Committee on Subsidies and Countervailing Measures

MINUTES OF THE MEETING
HELD ON 8 MAY 1980

Chairman: Mr. P.R. Barthel Rosa

1. The Committee on Subsidies and Countervailing Measures held its third meeting on 8 May 1980.

2. At the outset of the meeting the Committee reverted to unfinished business from its March 1980 meeting, namely participation of non-contracting parties and international organizations in an observer capacity. The Chairman recalled that at its March meeting the Committee adopted the following procedures with respect to the participation of observers from non-contracting parties:

"Representatives of non-signatory countries not contracting parties, which participated in the multilateral trade negotiations and which are interested in following the proceedings of the Committee in an observer capacity, should communicate a request to the Director-General of the GATT indicating their desire to do so. The Committee shall decide on each request." (L/4965, Annex I, paragraph 2)

In this relation the Director-General had received requests to follow the proceedings of this Committee from the following countries, non-contracting parties, which participated in the Multilateral Trade Negotiations: Bulgaria, Ecuador, Mexico, Thailand and Venezuela. As to the request from Mexico the Chairman said that while some signatories had favoured an immediate acceptance of Mexico as an observer, others had indicated the desire to consult further on this matter, and to this effect had requested him to contact, informally, the Mexican representation. Since it appeared to him that no decision would be taken on this request at this session he proposed that the Committee revert to the matter at its next meeting. As there were no objections to the other requests, the Chairman concluded that Bulgaria, Ecuador, Thailand and Venezuela were accepted as observers.

3. Regarding the question of observers from international organizations the Chairman said that after informal consultations he believed there was a consensus that requests from international organizations to participate as observers would be considered individually, and invitations would be issued on a meeting-by-meeting basis.
In the case of requests from international organizations to participate in an observer capacity he, as Chairman of this Committee, would consult with signatories to this Agreement to determine if there is objection to issuing an invitation to the requesting international organization. This consultation would take place before the draft agenda for the next meeting had been issued in final form. The informally circulated draft agenda sent to signatories should include a list of those international organizations which had requested observer status. The Committee adopted these procedures.

4. The Chairman referred to letters sent by the IMF and UNCTAD asking for observer status in meetings of the Committee. It was agreed that these organizations would be invited to follow particular issues of the Committee in an observer capacity in accordance with the procedures for participation of observers, as adopted.

5. The Chairman recalled that the agenda for this meeting had been circulated in the airgram convening the meeting (GATT/AIR/1622). The agenda was as follows:

1. Rules of procedure for the Committee and circulation of the Committee's documents.
2. General policy statements.
3. Information on implementation and administration of the Agreement (notification by signatories of their national legislation and implementing regulations) including questionnaires used in countervailing investigations.
4. Notifications under the Agreement.
5. Criteria for the calculation of the amount of a subsidy (footnote 15 to Article 4:2).
6. Definition of the word "related" (footnote 21 to Article 6:5).
8. Procedures for the annual review of the operation of the Agreement and the annual report to the CONTRACTING PARTIES.
10. Other business.

The Committee adopted the agenda.
I. Rules of procedure for the Committee and circulation of the Committee's documents

6. On the rules of procedure the Chairman said that in the conduct of its business the Committee would be guided by existing GATT rules and practice, and flexibility would be retained in order to ensure that the aims of the Agreement were fully achieved.

7. Concerning circulation of the Committee's documents the Chairman stated that there seemed to be a common approach on the matter and informed the Committee of the following arrangements which, in his view, met the general need for transparency and the Committee's particular, if occasional, need for confidentiality. He proposed that after each meeting, he would issue under his own responsibility a concise note on the meeting. This would be circulated to all contracting parties. The Committee's working papers, minutes, etc., would be issued in their appropriate SCM series and circulated to all participants. These would of course be available to all contracting parties on request. In the case of sensitive documents, when the need for confidentiality arose, as for instance in a dispute settlement procedure, documents would be issued on an ad hoc basis, and would have a restricted circulation, to be determined in each case. He proposed to proceed on this basis.

8. Concerning derestriction, the Chairman stated that he assumed that a procedure based on customary GATT practice for the derestriction of documents would be followed, i.e. that working documents and minutes would never be derestricted and that the secretariat should make a proposal annually regarding other documents to be derestricted at the end of the year and that these documents would be derestricted if no delegation objected to the proposal.

