MINUTES OF THE MEETING HELD ON 17 NOVEMBER 1983

Chairman: Mr. M. Ikeda (Japan)

1. The Committee met on 17 November 1983.

2. The Committee adopted the following agenda:

A. Adherence of further countries to the Agreement

B. Examination of national legislation and implementing regulations (SCM/1 and addenda)
   (i) Legislation of Uruguay (SCM/1/Add.19)
   (ii) Questions concerning the legislation of Australia (SCM/W/49, SCM/W/50, SCM/W/53 and SCM/W/58)
   (iii) Questions concerning the legislation of New Zealand (SCM/W/51)
   (iv) Other legislations

C. Notification of subsidies (SCM/45, SCM/W/61)

D. Semi-annual reports of countervailing duty actions taken within the period 1 January 1983–30 June 1983 (SCM/44 and addenda)

E. Reports on all preliminary or final countervailing duty actions (SCM/W/47, 52, 55, 56, 57 and 60)

F. Matter referred by India under Article 17:1 of the Agreement (certain domestic procedures of the United States)

G. Other business
   (a) Statement by Colombia
   (b) Statement by Uruguay
   (c) Statement by New Zealand
   (d) Supplement to the report to the CONTRACTING PARTIES
A. Adherence of further countries to the Agreement

3. The Chairman informed the Committee that on 14 October 1983 the Government of Egypt had deposited with the Director-General an instrument of ratification relating to the Code on Subsidies and Countervailing Measures, thereby recognizing as fully binding the signature affixed by its plenipotentiary on 28 December 1981. In terms of its of Article 19:4, the Code had entered into force for Egypt on 13 November 1983.

4. The representative of Brazil, referring to this agenda item, made some observations on the operation of the Code. He said that the attitude of developed countries was not very consistent for they advocated liberalization while at the same time increasing their subsidies. The free market was seen by them as the panacea until the moment when more efficient competitors started reaping a small portion of the benefits. In addition, in the developed countries programmes financed by governments in the fields of defence, telecommunications and space exploration had generated important benefits for commercial activities, not to mention the support programmes in other sectors. It was clearly inappropriate, in the light of all this, to blame developing countries for the alleged effects of their subsidies on trade. He was against passing critical judgement on the efficiency of the Code when major trading countries signatories of the Code were falling short of their obligations; the fact that some countries did not abide by the provisions of the Code could not be interpreted as a demonstration that such provisions were inefficient. As to the functioning of the Code, there were problems with the determination of injury as well as with the attempts at freezing market shares to the detriment of more efficient competitors. He concluded by indicating that if there was any bias in the Code, it was certainly against developing countries. In spite of this, his delegation believed that the Code provided a far better discipline for action than any unilateral solution.

5. The representative of Pakistan emphasized the importance of Article 14 of the Code for developing countries.

6. The representative of India hoped that some of the problems mentioned by Brazil could be solved in a satisfactory manner, thus leading to the accession of further countries. He endorsed the view of his colleague from Pakistan regarding Article 14 and stressed the importance of recognizing that subsidies were an integral part of the economic development programmes of the developing countries. Any attempt to equate the different rights and obligations of developing countries would not only deter other countries from acceding to the Code but make the task of developing countries more difficult.

7. The representative of Uruguay joined his colleagues in underlining the importance of the statement of the Brazilian delegation. He said that in practice the Code did not seem to be very attractive to developing countries and it was the Committee's task to make it a much more positive instrument.

8. The representative of the EEC said that Article 14 constituted an integral part of the Code. Regarding the problems for some developing countries in becoming Signatories, he recalled the decision of the Committee in its report to the CONTRACTING PARTIES, i.e. to examine in detail these difficulties.
9. The representative of Egypt supported the views of his colleagues regarding the problems developing countries had in acceding to the Code and encouraged the Committee to consider these problems.

10. The observer for Peru welcomed the statement by the delegate of Egypt and associated himself with the views of other delegates regarding the importance of Article 14.

