MINUTES OF THE MEETING HELD
ON 25 OCTOBER 1990

Chairman: Mr. Crawford Falconer (New Zealand)

1. The Committee on Subsidies and Countervailing Measures ("the Committee") held a regular meeting on 25 October 1990.

2. The Committee adopted the following agenda:

A. Examination of countervailing duty laws and/or regulations of signatories of the Agreement (SCM/1 and addenda)
   (i) United States (SCM/1/Add.3/Rev.3)
   (ii) Revised countervailing duty regulations of the United States Department of Commerce (SCM/1/Add.3/Rev.3/Suppl.1)
   (iii) Korea (SCM/1/Add.13/Rev.2/Suppl.1)
   (iv) Turkey (SCM/1/Add.28)
   (v) Australia (SCM/1/Add.18/Rev.1/Suppl.3)
   (vi) Canada - Amendments to the SIMA resulting from the FTA with the United States
   (vii) Other legislation

B. Notification of subsidies under Article XVI:1 of the General Agreement
   (i) Examination of notifications circulated in L/6111 and addenda
   (ii) New and full notifications (L/6630 and addenda)

1 The term "Agreement" means Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade.

90-1801
C. Semi-annual reports of countervailing duty actions taken within the period 1 January-30 June 1990 (SCM/104 and Addenda)

D. Reports on all preliminary or final countervailing duty actions (SCM/W/219, 220, 222 and 223)

E. United states - Countervailing duties on non-rubber footwear from Brazil - Report by the Panel (SCM/94)

F. Other panel reports pending before the Committee

G. Draft guidelines on the application of the concept of specificity (SCM/W/89)

H. United States - Initiation standards for countervailing duty investigations

I. Other business

J. Annual review and Report to the CONTRACTING PARTIES

A. Examination of countervailing duty laws and/or regulations of signatories of the Agreement (SCM/1 and addenda)

(i) United States (SCM/1/Add.3/Rev.3)

3. The Chairman recalled that the Committee had examined this legislation at its meetings of 22 June 1989 (SCM/M/43, paragraphs 14-18), 26 October 1989 (SCM/M/44, paragraphs 9-15) and 24 April 1990 (SCM/M/46, paragraphs 5-9). Written questions had been received by the EEC (SCM/W/185), Korea (SCM/W/186), India (SCM/W/196) and Canada (SCM/W/197). The United States had replied to these questions in, respectively, documents SCM/W/192, 204, 205 and 206. No further questions had been received since the April 1990 meeting.

4. The representative of Australia reserved his delegation's right to revert to this matter and to submit written questions at some future time.

5. The Committee took note of the statement and decided to conclude its examination of the legislation of the United States.

(ii) Revised countervailing duty regulations of the United States Department of Commerce (SCM/1/Add.3/Rev.3/Suppl.1)

6. The Chairman recalled that the Committee had examined these regulations at its meetings of 26 October 1989 (SCM/M/44, paragraphs 16-23) and 24 April 1990 (SCM/M/46, paragraphs 10-13) and had agreed to revert to this item at the present meeting.

7. No further questions were raised or comments made and the Committee decided to conclude its examination of these regulations.
8. The Chairman recalled that the Committee had examined the recent amendments to the Presidential Decree implementing the countervailing duty provisions of the Korean Customs Act at its meetings of 26 October 1989 (SCM/M/44, paragraphs 27-32) and 24 April 1990 (SCM/M/46, paragraphs 14-18). The delegation of Korea had circulated written responses to questions raised by the EEC and Australia (SCM/W/218).

9. The representative of the EEC said that his delegation had nothing to add to the points it had already made regarding the Korean legislation. While it had not changed its opinion on this matter, the EEC was satisfied with the examination thus far.

10. The representative of Australia said that his delegation had taken note of Korea's assurances and would monitor the application of the Presidential Decree in order to ensure its conformity with Korea's obligations.

11. The Committee took note of the questions raised and replies given and decided to conclude its examination of the legislation of Korea.

(iv) Turkey (SCM/1/Add.28)

12. The Chairman recalled that the Committee had examined this legislation at its meetings on 26 October 1989 (SCM/M/44, paragraphs 33-35) and 24 April 1990 (SCM/M/46, paragraphs 19-22). The delegation of Turkey had submitted written responses to questions raised by the EEC (SCM/W/221).