9. The Committee agreed to follow this procedure.

10. The Chairman suggested that the Committee might revert to the question of derestriction of panel reports and decisions pursuant to these reports at a future meeting in the light of informal consultations between himself and interested delegations.

II. General policy statements

11. The representative of the United States believed that the Agreement negotiated on subsidies and countervailing measures in the MTN was one of the most important, perhaps the most important, agreement emanating from the MTN. The United States had long sought greater discipline over the use of subsidies that conferred unfair competitive advantages upon the products of the subsidizing country and believed that the new subsidies/countervailing Agreement was a significant initial step in this direction. He also believed
that through the Agreement significant gains had been made in the area of transparency with respect to the use of subsidies, in the area of consultation, conciliation, and dispute settlement procedures at the international level; and in the area of transparency and due process with respect to the administration of domestic countervailing duty laws and regulations. He said that the United States was pleased that the Agreement finally laid out an agreed international framework for taking countervailing actions in respect of problems generated by the use of trade distorting subsidies. He recalled that the United States had taken the necessary legislative and administrative steps to implement fully its obligations under this Agreement, and the relevant United States laws and regulations in the countervail area had been notified in SCM/1/Add.3. He believed it crucial that all signatories implemented the Agreement on a timely basis, both on the subsidies side and on the countervailing measure side, in fulfilment of their obligations. He expected that a systematic review of how signatories had implemented the Agreement would be undertaken by the Committee this autumn. Referring to the procedures for dealing with export subsidy commitments made by developing countries as called for by Article 14:5, he said that his own informal contacts with developing countries had led him to believe that considerable uncertainty remained as to the position of the United States with respect to commitments by developing countries in the export subsidy field. He recalled that the United States' countervailing duty law was enacted in 1897 without an injury test. Under the protocol of provisional application, this law was consistent with the GATT obligations of the United States. When the United States expanded the scope of the countervailing duty law to cover duty-free imports in 1975, an injury test was included for such imports to comply with their GATT obligations. Prior to the negotiation of the subsidies code, the United States still had no injury test in its domestic countervailing law for dutiable merchandise. One of the major objectives of the trading partners of the United States in negotiating this code was to have the United States expand its injury test to dutiable products and to make the test one of "material injury". The fundamental negotiating position of the United States had been that they would give other countries a material injury test in their law for dutiable, as well as duty-free, products in return for increased discipline over other countries' trade distorting subsidy practices. Essentially, this remained their position. With respect to developing countries, he believed that increased discipline entailed commitments by developing countries to bring their export subsidy practices into line with their own particular trade and development needs. In some developing countries, this implied a complete and prompt phase-out of export subsidies; for others, it implied a less rigorous reduction of export subsidies. The United States' position was that it could extend the benefits of an injury test in its law only to those countries that had undertaken increased discipline in the subsidies area. In the case of developing countries, this meant that the United States could only apply its new countervailing duty law to those developing countries that had undertaken commitments with regard to
their export subsidy practices. The United States was flexible as to the contents of these commitments, as long as there was a commitment to eliminate export subsidies as soon as possible depending upon a country's competitive and development needs. The United States was anxious to have developing countries sign this Agreement and to extend the benefits of their new countervailing duty law, including an injury test, to them. He said that while he in no way contested the right of any country to sign this code without the commitments he had referred to, his Government would find it impossible to apply their new law to imports from developing countries which did not provide commitments.

12. The representative of the European Economic Community said that he also considered this Agreement as one of the most important results of the Multilateral Trade Negotiations and that his delegation attached great importance to its prompt and meaningful implementation, especially through appropriate national legislations. The European Economic Community had enacted a completely new legislation fully consistent with the Agreement, and so had the United States. However, there were not many more countries which could say they had done the same. This was why he felt compelled to insist that all signatories have not just general rules but a comprehensive legislation including the possibility of appeal to national courts.

13. The representative of Canada also felt that the Agreement was one of the outstanding achievements of the Tokyo Round and said that his Government was taking all the necessary steps to convert this improved framework of international understanding into meaningful practice. The existing legislation enabled Canada to meet all of the obligations of the Agreement but it would certainly be further developed and elaborated and proposals to this effect were under preparation. Referring to Article 14:5 commitments he said that he had a lot of sympathy for the objectives which the United States had been pursuing in this area, particularly as many signatories were very concerned about export subsidies. This had become a sensitive issue. He also felt some sympathy with a number of developing countries who did not have export subsidies and he hoped that they would not get caught up in procedures which might be intended for other countries.