B. Examination of national legislations and implementing regulations (SCM/1 and addenda)

(i) Legislation of Uruguay (SCM/1/Add.19)

11. The representative of Uruguay said that the legislation presented to the Committee dated back to 1980 and had never been applied. He expressed his readiness to supply any additional materials and information concerning his country's legislation.

12. The representative of the EEC noted that complaints under the countervailing law of Uruguay could be brought by any interested party and not by, or on behalf of, domestic industries representing a major part of the domestic production. In the case of injury, in Article 1 of the Uruguayan law, no reference was made to the major proportion of production. He further noted that according to the Code, provisional measures could not be applied immediately after the opening of the investigation nor was it the Minister who determined the criteria for the imposition of countervailing duties. As to Articles 17 and 19 of the Uruguayan regulations, he found the twenty-one day time limit for the submission of evidence for subsidization, and the further twenty day time limit for the authorities to decide on the imposition of countervailing duties as being too short. Regarding Article 22 of the Uruguayan regulations he said that to consider the absence of an offer for an undertaking as material indication of subsidization was in sharp contrast to the provisions of the Code. He finally recalled that the Code was clear in that retroactive duties, in the case of violation of the undertakings, could not be levied for a period prior to ninety days before the application of provisional duties; Article 24 of the Uruguayan regulations permitted these duties to be levied up to ninety days prior to the date of the complaint. He was of the view that the Uruguayan legislation needed a thorough review.

13. The representative of Canada made several comments on the Uruguayan regulations. He said that Articles 4 and 5 related rather to dumping and not to subsidization. He wondered whether the interpretation of a "well founded complaint" in Article 13 was that the three criteria of subsidization, material injury and causality had to be met. He further noted that in the last line of Article 14 there was probably a translation problem and that clarification was needed. He finally shared the views of the delegation of the EEC concerning Articles 17, 19, 22 and 24.

14. The representative of the United States noted the concern of his delegation regarding the conformity of national legislations implementing the Code with the obligations of the Code.

15. The representative of Uruguay took note of the various points made by the delegations of the EEC, Canada and the United States. He assured the
Committee that a reply would be offered either at the next meeting or circulated to all interested parties.

16. The Chairman suggested reverting to the Uruguayan legislation at the next regular session of the Committee. It was so agreed.

(ii) Questions concerning the legislation of Australia (SCM/1/Add.18 and Suppl.1 and 2, SCM/W/49, 50, 53 and 58)

17. The Chairman recalled that several delegations had submitted written questions to the delegation of Australia (SCM/W/49, 50, 53 and 58). The delegation of Australia had subsequently submitted written replies to these questions (SCM/W/63) and an amendment to its legislation (SCM/1/Add.18/Suppl.2). He invited comments from the Committee.

18. The representative of the EEC said that the definition of subsidy in Section 10:2:e of the Australian countervailing statute was an extension of the idea of subsidization. The concept "prescribed assistance" went beyond the concept contained in Article VI:3 of the GATT and consequently was contrary to it. Referring to Section 12 of the Statute on preferential freight, he indicated his opposition to considering as subsidization a case where the freight which was charged for the transport of goods to Australia was less than the normal freight. He pointed out that no definition was given of what "normal freight" meant and considered that subsidization could only be established on the basis of a proper enquiry. He finally said that Section 10:2:b and d of the Statute permitted the imposition of countervailing duties without applying an injury test to goods which originated in a country which did not itself apply an injury test to exports from Australia. In his view this was dangerous for it permitted unilateral retaliation by Australia outside the dispute settlement procedure of the Code.

19. The representative of Canada, referring to the last point raised by the EEC delegate on the non-application of the injury test, indicated that this practice by Australia could lead to discriminatory treatment. He further asked his colleague from Australia to elaborate on the procedures for dealing with importers who switch their sources of supply to other countries; it was not clear to his delegation what sort of investigation would take place in a situation like this.

20. The representative of Japan indicated that his government would carefully examine the replies submitted by Australia.

21. The representative of Switzerland reiterated some of the points he had raised in the Anti-Dumping Committee. He insisted that the Code should be faithfully transposed into domestic legislation.