13. The representative of the EEC said that most of the questions seemed to have been answered in a relatively satisfactory manner. His delegation would still like to see some of the interpretations suggested by those answers embodied in the law. Regarding the initiation of investigations, the EEC's question had been whether questionnaires in a countervailing duty investigation would be sent to all domestic producers including those who had not supported the complaint. The answer had been that the questionnaires would not be sent to domestic producers which had not supported the complaint. The EEC's view, this was not the correct way to determine the existence of injury, as obviously the producers supporting the complaint were experiencing problems. If one limited the injury investigation to those producers, one was likely to find some injury. It might be that the bulk of the industry did not support the complaint because it was not suffering injury; thus, any injury investigation should cover all domestic producers. Regarding the allocation and calculation of a subsidy in the case of acquisition of fixed assets (Article 25 of the Turkish legislation), it was still not clear what that provision meant.

14. The representative of the United States recalled that at the Committee's meeting in April 1990, Turkey had indicated that it would be considering possible revisions to its legislation in light of some of the EEC's questions. He asked whether Turkey intended to do this.
15. The representative of Turkey asked the EEC and the United States to submit their comments in writing for her authorities' examination.

16. The Chairman invited delegations wishing to revert to this matter to submit their questions or comments in writing as soon as possible and requested the delegation of Turkey to provide written replies to such questions by the end of January 1991.

(v) Australia (SCM/1/Add.18/Rev.1/Suppl.3)

17. The Chairman recalled that the Committee had received a communication from the delegation of Australia concerning amendments to Australia's countervailing duty legislation (SCM/1/Add.18/Rev.1/Suppl.3).

18. The representative of Australia explained that document SCM/1/Add.18/Rev.1/Suppl.3 was a legislative package that had been enacted which amended Australia's anti-dumping legislation. As indicated in the document, this legislation was to be read in conjunction with previous Australian anti-dumping legislation which had been notified to the Committee. The primary objective of the two Acts described in the document had been principally to restructure the anti-dumping and countervail provisions of the customs legislation. This was not something which in itself affected the operation of these provisions as far as signatories of the Subsidies Code were concerned. The major substantive change to the Customs Legislation (Anti-Dumping) Amendment Act 1989 related to the amendment proposed in Clause 13 for a new Section 269TAC regarding the Government's decision, on the anti-dumping authority's report, to make provision for the inclusion of a profit margin when the normal value of goods was being constructed. This was an issue before the Anti-Dumping Committee rather than the Subsidies Committee, as the same legislative package had been submitted in toto to both Committees. The legislation also included some procedural changes of a less substantial nature regarding the administration of dumping investigations. Australia was ready to accept any questions which signatories might have on the document.

19. The Committee took note of the statement and agreed to revert to this matter at its next regular meeting. The Chairman invited delegations wishing to raise questions on this matter to do so in writing by 18 January 1991 and requested the delegation of Australia to provide written replies to such questions by 28 February 1991.

(vi) Canada (SCM/1/Add.6/Rev.2)

20. The Chairman recalled that the Committee had received from Canada information on amendments to Canada's Special Import Measures Act (SIMA) resulting from the Canada-US Free Trade Agreement. The amended text of the SIMA and an explanatory note on these amendments were contained in document SCM/1/Add.6/Rev.2.
21. The representative of **Canada** said that the document in question essentially contained a description of the legislative amendments to the SIMA necessary to implement the provisions of the Canada-United States Free Trade Agreement. It also contained a copy of the new regulations and a complete copy of the amended legislation. He said that the main purpose of these amendments and regulations was to implement the binational panel mechanism agreed to under the Free Trade Agreement in respect of countervailing duty and anti-dumping cases. When employed, that mechanism replaced judicial review of certain decisions in anti-dumping and countervailing duty cases. The binational panels were bound by a very closely defined standard of judicial review in each country, i.e. the standard applicable in each country under its national legislation. The amendments by and large did not introduce substantive changes to the countervailing duty or anti-dumping law of the two countries. The panels were charged with determining whether or not the national statutes of each country had been properly applied in a given case. Canada would provide a written response to any questions by the time of the Committee's next meeting.

22. The representative of **Australia** said that his delegation, as it had only just received this document, might want to submit questions once it had examined its contents. The representative of the **EEC** concurred in that statement.

23. The Committee took note of the statements and agreed to revert to this matter at its next regular meeting. The **Chairman** invited delegations wishing to raise questions on this matter to do so, in writing, by 18 January 1991 and requested the delegation of Canada to provide written replies to such questions by 28 February 1991.