14. The observer for Colombia said that his Government was studying the Agreement with great interest and was considering whether Colombia should or should not enter into a commitment. He reiterated the position that commitments under Article 14:5 were unilateral and autonomous. He expressed his concern on the statement by the United States representative, which, in his opinion, nullified benefits accruing to developing countries under provisions of Articles 14:1 and 14:2 - a policy which forced developing countries who wished to sign the Agreement, to enter into commitments would not open the way for wide participation of developing countries in this Agreement.
15. The representative of Chile said that his Government would definitely accept the Agreement in the near future and the Agreement would be integrated in the national legal framework. As to the notifications under Article 19:5 he said that in Chile there was neither legislation, regulations nor administrative procedures concerning countervailing duties and consequently as long as an appropriate legislation was not enacted Chile would not impose countervailing duties. As to the question of notifications under Article XVI:1 of the General Agreement his Government would shortly submit an appropriate notification to the CONTRACTING PARTIES and to the Committee. His Government would also, if requested, be ready to give additional information in accordance with Article 7:1 of the Agreement. He also stated that for the time being his Government did not grant export subsidies on any product. This had been Chile's policy since 1974 and there was no intention to change this policy in the future. He also reiterated his Government's position that commitments under Article 14:5 were unilateral and in no case constituted a condition for accession to the Agreement. He expressed his satisfaction that there was a consensus in the Committee on this matter. As to the statement by the representative of the United States he said that the policy in respect of Commitments resulted from requirements of their internal legislation and it was not based on an interpretation of Article 14:5. He regretted that the United States' domestic legislation required them to seek commitments from developing countries and wondered whether this legislation was in conformity with the General Agreement.

16. The representative of Japan considered it particularly significant that the Agreement provided elaborate rules and procedures for the imposition of countervailing duties in parallel with those for anti-dumping; a fact which should contribute to smoother development of international trade. The Agreement would play its rôle only if all signatories brought their national legislations into full conformity with its provisions. He informed the Committee that procedures for the final acceptance of the Agreement had been completed by his authorities and that it was the intention of the Japanese Government to take the steps necessary to ensure its effective implementation. His Government felt that it was important to encourage as many countries as possible to join the Agreement, in particular developing countries.

17. The representative of Austria joined the previous speakers in considering this Agreement as one of the most important results of the Tokyo Round and considered it very important that as many countries as possible signed it and participated in the Committee's work. The procedures for ratification of the Agreement had now been completed in his country and his delegation would soon be able to deposit Austria's instrument of ratification. This Agreement had been applied on a de facto basis since 1 January 1980. The wording of the existing legislation would be adapted to the wording of this Agreement.
18. The observer for India joined the observer for Colombia in stressing the concern that the statement by the representative of the United States had caused to developing countries, potential signatories to this Agreement, and the danger that such restrictive interpretations were taking the goal of developing countries' participation further away. He recalled his statement made on behalf of developing countries at the March meeting of the Committee. He was happy to note that the United States were not questioning the right of developing countries to accede to the Agreement without any commitments being made in terms of Article 14:5. He was concerned that, despite this recognition, the United States had, in their domestic legislation, provisions which necessitated these commitments, at least in terms of application of the injury test to developing countries. In terms of logic one would tend to draw the conclusion that the United States legislation was not in line with the provisions of the Agreement, not even in line with their interpretation of the provisions of the Agreement. He hoped that the Committee would include this aspect of the United States' domestic legislation in its systematic review. How could one talk about commitments "across-the-board" in terms of all developing countries? Who would decide what a developing country's competitive needs were apart from that country itself? Would it be an across-the-board decision irrespective of the requirements and needs of a particular developing country? These matters should also be reviewed when the Committee undertook the review of the United States legislation. He also considered it inconsistent with the Agreement that the United States legislation established a link between Articles 14:5 and 19:9. He strongly endorsed the view expressed by the observer for Colombia that this approach nullified benefits under Articles 14:1 and 14:2 and jeopardized the balance of interests that developing countries had secured in this Agreement. He expressed his concern regarding remarks made by the representative of Canada that the United States had also been acting for other signatories. If it was so, then the implications of this situation would be far wider spread than he had originally hoped. He said that the general effects of these trends on the effective functioning of the GATT system had already been underlined by him and it would be up to each of the contracting parties to consider how its rights under Article I of the General Agreement had been affected.