22. The representative of the United States reiterated that his delegation remained particularly concerned about the lack of transparency in Australian procedures and the inadequate disclosure of reasons in their notices of action taken.

23. The representative of Australia took note of the statements made by other delegations. He reiterated that inclusion of a convention or code in
domestic law required legislation by Parliament and that when Australia had joined the Code, his Government had recognized that certain changes had to be made in its national legislation. Referring to the domestic procedures, he indicated that the imposition of duties were decided by the Minister for Industry and Commerce; these decisions were reviewable by the courts. He further said that following a wide-ranging review of its Anti-dumping legislation the Australian Government had recently announced certain administrative and legislative changes. The amended legislation was expected to be introduced into the current sitting of Parliament and would, after enactment, be submitted to the Committee. He finally referred to the remarks by the Canadian delegate on the point of "switching of sources"; the administrative procedures in that area largely related to a dumping situation.

24. The Chairman invited the Committee to revert to the Australian legislation at the next meeting.

(iii) Questions concerning the legislation of New Zealand (SCM/1/Add.15, SCM/W/51, 59)

25. The Chairman recalled that the delegation of the EEC had submitted written questions to the delegation of New Zealand and that New Zealand had circulated an advance comment on these questions. He invited the Committee to comment on this matter.

26. The representative of the EEC referred to some points where the present New Zealand countervailing statute did not seem to be in conformity with the Code; the concept of material injury was not included in the legislation of New Zealand, provisional duties could be applied for up to six months and not for up to four months as the Code required, and retroactive application of countervailing duties was possible for 120 days prior to the application of provisional measures whereas ninety days were the maximum under the Code. He further requested clarification on the question of the legal status of the Code vis-à-vis the New Zealand legislation. As an example he enquired about a situation where the authorities applied the material injury test as required by the Code whereas the complaining industry claimed that this test was not required by the national legislation.

27. The representative of New Zealand took note of the concern raised by his colleague from the EEC. He said that New Zealand had no constitution but a common law system; the power to accept binding obligations resulting from international treaties rested with the executive which had to ensure that in this respect it was not restricted by domestic law. New Zealand's strict adherence to international agreements was often reflected more in administrative procedures than in its statutory law. He further noted the difficulty to point to any instances in which the established procedures had not been in conformity with the Code, as to date his country had not taken any countervailing actions. He further referred to the current revision of the Customs Act and the publication of new customs instructions which should clarify the procedures to be followed by the Government; these procedures were fully in conformity with the Code. He hoped to be able to make available to the Committee copies of the amended act and the customs instructions early in 1984. As to the last point raised by the EEC delegate he said that the Minister in exercising his discretion must have regard not only to the national law but also to the Code provisions.
28. The Chairman invited the delegation of New Zealand to further examine the various points raised in the Committee and to supply the necessary information. The Committee would refer to this item at its next session if needed.

(iv) Other legislations

29. The representative of Canada explained that his country's legislation and implementing regulations would be introduced at the new session of Parliament. He further requested clarification from the Chilean delegation on a subsidy/counter-vail case where the Chilean Government had applied the countervailing duty on an m.f.n. basis rather than limited to the exporting country involved. The representative of the United States shared the concern of the Canadian delegation on this point.

30. The representative of Chile explained that the measure which his Government had taken was not a countervailing duty but a temporary increase in the customs duty which was applied on an m.f.n. basis; the final duty for the twenty-five products involved had not surpassed 35%. He recognized that cases where temporary tariff surcharges had been applied had coincided with the end of an investigation into a situation of subsidized imports about which the private sector had complained. As regards the extent of the surcharges, between November 1981 and September 1983 there had been 109 complaints but only in forty-six cases had there been agreement to initiate an investigation; among those latter cases, surcharges had been applied in only twenty-eight instances. Referring to the reasons for that procedure, he cited a study by the Central Bank of Chile in which it was stated; "The application of tariff surcharges can avoid diplomatic problems and possible commercial retaliation from the affected countries in the event that countervailing duties were applied. Accordingly, the application of a tariff surcharge that does not discriminate according to the country of origin of the product concerned, avoids deterioration of bilateral relations and eliminates injury to the domestic industry".