(vii) **Other legislation**

**New Zealand** (SCM/1/Add.15/Rev.3/Add.1)

24. The **Chairman** noted that the Committee had received a communication from the delegation of New Zealand containing amendments to the countervailing duty legislation resulting from the passage of the Dumping and Countervailing Duties Amendment Act. These amendments would be discussed at the next regular meeting of the Committee.

25. The representative of **New Zealand** said that the substantive changes to New Zealand's Dumping and Countervailing Duties Act outlined in the document reflected the change in conditions between New Zealand and Australia regarding dumping action. The countervail provisions remained in effect. The amendment to this legislation had provided the opportunity to make some previously outstanding minor or technical amendments to clarify the intent of the legislation and to ensure its consistency with the Code. In particular, New Zealand had taken into account the questions raised in 1989 in this Committee, such as the United States' question on the definition of domestic industry. Her delegation would respond to any further written questions.
26. The Committee took note of the statement and agreed to revert to this matter at its next regular meeting. The Chairman invited delegations wishing to submit questions to do so, in writing, by 18 January 1991 and requested the delegation of New Zealand to provide written replies to such questions by 28 February 1991.

27. The Committee agreed to maintain this item on its agenda in order to allow signatories to revert to particular aspects of national countervailing duty laws and regulations at a later stage.

B. Notification of subsidies under Article XVI:1 of the General Agreement (i) Examination of notifications circulated in L/6111 and addenda

28. The Chairman recalled that the Committee had held a special meeting on 27 October 1988 to examine notifications under Article XVI:1. The Committee had continued this examination at its meetings of 26 April 1989, 26 October 1989 and 24 April 1990. In several cases more information had been sought or further questions had been asked, and therefore the Committee had agreed to revert to a number of notifications.

EEC (L/6111/Add.19)

29. The representative of Australia expressed his delegation's disappointment with the EEC's approach to the notification requirement under Article 7 of the Code and reserved Australia's right to return to this matter at some future time.

30. The representative of the EEC said that he could only restate the position his delegation had taken previously on this matter. The EEC believed that it had replied exhaustively to the questions submitted. The EEC could only hope that the new disciplines currently being negotiated would clarify the scope of the notification obligation through a better definition of the scope of subsidies discipline, so that this problem could be avoided in future.

India (L/6111/Add.4)

31. The Chairman recalled that the Committee had postponed its consideration of this notification at the request of the delegation of India. That delegation had been asked to circulate in writing clarifications requested by Australia. No such clarifications had been received. For this reason, and in the absence of the delegation of India at the present meeting, the Committee decided to revert to this item at its next meeting.

Korea (L/6111/Add.12 and SCM/W/187/Add.1)

32. The Chairman recalled that at the Committee's most recent meeting, the delegation of Australia had requested the delegation of Korea to circulate in writing additional explanations concerning its foodgrain procurement programme. This has been done in document SCM/W/187/Add.1.
33. The representative of Australia reiterated his delegation's view that the foodgrain procurement programme had a significant impact on trade in rice, and that in combination with artificially high domestic prices, it served to inhibit imports and was an integral element in supporting high domestic prices. The fact that the purchasing price for rice under the programme was 97.9 per cent of the domestic price did little to offset the demand effect on price purchasing 14.3 per cent of the rice harvest. There was a very large tariff equivalent to the difference between Korea's domestic price for rice and international prices. Australia was also concerned that the price stabilization programmes that Korea had notified - livestock, rice, red peppers and garlic - covered only a small part of the total subsidies that these products received. The tariff equivalents of support for beef as well as garlic and red peppers were exceptionally high.

34. The representative of Korea said that his delegation maintained the position it had submitted in its written response to Australia's question.

United States (L/6111/Add.17)

35. The Chairman recalled that the Committee had agreed to revert to this notification at the request of the delegation of Australia. The delegation of Australia had asked the US delegation to comment on the findings of a study by the Australian Bureau of Agricultural and Resource Economics on the depressing effect of US subsidies on world prices for sugar, and other adverse effects.

36. The representative of the United States said that in the absence of technical experts in the United States who could comment on the Australian study, he was unable to comment in any specific manner. He recalled that subsequent to the Committee's most recent meeting, his delegation had asked the delegation of Australia to try to focus its question or remarks in a way that he could transmit to his authorities. Thus far, nothing had been received from Australia, but the offer remained on the table. The representative of Australia said that he would ask his authorities to prepare more focused questions to which the United States might be able to respond.