19. The representative of Switzerland wished to join those who underscored the importance of this Agreement and expressed the hope that all signatories would fully implement its provisions. He informed the Committee that the Swiss Parliament had adopted the Agreement which consequently had the force of law in Switzerland. The text of the Agreement had been published in the Swiss Federal Gazette and was included in the Recueil des lois fédérales.
20. The representative of the United Kingdom speaking for Hong Kong supported the views expressed by the representative of Chile and the observer for India.

21. The representative of the European Economic Community said that his position on Article 14:5, especially on the autonomous nature of commitments remained unchanged. In addition, he wished to underline the positive aspects of the commitments. He recalled that the Agreement was the result of long and painful negotiations. Participants had entered these negotiations with different interests and everybody had had to make concessions. As far as developed countries were concerned, one side had to reconfirm the formal interdiction of export subsidies, which appeared now in Article 9 of the Agreement. In addition, this side had to accept more detailed procedures under the second track. The other side, as a counterpart, agreed on more detailed definitions and procedures with respect to injury. When the negotiations started on special treatment for developing countries one tried to invent a special system with special advantages for these countries. The result was that under certain conditions no second track procedures should apply to developing countries and there would be no review procedures as provided for under Article 14:8. This was to the advantage of developing countries, which on their side would accept the commitments provided for in Article 14:5. Those commitments were much more flexible than the strong obligations which developed countries had under Article 9 of the Agreement. He expressed the hope that a solution to the problem of commitments be found by all sides because the absence of a settlement would detract from the effectiveness of the Agreement.

22. The observer for Sri Lanka associated himself with the views expressed by the observers for Colombia and India. Being a Contracting Party to the GATT for a very long time, almost since its inception, his Government was astonished at some of the strange concepts enunciated by the United States, and the manner in which that country wanted to implement the Agreement. Such an approach would, in his opinion, restrict the membership in the Agreement to developed countries only. The observer for Ghana said that his authorities would need to study in depth the statement made by the representative of the United States. He considered that this statement was made too early and suspected that there were some business groups within the United States putting pressure on the Government to act in such a way. As to Article 14:5 he felt that it required the Committee to work out a meaningful application of the concept of export subsidies inconsistent with competitive needs. The determination of these needs should not be done by a country alone, but the question should be brought before the Committee. He also associated himself with the views expressed by observers for Colombia and India.
23. The observer for Nigeria said that his Government was cognizant of the importance of this Agreement and was considering appropriate action to take. He associated himself with the observers for Colombia and India and the representative of Chile and raised the question of the incompatibility of the United States legislation with Articles 14:1 and 14:2. The observer for Trinidad and Tobago shared the views expressed by other developing countries. The United States' interpretation of Article 14:5 raised the question of how to determine the competitive and development needs of a developing country and certainly constituted a serious obstacle for developing countries wishing to join the Agreement. In this situation it seemed better for those countries not to join but to invoke their rights under the General Agreement. He also agreed that the consistency of the United States' legislation with the General Agreement should be examined. He wondered whether the provision in the 1975 United States law that imposition of countervailing duties on non-dutiable imports required an injury test was still applicable to imports from developing countries which had not signed the Agreement.

24. The representative of Pakistan informed the Committee that his Government had signed the Agreement and fully applied it as of 30 April 1980. The representative of Brazil reiterated his delegation's position on the unilateral and autonomous nature of commitments. He said that all signatories should interpret the Agreement in such a way as to ensure the widest possible participation of developing countries. He regretted that the United States' statement seemed to indicate that they did not interpret the Agreement in such a way. The observer for Peru said that her Government was analyzing the possible accession to the Agreement. She shared the views expressed by the observer for Colombia that the United States' interpretation nullified the fundamental principles of special and differential treatment provided for in Articles 14:1 and 14:2. She was surprised that some other signatories seemed to share the interpretation of the United States. She also considered that the Committee should examine the conformity of the United States legislation with the Agreement.

