressed by other delegations about the legal implications of the notified IEAT Announcement.¹⁵ The Committee would benefit from further clarification on this.

65. In terms of the BOI programme, Japan welcomed the answers from Thailand to the questions posed by various Members. Japan was aware that it required substantial work on the part of the Thai Government in terms of sending questionnaires, collecting their responses, going through them and analysing the information contained therein. Japan appreciated Thailand's efforts to eliminate the export requirement for a substantial proportion of the programme. However, as was the case with other delegations, Japan considered that there were several items which merited further clarification and which were outlined in the joint list of questions referred to by the US delegation.¹⁶ The delegate of Japan also expressed his delegation's intention to follow the developments regarding the BOI Working Group on the remaining 78 projects, bearing in mind that the extension of the BOI programme which had been granted in December 2002 was for the year 2003. Japan supported the suggestions by the United States for having informal meetings to enhance further clarification and understanding of the programmes.

66. The delegate of Thailand thanked Members for posing questions and making comments on Thailand's replies. He stated that it had taken Thailand more time than expected to revamp its database in order to come up with relevant information. The Thai delegate stated that a significant portion of responses to questions had been provided. Even though certain questions had not yet been appropriately or adequately responded to, Thailand would do its best to respond to questions at a later

¹⁴ *Ibid.*

¹⁵ Document G/SCM/Q3/THA/19

¹⁶ Document G/SCM/Q3/THA/21

date. However, Members should bear in mind that certain questions could not be answered at all, not because Thailand did not want to do so, but because the requested information was not available. For example, concerning question 5(b) in G/SCM/Q3/THA/21 on the HTS number, Thailand did not have information available in its database. That was why Thailand could not give an answer to that question posed by certain Members.

67. The Thai delegate stated that since questionnaires were sent out to investors, the investment atmosphere in Thailand had been stirred up. Requests for information from the companies concerned needed to be made discreetly. The delegate of Thailand stated that this did not mean that Thailand was not committed to its obligations under the Agreement. What Thailand had done was to ensure that it was on the right track. While the working group was working, Thailand would make sure that ways and means would be adequately explored in order to abide by its commitment. Regarding the IEAT programme, some concerns had been expressed relating to the notification in G/SCM/101/Suppl. 1. Thailand wished to reiterate that the export requirement had been removed because such requirement had been excluded in clause 10 of the relevant announcement. It might be problem with the translation that Thailand had circulated to Members. Clause 10, as a whole, was circulated. However, only paragraph 1, which dealt with export requirements, was repealed and replaced by the new version. From paragraph 2 onwards, it remained the same. With respect to other questions that Members had asked, Thailand would do its best in trying to respond to them in due time.

68. The Chairman's impression from the interventions made by Members was, first, that they appreciated greatly the efforts the Thai delegation had made to provide the information referred to in decisions G/SCM/101 and 102. At the same time, it was his understanding that, despite these efforts, there were certain questions or issues which would require additional attention. Some of the questions originally proposed had not been responded to by the time of this Committee meeting. In addition, some additional questions had been posed during this meeting. At the same time, there were some indications on the part of certain Members that they might have some follow-up questions after reflecting on the Committee's discussions. In terms of process, the Chairman proposed setting a deadline for any follow-up questions, which could be 23 May. Another deadline would have to be set for the Thai delegation to kindly respond to those questions, which he suggested could be 6 June. Once that information was available, then it might be convenient to have some informal consultations in mid-June. The purpose of those consultations would clearly be, as indicated by the delegate of Japan, to enhance better understanding of the situation with respect to the IEAT and BOI programmes.

69. The delegate of Thailand thanked the Chairman for his initiative in proposing deadlines for follow-up questions and also responses to be made by the first week of June. The Thai delegate stated that Thailand would do its best in order to try to reply questions within the deadline. However, the Thai delegate stated that, if there were many follow-up questions posed on 23 May, two weeks' time might not be sufficient for the submission of replies.

70. With respect to the conduct of the informal consultations, the Chairman stated that he would be in touch with the incoming Chairperson with a view to asking her to conduct those consultations.

71. The Committee took note of the statements made and agreed to proceed as suggested by the Chairman.

T. CONSTANT DOLLAR METHODOLOGY FOR GRADUATION FROM SCM ANNEX VII(B)

72. The Chairman reminded Members that, pursuant to the Doha Ministerial Decision on Implementation-Related Issues and Concerns (document WT/MIN(01)/17, para. 10.1) – in which

Ministers agreed that Annex VII(b) to the Agreement includes the Members that are listed therein until their GNP per capita reaches US \$1,000 in constant 1990 dollars for three consecutive years – as of 1 January 2003, the methodology set forth in G/SCM/38, Appendix 2 applied. As foreseen in that document, the Secretariat would circulate updated figures as and when the necessary calculations had been conducted on the basis of the appropriate World Bank data.

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

U. PERMANENT GROUP OF EXPERTS – ELECTION OF AN EXPERT

74. The Chairman recalled that Professor Flores' term as a member of the Permanent Group of Experts ("PGE") expired in the spring of 2003, and there was therefore a need for the Committee to elect a new expert. Pursuant to a Committee decision (G/SCM/4), the Chairman and Vice-Chairman were to propose to the Committee candidates for election to the PGE. The proposal was to be based on suggestions submitted by Members and to be made after informal consultations. Candidates proposed had to meet the requirement that the PGE be composed of independent persons, highly qualified in the fields of subsidies and trade relations.