Pakistan

37. The Chairman recalled that since 1984, no notification had been received from the delegation of Pakistan. As that delegation was not present at the meeting, the Committee decided to revert to this item at its next regular meeting.

38. The Chairman expressed his concern about the very unsatisfactory state of up-dating notifications due in 1988 and 1989. Such notifications had not been received from Egypt, Indonesia, Israel, Korea, the Philippines, the United States, Uruguay, Yugoslavia and Pakistan. He urged all signatories to renew their efforts to provide these notifications.
(ii) New and full notifications

39. The Chairman recalled that in accordance with the decision of the CONTRACTING PARTIES (BISD 11S/58), every contracting party should submit, in 1990, a new and complete notification of subsidies. So far the Committee had received such notifications from the following signatories: Australia, Canada, Chile, Finland, Hong Kong, Japan, New Zealand, Norway and Turkey. As could be seen, the major part of the signatories had not fulfilled this obligation. At the same time, the Committee should have had a special meeting in the autumn to examine the new and complete notifications which had been submitted by signatories. As Chairman, he needed to know when these missing notifications would be available. He therefore asked each of the above-mentioned delegations when he might expect to receive such notifications so that the Committee could discharge its responsibilities effectively.

40. The representative of Austria said that a new and full notification by his country was being prepared, but that due to the enormous pressure of work in the Uruguay Round, its submission prior to the Ministerial meeting in Brussels was unlikely. The representative of Brazil said that a new and full notification would be submitted in the near future. The representative of Colombia recalled that his country had signed the Code only in June 1990 and had not had time to prepare this notification, which would be submitted in due time. The representative of Korea said that his country's notification was likely to be submitted after the end of the Uruguay Round negotiations. The representative of Finland, on behalf of Sweden, said that the Swedish authorities intended to submit their notification in the first half of November. The representative of Switzerland said that his country should be able to submit its notification by the end of November.

41. The representative of the United States said that the bulk of the US notification, involving non-agricultural programmes, had been completed. He understood that the notification regarding agricultural programmes had been pending the completion of certain farm legislation in the United States, which should be forthcoming. However, he could not at present give a specific date for the complete notification. He said that the United States continued to feel very strongly that all subsidies, in particular all agricultural subsidies, should be notified. Therefore, his authorities had felt it was not appropriate to submit a notification without this crucial element.

42. The representative of the EEC said that while he could not provide a specific date, he wanted to reassure all that the EEC did not ignore its obligations under the General Agreement.

43. The Chairman said that all notifications should be submitted by 5 December 1990. Those delegations who had indicated a firm intention to make their notification in advance of that date were encouraged to do so. He suggested that the Committee agree tentatively to hold a special meeting on those notifications by the end of January 1991.
C. Semi-annual reports of countervailing duty actions taken within the period 1 January-30 June 1990 (SCM/104 and addenda)

46. The Chairman recalled that an invitation to submit semi-annual reports under Article 2:16 of the Agreement had been circulated in SCM/104. Document SCM/104/Add.1 listed those signatories which had notified that during the period 1 January-30 June 1990, they had not taken any countervailing duty action. These signatories were: Austria, Brazil, Chile, Columbia, the EEC, Finland, Hong Kong, Japan, Korea, New Zealand, Norway, Sweden, Switzerland, Turkey and Yugoslavia. The following signatories had notified countervailing duty actions: United States (SCM/104/Add.2), Canada (SCM/104/Add.3) and Australia (SCM/104/Add.4). No reports had been received from: Egypt, India, Indonesia, Israel, Pakistan, Philippines and Uruguay.

47. The Chairman said that looking at the list of those signatories which had not submitted their notification under Article 2:16 of the Code, one could see a certain similarity with the list of those which had not submitted the up-dating or the full notification of subsidies. He asked whether there were going to be two categories of signatories - those who always fulfilled their obligations and those who did not bother even about their purely formal obligations but always remembered their rights. This was not an onerous obligation, but an obligation nevertheless. Work in the Uruguay Round should reinforce the need to comply with existing obligations rather than be used as an excuse for not doing so.

48. No comments were made on the semi-annual reports submitted by the United States and Canada.

49. The representative of Australia apologized for the lateness of the circulation of Australia’s semi-annual report of countervailing duty actions.