III. Information on implementation and administration of the Agreement

25. The Chairman recalled that an invitation to submit notifications of national legislation and implementing regulations was contained in document L/4946, paragraph 4. So far the secretariat had received communications from the EEC (SCM/1/Add.1), Sweden (SCM/1/Add.2), United States (SCM/1/Add.3), Norway (SCM/1/Add.4), Finland (SCM/1/Add.5) and Switzerland (SCM/1/Add.7). Some other signatories had informed the Committee, under the previous item, of their intentions in this respect. The representative of Brazil said that the Agreement had been fully applied by Brazil as of 1 January 1980 and that any further implementing regulations would be based on the Agreement, as it applied to Brazil, and would be notified to the Committee. The representative of Sweden
said that the Agreement had been approved by the Parliament and therefore
the Swedish Government was bound by the Agreement. In any countervailing
action the provisions of the Agreement would be completely followed. He
also said that there were some points which were not clear in the United
States' implementing regulations and he hoped that in implementing these
provisions the United States Government would take into account the
relevant results of possible future work undertaken by this Committee.
The observer for India recalled comments he made earlier in the
discussion on the review of domestic legislations.

26. The Chairman invited signatories, who had not yet done so, to submit
their notifications by 30 June 1980. On the basis of notifications
received by that date the Committee would, at its autumn session,
initiate systematic examination of national legislations. He would
consult informally with signatories on how to proceed with this examina-
tion. It was so agreed.

27. The Chairman proposed that the question of questionnaires used in
countervailing investigations should remain on the agenda for subsequent
meetings. It was so agreed.

IV. Notifications under the Agreement

(a) Notifications of subsidies

28. The Chairman recalled that all contracting parties to the GATT were
obliged, by virtue of Article XVI:1 to notify their subsidy practices
according to the Decision of the CONTRACTING PARTIES at their twentieth
session (BISD, 11th Supplement, page 58). This obligation had been
reaffirmed by Article 7:1 of the Agreement, thus the signatories should
feel specially obliged to fulfil this obligation. However, despite the
fact that such notifications should be made by the end of January every
year, none of the signatories had so far submitted any notification.
Bearing in mind the objectives of the Agreement the signatories should
submit their notifications in an appropriate form. In this relation he
drew the Committee's attention to the questionnaire on subsidies
contained in BISD, Ninth Supplement, pages 193-194 which provided guide-
lines for notifications. Signatories were invited to reflect on whether
these guidelines were adequate or whether there was need for improve-
ments. Irrespective, however, of whether the questionnaire needed
further improvements or not, the signatories should submit their
notifications under Article XVI:1 as promptly as possible.

(b) Reports by signatories under Article 2:16

(i) All preliminary or final actions taken with respect
to countervailing duties

29. The Chairman said that the most appropriate action for this kind
of notification seemed to be that signatories send to the secretariat
all formal decisions concerning preliminary or final actions taken
with respect to countervailing duties, immediately after such decisions had been taken. These notifications would be available in the secretariat for inspection by government representatives. Once experience with the operation of these procedures had been gained the Committee would review the situation and consider possible modifications. It was so agreed.

(ii) Semi annual reports on all countervailing duty actions taken within the preceding six months

30. The Chairman recalled that Article 2:16 of the Agreement required signatories to submit, on a semi-annual basis, reports on any countervailing duty actions taken within the preceding six months. It seemed to be a general wish of the Committee that such semi-annual reports, covering the period 1 January 1980-30 June 1980 be examined at the autumn session of the Committee. Signatories should submit such reports to the secretariat in good time before the autumn session, irrespective of whether there would be a standard format for such reports or not. However, it seemed most appropriate to have a standard format for semi-annual reports. In this relation the secretariat had circulated an informal proposal by the Chairman on a standard format, for consideration by signatories. He further proposed that if there were no objections from signatories by 5 June 1980 he would circulate this proposal in an SCM document with a recommendation that it be followed as closely as possible in semi-annual reports to be submitted before the autumn meeting. It was of course understood that, in the light of experience, the proposed form would be subject to further discussions in the Committee and modifications could be made.

31. The representative of the United States said that to maintain the balance of the Agreement it seemed appropriate to pursue its subsidy side as well. For this reason his delegation would also like to discuss certain subsidy practices and programmes parallel with the discussion of semi-annual reports on countervailing duties. The representative of the European Economic Community said that in the case of countervailing duty actions the discussion would be based on semi-annual reports and everybody would know what would be subject for discussion. If the United States wanted to discuss certain subsidy practices they should indicate them in good time to enable other signatories to be prepared for such a discussion. Furthermore, if someone wanted to discuss subsidy practices he could certainly do this but not under the Article 2:16 procedure. The representative of the United States replied that such a review of subsidy practices was provided for in Article 19:6 under the review of the implementation and operation of the Agreement.
32. The Chairman said that a practical way on how to proceed would certainly be found. He also said that as Article 16:1 of the Agreement provided that the Committee "shall afford signatories the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives" it would be desirable that signatories who wanted to raise any particular problem notified other signatories in good time about their intentions.