31. The representative of Chile shared the concern expressed by the United States representative since the case of Chile revealed the limitations for a small developing country like his own to apply countervailing measures without damaging bilateral relations or provoking commercial retaliatory measures. The representative of Canada commented that the countervailing duty provision had been designed to deal with unfair trade practices. If the latter was the case in Chile, countervailing duties rather than some type of safeguard action would have been the appropriate route.

32. The Chairman suggested to revert to this matter at the next regular session of the Committee. He then invited the representative of Korea to reply to the questions formulated by the EEC at the last session.

33. The representative of Korea said that an exporter who had given an undertaking was free to withdraw from it only with the consent of the Korean Government. The representative of the EEC said that he would like to examine this matter further since he was not sure whether this procedure was in conformity with the Code.

34. The Chairman said that the Committee would maintain this item on its agenda in order to allow signatories to revert to particular aspects of some
legislations at a later stage. He also reminded those signatories who has not as yet formally notified the Committee of their actions under Article 19:5 of the Code to do so without further delay.

C. Notification of subsidies (SCM/45, SCM/W/61)

(a) Status of notifications

35. The Chairman indicated that the secretariat had circulated a paper (SCM/W/61) on the status of notifications under Article XVI:1. It resulted from this document that all Signatories, except Egypt, had submitted their notifications. There was, therefore, a clear improvement as far as the quantity of notifications was concerned. It was expected that Egypt as well as Yugoslavia would shortly fulfill their obligations under Article XVI:1. He further reminded the Committee that in 1984, in accordance with the Decision of the CONTRACTING PARTIES at their twentieth session, contracting parties should submit new and full notifications. It was very important to keep the momentum and all Signatories should notify promptly and in as comprehensive a manner as possible their subsidies on agricultural and industrial products. Once the full notifications had been submitted the Committee would hold a special meeting to examine them. It would be useful if such a meeting could take place before the autumn session of the Committee in 1984. The Chairman therefore strongly appealed to the Signatories to take all necessary steps to ensure that new and full notifications be submitted as early in 1984 as possible.

(b) Quality of notifications

36. The Chairman invited the Committee to comment on document SCM/45 which had been prepared by the Secretariat.

37. The representative of Chile indicated that he had nothing to add to SCM/45. He considered that the questionnaire had to be revised but it would not be appropriate to have one questionnaire for signatories and another one for non-signatories. He hoped that if something was worked out by the Committee, the matter would be examined by the CONTRACTING PARTIES and an appropriate decision would be taken by them. He further asked how the Committee would proceed with the issues contained in SCM/45. The representative of the United States reiterated the need to improve the quality of notifications and supported the comments made by Chile on the revision of the questionnaire. The representative of the EEC said that in considering issues raised in SCM/45 it would be advisable to bear in mind points contained in SCM/23.

38. The Chairman invited interested signatories to submit written comments to the points raised in SCM/45 by 15 February 1984. On the basis of these comments, informal consultations would be organized and eventually a set of guidelines could be prepared. He stressed that the aim of the exercise was greater transparency and uniformity of notifications. It was so agreed.

39. The representative of Chile referred to a notification by Finland (L/5449/Add.6) regarding the subsidizations of processed agricultural products. In his opinion, this practice was not in conformity with Article 9 of the Code; the notification should not create a presumption for the legality of this practice. He wished to reserve his rights under the Code on
this matter. The representative of the EEC disagreed with the remarks made by his colleague from Chile. He further indicated that the statement made by the delegate of Chile was a unilateral statement and should be considered as such by the Committee. The representative of Finland also interpreted the statement made by Chile as a unilateral statement. He made it clear that the subsidies notified by his Government were in conformity with Article 9 of the Code.