50. The Chairman said that given the lateness of Australia’s document, any signatory wishing to could revert to this item at the Committee’s next meeting.

D. Reports on all preliminary or final countervailing duty actions (SCM/W/219, 220, 222 and 223)

51. The representative of Canada asked that a corrigendum to SCM/W/220 be issued as there was an inconsistency between that document and SCM/104/Add.3 with respect to the list of countries other than Brazil, to which countervailing duty actions had been applied.

E. United States - Countervailing duties on non-rubber footwear from Brazil (SCM/94)

52. The Chairman recalled that the Committee had examined this report at its meetings of 26 October 1989 (SCM/M/44, paragraphs 86-95) and 24 April 1990 (SCM/M/46, paragraphs 41-55). The Committee had agreed to revert to this report at the present meeting.
53. The representative of Brazil said that his Government had presented its substantive objections to the Panel Report on Non-Rubber Footwear from Brazil at the Committee's October 1989 meeting. Brazil's formal comments had been circulated on 5 March 1990 (SCM/96) and discussed at the Committee's April 1990 meeting. At that time, a number of delegations had expressed support for Brazil's position. As signatories were familiar with Brazil's objections, he would not repeat them. However, he wanted to inform the Committee that on 7 August 1990, Brazil had formally requested consultations with the United States under Article XXIII:1 of the General Agreement on the basis of Articles I and VI of the General Agreement. On 28 August 1990, Brazil had received a written request from the United States to clarify the basis of Brazil's request. Specifically, the United States had asked Brazil to clarify how the United States had violated m.f.n. treatment in the implementation of its obligations under Article VI, and on what basis Brazil was now requesting a readjudication of the same matter which was the subject of the Panel Report. On 17 September 1990, his Government had responded as follows:

"Under Article VI, the United States is obligated to provide an injury test to all contracting parties before levying countervailing duties. The United States has taken the position that it had been exempted from this requirement of Article VI due to its invocation of the Protocol of Provisional Application (PPA), but any exemption afforded by the PPA has expired in a number of cases making this obligation effective upon expiration. In the case of imports from a number of countries, the United States has implemented its obligation automatically as of the date the obligation arose. In the case of imports from Brazil, however, the United States required Brazil to expressly request an injury test and then applied it only as of the date of the request, not the date the obligation arose. This arbitrary and discriminatory application of US Article VI obligations upon the expiration of the application of the PPA denied Most-Favoured-Nation treatment to Brazil and is the basis of Brazil's request for consultations.

"Brazil is not requesting readjudication of the same matter that was addressed in the Panel Report. The Panel Report did not address the issue upon which Brazil seeks consultation with the United States. This issue is the inconsistent and discriminatory implementation of US Article VI obligations upon the expiration of the PPA as between Brazil and countries that were not signatories to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade. This is an issue that arises under the provisions of the General Agreement, not the Subsidies Code and is thus properly a matter to be considered by the Council."

The United States had now agreed to consult with Brazil on this matter. These consultations would be held the following week.
54. As was stated in Brazil's letter to the United States, the Article XXIII:1 action was not an appeal of the Panel Report. The issue now before the Council was the inconsistent and discriminatory implementation of the United States' obligations to provide an injury test under Article VI upon the expiration of the exemption provided by the PPA. The question was not whether the United States had implemented its obligation under Article VI, but whether it had violated Article I by doing so in a discriminatory manner, when the exemption provided by the PPA had expired with respect to Brazil compared to three countries that were not signatories to the Code. Since the issue was one of discrimination in the implementation of obligations upon the expiration of the PPA exemption, and since the issue involved differential treatment accorded to a Code signatory and to three non-signatories, Brazil believed the issue should properly be resolved by the Council under Article I.

55. The representative of the United States said that his delegation was very disappointed with Brazil's statement and that for a third time Brazil had blocked adoption of this Panel Report, adding yet another case to the sorry pattern of blockage faced by this Committee. The United States disagreed with Brazil's views. Brazil was seeking to claim that the issue for which it had recently sought consultations was different from the issue firmly addressed by this Panel. While Brazil's argument was phrased in a slightly different fashion than had been addressed by the Panel, the issue to which Brazil was referring had been raised by the United States before the Panel and had been considered by that Panel. In the US view, it was highly irregular to seek to adjudicate the same matter again, particularly in a different forum. Such action would bring discredit to the GATT dispute settlement system at a time when it needed the contrary. The United States was all the more disappointed because it had been advised by US sources that one of the reasons for the action being taken was the advice of US counsel for footwear importers in a matter currently before the US court. Such importers were apparently seeking to use these actions in the GATT in order to delay the domestic judicial process. He did not assert this as a fact, but wanted to record his delegation's concern and fervent hope that such information was not correct.