V.VI. Criteria for the calculation of the amount of a subsidy and definition of the word "related"

33. The observer for India said that these two items were of very great importance and they were left undefined in the Multilateral Trade Negotiations because negotiators considered that the process of working out appropriate definitions would be complex and time-consuming. The definition of these two concepts would have a crucial bearing on the operation of the Agreement and therefore was of great importance, not only to actual signatories, but also to potential signatories. He proposed that the GATT secretariat prepare a detailed technical paper on the calculation of subsidies which would constitute a basis for further work in the Committee. He also recalled the definition of related persons in the Valuation Code and considered that this definition should be taken into account in the context of this Committee's work.

34. The representative of Sweden, speaking as the Chairman of the Committee on Anti-Dumping Practices, proposed the establishment of a group of experts from interested signatories with the task of identifying and examining, at technical level, problems involved in the definition of the word "related". This group would act as an Inter-Committee group and would report to this Committee and to the Committee on Anti-Dumping Practices. Referring to the question of the definition of related persons as used in the Valuation Code he said that this definition could be only one of the starting points in the group's work. The representatives of the European Economic Community and Japan supported the establishment of an Inter-Committee group of experts and agreed that the definition used in the context of valuation might not be appropriate in the context of anti-dumping and countervailing duties. The representative of Japan suggested that this Committee should set up a group of experts to deal with the calculation of the amount of a subsidy. The representative of the United States also supported the establishment of an Inter-Committee group and the suggestion by the representative of Japan.

35. The observer for India considered that the membership in both groups should be open to non-signatories as well. He pointed out that the concepts to be discussed had a bearing on the provisions of the General Agreement itself and they would be applicable in actions taken against countries irrespective of whether they were signatories or not.
36. The Chairman noted that there was an agreement in the Committee that such groups of experts should be established and the only question which remained open was that of participation.

37. The representative of Austria drew the attention to the very technical character of the work of the groups of experts which, for these reasons, should be very restrained. He also pointed out that this work would be limited to technical aspects and that both groups would report to the Committee, where more policy oriented discussions would take place and where decisions would be taken.

38. The Chairman said that the intention behind the establishment of these two groups was to examine at technical level by a small group which would not necessarily include all signatories, concrete, practical questions. These groups would not negotiate, they would only identify technical problems. The results of this identification would be reported to the Committee which would proceed with the appropriate work at the level of governments.

39. The representatives of the European Economic Community and of the United States agreed with the Chairman that the groups would have their task limited to technical questions and would report to the Committee where the decision-making process would take place. The observer for India said that his delegation would like to make a contribution at the technical level. The representative of Sweden said that all contributions would be taken into account and that such contributions could be presented to the Committee itself or submitted to the groups of experts.

40. The Chairman said that the wish of the Committee seemed to be to have as small groups as possible which would work in an informal and flexible way and report to the Committee without delay. He proposed that contributions which interested countries wished to make should be submitted in writing and that he would invite the chairman of the groups to consult with interested observers and inform them about their work. In this way interested observers would be fully informed about what was going on and once the matter came to the Committee they would have full opportunity to express their views.

41. The observer for India said that the interests of contracting parties could be affected, even in discussions at technical level and observers who were contracting parties to the GATT should be included in such discussions. The observer for Ghana supported the observer for India. He said that experts, while discussing technical problems, should also bear in mind political and social aspects and therefore the presence of observers would be very important. The observer for Argentina wondered whether the rules of procedure adopted by the Committee allowed the establishment of a restricted group if there were no obvious reasons for such a restriction. The observer for India said that the groups which were to be set up were certainly formal groups.
42. The Chairman said that all views had been noted and proposed that the Committee take the following decisions:

(a) The Committee decides to set up together with the Committee on Anti-Dumping Practices a group of experts with the task to identify and examine, at technical level, problems involved in the definition of the word "related", as required by footnote 7 to Article 4 of the Anti-Dumping Code and footnote 21 to Article 6 of the Subsidy/Countervailing Measures Code. This group will be open to experts from interested signatories and will report to both the Committees. The Chairmen of both the Committees will, in consultation with interested signatories, nominate the Chairman of this group of experts and will establish the date for its first meeting.