D. Semi-annual reports of countervailing duty actions taken within the period 1 January 1983 – 30 June 1983 (SCM/44 and addenda)

40. The Chairman said that an invitation to submit semi-annual reports under Article 2:16 of the Agreement had been circulated in SCM/44 on 21 July 1983. Responses to this request had been issued in addenda to this document. The following Signatories had notified the Committee that they had not taken any countervailing duty action during the period 1 January-30 June 1983: Austria, Brazil, Egypt, Finland, India, Korea, New Zealand, Norway, Pakistan, Spain, Sweden, Switzerland, United Kingdom on behalf of Hong Kong, Uruguay, Yugoslavia (SCM/44/Add.1). Countervailing duty actions had been notified by Australia, Canada, Chile, the EEC, Japan and the United States. The Chairman was also glad to note that for the first time, all Signatories had submitted their notifications. As to the notifications reporting countervailing duty actions, the following were considered by the Committee:

(a) Chile - SCM/44/Add.2
(b) Japan - SCM/44/Add.3
(c) US - SCM/44/Add.4
(d) EEC - SCM/44/Add.5
(e) Australia - SCM/44/Add.6
(f) Canada - SCM/44/Add.7

E. Report on all preliminary or final countervailing duty actions (SCM/W/47, 47/Corr.1, 52, 55, 56, 57 and 60)

41. The Chairman said that notifications under these procedures had been received from the EEC, Canada and the United States. He invited comments from the floor.

42. The representative of Canada referred to document SCM/W/52 where it was mentioned that a preliminary finding had been made on certain fresh potatoes from Canada. He further said that as the United States authorities had not initiated the investigation, the document should be corrected to delete this item.

43. The representative of the United States said that in document SCM/W/47 there were several errors; his delegation would work with the Secretariat to correct them.

F. Matter referred by India under Article 17:1 – certain domestic procedures of the United States (SCM/20, SCM/M/11, SCM/Spec/17 and SCM/M/Spec/7)

44. The representative of India recalled that this matter had appeared on the Agenda of previous meetings and that he wished to inform the Committee about the most recent developments that had taken place. He said that the
United States authorities had accepted that the Indian scheme of Cash Compensatory Support constituted a bona fide rebate of indirect taxes. He also said that the countervailing duty order on leather footwear had been revoked. He finally indicated that the Indian authorities had not as yet had sufficient time to study the full implications of some of these developments. He assured the Committee that the delegation of India would do its utmost to cooperate with the United States delegation so as to facilitate the resolution of the remaining problems. The representative of the United States indicated that his Government would certainly work together with the Indian Government to resolve any remaining bilateral issues.

45. The Chairman suggested to revert to this matter at the next regular session of the Committee.

G. Other business

(a) Statement by Colombia

46. The observer for Colombia recalled his Government's interest in the Code, its importance for developing countries and the Ministerial Decision which referred to the difficulties and obstacles countries faced in adhering to various MTN Codes. He further recalled that developing country signatories were not prevented from subsidizing their industries including those in the export sector. The interpretation and use of Article 14:5 had prevented Colombia from adhering to the Code; the provision that "a developing country signatory should endeavour to enter into a commitment to reduce or eliminate export subsidies when the use of such export subsidies is inconsistent with its competitive and development needs" had became a pre-requisite for adhering to the Code. Moreover, this commitment had to be negotiated with only one signatory, the United States, for otherwise this country would invoke the non-application clause (Article 19.9). The observer for Colombia indicated that although his country was opposed to this interpretation of Article 14:5, negotiations with the United States had taken place; no concrete results had emerged from these negotiations because of the requirements stipulated by the United States. These included the definitive elimination of all subsidies, which was against Articles 14:1 and 14:2; the acceptance of OCED rules regarding interest rates for export loans, which were applicable only to industrialized countries; the strict compliance with Article 9 of the Code, which contradicted Article 14:2; and the avoidance of the procedure for the multilateral settlement of disputes, which was in sharp opposition to the Code and to the General Agreement. He finally said that it was the Committee's task to elaborate on Article 14:5, for the commitment therein mentioned had to be the result of the Committee's deliberations and not a unilateral decision. He requested his statement to be reflected in the report to the CONTRACTING PARTIES.

47. The representative of Chile said that the issues raised by the observer for Colombia were of great importance for the work of the Committee. He indicated that the Committee should devote a session to discuss these matters.