75. Members would recall that, in document G/SCM/105, the Chairman had invited suggestions from Members by 14 March 2003. However, in view of the fact that no suggestions had been received, the Chairman had then extended this deadline to 10 April 2003 (in document G/SCM/106). On that final date, two suggestions were received. Members would then recall that the Chairman informed them of this situation by fax dated 14 April 2003, and indicated that interested Members could request the *curriculum vitae* of the two suggested individuals from the Secretariat. Subsequently, by fax of 29 April, the Chairman indicated his readiness to conduct informal consultations with interested Members with a view to identifying a basis for consensus. However, to the Chairman's disappointment, only a minimal number of delegations took advantage of this opportunity to express any view on this matter. Given this extremely low level of participation by delegations, the Chairman was unable to identify any possible basis for consensus on the election of an expert in advance of this meeting, and therefore it was the Chairman's view that the Committee was not yet in a position to take a decision on the election of an expert at this time. In this situation, the Chairman believed that the best course of action was for him to implore Members to re-double their efforts on this matter with a view to reaching an agreement as soon as possible. To this end, the Chairman suggested that the incoming Chair continue to conduct informal consultations with Members with a view to identifying a basis for consensus. Once such a basis for consensus was found, the Chairman suggested that the Committee follow a written procedure in order to formalize the election of the new expert. That is, the Chairman suggested that, once the incoming Chair was in a position to do so, the Chair would communicate to Members the candidate which had been identified as the basis for an emerging consensus, and subject to no comments being received by a set date, that candidate would then be deemed to be elected to the PGE. The Chairman asked Members whether they would be ready to give positive consideration to this way of proceeding.

76. The Committee took note of the statement made and so agreed.

V. OTHER BUSINESS

1. **Statement of the United States concerning the US request for a Secretariat export competitiveness calculation with respect to India's textiles and clothing sector**

77. For the Committee's information, the delegate of the United States noted that the United States had requested the Secretariat to perform an export competitiveness calculation with

respect to certain textile products exported from India.¹⁷ The Secretariat had performed those calculations, circulated in G/SCM/103/Add. 1, and the United States was reviewing them. In the near future, the United States expected to enter into bilateral discussions with India with respect to the calculations performed.

78. The Committee took note of the statement made.

2. Statement of India concerning the US request for a Secretariat export competitiveness calculation with respect to India's textiles and clothing sector

79. The delegate of India stated that, following a request by the United States, the Secretariat had circulated the document G/SCM/103/Add.1, containing a calculation of export competitiveness of India's textile and clothing exports. India was carefully studying this calculation undertaken by the Secretariat. India sought clarification from the Secretariat as to whether the figures for world trade contained in this computation included trade under RTAs, FTAs and GSP schemes. It was India's understanding that the clock of phasing-out export subsidies, as appropriate, would start on the receipt of this clarification.

80. The Chairman stated the Secretariat would send its reply not just to the delegation of India but also to other Members of the Committee. This clarification was subsequently circulated in document G/SCM/103/Add.2.

81. With respect to the issue of when the clock started in terms of a Member's obligation to phase-out its export subsidy programmes, the delegate of the United States stated that, in the view of his delegation, this occurred when export competitiveness was reached pursuant to Article 27 of the Agreement. He stated that Members had had this discussion before in the implementation context and it appeared that this discussion would continue. Evidently, there was a disagreement as to how the Agreement was to be interpreted with respect to this issue.

82. The Committee took note of the statements made.

W. DATE OF NEXT REGULAR MEETING

83. With respect to the date for the Committee's next regular meeting, the Chairman recalled the statement by the Chair of the Anti-Dumping Committee in the meeting held on 1-2 May 2003 that, in order to accommodate the rules area meetings in autumn 2003, the Secretariat had reserved rooms for the weeks of 20 and 27 October. The first week would be meetings of the Safeguards Committee, on Monday, 20 October (and not Friday, 24 October, as was originally announced in the 28 April meeting of the Safeguards Committee). The Anti-Dumping Committee bodies would meet on Tuesday to Friday, 21-24 October 2003. The second week would be the meetings of the Subsidies Committee bodies and, likely, a meeting of the Rules Negotiating Group. Of course, Members would be receiving reminders of the dates, and official notice in the airgrams convening those meetings.

84. The Committee took note of the Chairman's statement.

X. ELECTION OF OFFICERS

85. The Chairman recalled that the Chairman of the Council for Trade in Goods carried out informal consultations on the nomination of Chairpersons for the different bodies operating under the auspices of the Council for Trade in Goods. The proposed nominations were taken note of by the Council for Trade in Goods at its meeting on 12-13 March 2003. As concerned this Committee, the

¹⁷ Circulated as document G/SCM/103.

Chairperson of the Council for Trade in Goods had proposed the nomination of Ms. Lozano of Colombia. He asked the Committee whether it would be able to agree to elect Ms. Lozano as Chairperson.

86. The Committee agreed to elect Ms. Lozano as Chairperson by acclamation.

87. Regarding the question of Vice-Chairperson for the Committee, the Chairman stated that he had conducted consultations with Members. On the basis of those consultations, and as he indicated to Members by fax dated 30 April 2003, the Chairman proposed the election of Mr. Naoshi Hirose of Japan as Vice-Chairperson of the Committee. The Chairman asked the Committee whether it would be able to agree to elect Mr. Hirose as Vice-Chairperson.

88. The Committee agreed to elect Mr. Hirose as Vice-Chairperson by acclamation.

89. At the invitation of the Chairman, the incoming Chairperson, Ms. Lozano, addressed the Committee. She expressed her gratitude to be able to take the Chair in the name of Colombia. She thanked Members for their vote of confidence. She thanked and expressed her appreciation to Ambassador Hovorka for his hard work and dedication in the Committee.

90. The Chairman expressed his sincerest gratitude to the Secretariat for its invaluable assistance and advice during his term as Chairman.

91. The Committee took note of the statements made.

92. The meeting was adjourned.