(b) The Committee decides to set up a group of experts with the task to identify and examine, at technical level, problems involved in the calculation of the amount of a subsidy, as required by footnote 15 to Article 4 of the Subsidy/Countervailing Measures Code. This group will be open to experts from interested signatories and will report to the Committee. The Chairman of the Committee will, in consultation with interested delegations, nominate the Chairman of this group of experts and will establish the date for its first meeting.

It was so agreed.

43. The observer for Australia associated himself with those observers who had expressed the view that as the issues to be discussed by technical experts could have a bearing on any contracting party's rights under the General Agreement it would be appropriate that observers be present. There was no reason to leave observers out and the Committee by denying itself the expertise of observers, in particular those from developing countries, had left itself open to unfortunate interpretations of the motivation behind this decision.

44. The representative of Sweden considered that the intervention by the observer for Australia was in contradiction with what the signatories really intended to do. There had never been any doubt that the Committee would have the expertise of observers and if anyone thought that such expertise would be denied he would not align himself with such intention. It had been clearly stated that expertise from anybody—whether observer or signatory—would be taken into account, not only in the Committee itself but also at the earlier stages of the work.
45. The Chairman said that he understood the situation in the same way as the representative of Sweden. He added that he was at the disposal of observers to consult on the most suitable way to transmit their expertise at an earlier stage and he was convinced that the Chairmen of the groups would also be so disposed. The observer for Nigeria took this opportunity to express his support for the proposal made by the observer for India that observers should be present in the groups, as it was their right as contracting parties to the GATT.

VII. Procedures for accession of non-contracting parties

46. The Chairman drew the Committee's attention to the Note by the secretariat circulated in this Committee as SCM/W/2 and to the Note by the secretariat entitled "Procedures for the Accession of Non-Contracting Parties (SCM/W/3). The latter set out, in legal terms, the procedures and terms generally described in SCM/W/2, in particular in paragraphs 10 and 11 thereof. Annexed to it was a Draft Decision by the Committee. As some questions had been raised on this matter in other Committees and it needed further consultations, the Chairman proposed that the Committee revert to this item at its next meeting.

VIII. Procedures for the annual review of the operation of the Agreement and the annual report to the CONTRACTING PARTIES

47. The Chairman recalled that Article 19:6 of the Agreement provided that the Committee should review annually the implementation and operation of the Agreement taking into account the objectives thereof. He proposed that the Committee proceed with such a review at its autumn session on the basis of reports from the Committee's meetings and other reports under the Agreement which would be available at that time. Following this review the Committee would prepare its report to the CONTRACTING PARTIES for their annual session in November 1980. This report would be drawn up along the lines of the annual reports of the former Anti-Dumping Committee.

48. The representative of Brazil said that he would like to see as a separate item on the agenda of such a review the application of provisions regarding special treatment for developing countries. The representative of the United States proposed that the secretariat prepare a note containing proposals for the organization of reviews.

IX. Panel members

49. The Chairman informed the Committee that the following countries had indicated to him, in accordance with Article 18:4 of the Agreement persons available for serving on panels: United States, Finland, Sweden, Brazil, European Economic Community and member States, Norway and Austria. Other signatories were invited to do so without delay.
50. The representative of the United States said that his Government had informed the secretariat that it had an additional list of both non-governmental and governmental experts to serve on panels. He considered that it would be appropriate, in many instances, for non-governmental experts to serve on panels. The representative of Sweden informed the Committee that his Government had also prepared an additional list of governmental and non-governmental experts.

X. Other business

51. The representative of Chile drew the Committee's attention to the subsidization by the European Economic Community of their export of malt. This subsidy was adversely affecting Chile's export of this product to some countries. He informed the Committee that his Government would seek consultations with the European Economic Community under Article 12 of the Agreement, without prejudice to the relevant provisions of the General Agreement.

Date of the next meeting

52. The Committee agreed that its next meeting should follow that of the Committee on Anti-Dumping Practices and it should tentatively start on 23 October 1980. The Chairman would confirm this date in consultation with delegations.