48. The observer for Peru shared the concern of the Colombian delegate and indicated that his own country was facing identical problems; Peru had wished to adhere to the Code but the pre-requisites to be fulfilled by his country had made this impossible.
49. The representative of India said that the statement of Colombia confirmed some of the difficulties India had faced when acceding to the Code. He recalled the limited membership from developing countries and indicated the urgent need for the Committee to examine in detail accession problems. He finally expressed his full support for any initiative aimed at resolving these difficulties.

50. The representative of Australia said that it was inequitable that a Signatory should attempt to apply pressure on potential developing countries Signatories to accept more onerous obligations than those required by the Code and particularly by Article 14. His delegation failed to see why developing countries had to negotiate in order that the injury test be applied to their exports, a requirement which all Signatories were obliged to extend according to the Code and the GATT.

51. The representative of Uruguay shared the view of the previous speakers on the importance of the issues raised by the observer of Colombia. He supported the idea of dealing with this matter in a special session of the Committee.

52. The representative of Brazil said that the Colombian statement confirmed the statement previously made by the Brazilian delegation. She further indicated her Government's full support for the Committee to examine this problem.

53. The representative of Yugoslavia supported the proposal of the Colombian observer.

54. The representative of the EEC recalled the equilibrium between rights and obligations under the Code. Referring to prospective signatories he said that it was not possible to impose on them obligations beyond those required by the Code.

55. The representative of Switzerland reiterated the importance of the subject raised by the observer of Colombia. He indicated his country's willingness to participate in substantive discussions of the problems raised.

56. The representative of Spain referred to the Ministerial Declaration concerning the adherence of further countries to the Code and said that it was of vital importance to examine and solve the problems raised by the observer for Colombia.

57. The observer for Israel said that his delegation would encourage any efforts towards facilitating the accession of further countries to the Code.

58. The representative of India recalled that many delegations had underlined the need to work out some solution to facilitate the accession of further countries to the Code. He suggested holding informal consultations before the next regular session of the Committee so as to examine these matters in detail; whether to hold a special session or to set up a working group should be considered too.

59. The Chairman said that if it were the wish of the Committee to instruct the chair to organize informal consultations, he would certainly follow this wish.
60. The representative of Chile indicated that the proposal put forward by the Indian delegation was opportune, convenient and appropriate.

61. The observer for Colombia expressed his appreciation for the support to his proposal.

62. The Chairman said that the Committee took note of the statements made and that he would proceed accordingly.

(b) Statement by Uruguay

63. The representative of Uruguay referred to the serious economic problems which his country was presently facing. In this context, his authorities were examining the possibility of taking certain economic measures and in particular their export incentive promotion policy. His delegation would inform the Committee of any developments in this field. The Committee took note of this statement.

(c) Statement by New Zealand

64. The statement has been circulated as a supplement to the Minutes of 9-10 June 1983 meeting, in document SCM/M/18/Suppl.1.

(d) Supplement to the report to the CONTRACTING PARTIES

65. The Chairman recalled that it had been agreed by the Committee to continue the discussion on the adequacy and effectiveness of the Code and that the Chairman would submit, in consultation with the Committee, a supplement to the report (L/5496) to the CONTRACTING PARTIES. He further recalled that the Council had been informed that any addition to the report could be submitted directly to the CONTRACTING PARTIES.

66. The representative of Australia said that in his view the report contained in L/5496 did not reflect the fact that the Code in its present form did not provide adequate and equitable disciplines on the subsidization of agricultural exports. The representative of the EEC stated that this point had been adequately covered in paragraph 38 of SCM/M/15. The delegate of Australia said that his statement should be considered as a comment on the comprehensiveness of the report and not as a qualification of his acceptance of the addition to it. The Committee agreed to add paragraphs 27-29, subsequently circulated in document L/5496/Add.1, to its report and to transmit it to the CONTRACTING PARTIES.

Date of the next regular session of the Committee.

According to the decision taken by the Committee at its April 1981 meeting (SCM/M/6, paragraph 36), the next regular session of the Committee will take place in the week of 7 May 1984.