56. The representative of Brazil said that he wanted to stress some of the points his delegation had already made clear in its responses to the United States' questions. By resorting to Article XXIII:1 of the GATT, Brazil was not delaying the process, but merely wanted to have its rights fully respected. Brazil believed that the United States had denied it m.f.n. treatment, and attached high importance to this issue. The United States had implemented the provisions of Article VI in an inconsistent and discriminatory manner among signatories and non-signatories of the Code. This constituted a violation of Article I, and was the main motivation which had led Brazil to request consultations under Article XXIII:1 and to take the matter to the Council.
57. He then gave examples of how, in Brazil's view, the United States had denied Brazil m.f.n. treatment. In cases involving certain textiles from Mexico, lime from Mexico, wire rod from Trinidad and Tobago, and fasteners from India, the US had implemented its Article VI obligation as follows: (1) A countervailing duty order in all four cases had been issued during a period when the provisions of the PPA applied to US actions - that is, no injury test had been required or extended. (2) Subsequently, the protection afforded by the PPA had expired. In the case of India and Trinidad and Tobago, the products had subsequently been designated as eligible for GSP treatment; in the case of Mexico this had been due to Mexico's becoming a contracting party. Subsequent to the expiration of the PPA, each of these contracting parties had requested the United States to make an injury determination on the imports in question prior to levying countervailing duties. The United States had fulfilled its obligations and had made an injury determination retroactive to the date the PPA exemption had expired, that is, the date the obligation had arisen. Specifically, the subsequent date of request for the injury test had in all cases been deemed irrelevant, as a legal matter, to the effective date of the injury test. This procedure was referred to in the Panel Report as an automatic procedure. In the case of imports of non-rubber footwear from Brazil, (1) the countervailing duty had also been issued while the United States was protected by the PPA, and no injury test had been required or extended; (2) the protection afforded by the PPA had expired as a result of Brazil's accession to the Subsidies Code on 1 January 1980. On 28 October 1981, Brazil had requested the United States to make an injury determination on imports of non-rubber footwear from Brazil. The United States had determined that such imports were not causing injury to the US industry and therefore had revoked the countervailing duty order. In so doing, however, the United States had limited the application of the injury test to the date of request - 28 October 1981 - rather than the date the obligation had arisen, i.e. 1 January 1980. By limiting the effect of the determination of no injury to the date of the request, the United States had denied m.f.n. treatment to Brazil, compared to the treatment extended to non-signatories upon the expiration of the PPA. This was the issue that would be the subject of the forthcoming consultations with the United States. His delegation did not believe that a country, in order to seek full application of its rights and if it believed it had received discriminatory treatment, should not take the issue to the Council.

58. The representative of the United States said that his delegation did not share the interpretation expressed by Brazil. The United States urged all members of the Committee to go back and read the Panel Report again; they would thus see that this principal issue had been raised by the United States in the Panel proceedings and had been considered by the Panel.

59. The Chairman asked the delegation of Brazil whether Brazil's decision to take to the Council the issue it had raised would prevent Brazil from agreeing to adopt the Panel Report in this Committee.
60. The representative of Brazil said that in his delegation's view, it was important to take this issue to the Council and to clarify it. After the conclusion of the Article XXIII proceedings, Brazil would be in a better position to evaluate its position on the Panel Report in this Committee.

61. The representative of the United States said that his delegation disagreed strongly with any intimation that the Council was the proper forum in which to debate, question or reargue issues properly before the Subsidies Committee, particularly issues properly subject to dispute settlement proceedings under the auspices of the Committee.

62. The Committee decided to revert to this item at its next meeting.

F. Other Panel Reports pending before the Committee

(i) Canada - Imposition of countervailing duties on imports of boneless manufacturing beef from the EEC (SCM/85)

(ii) EEC subsidies on export of wheat flour (SCM/42)

(iii) EEC subsidies on export of pasta products (SCM/43)

(iv) United States - Definition of industry concerning wine and grape products (SCM/1/71)

63. The representative of the United States said that the United States continued to maintain its position that all outstanding blocked panel reports before the Committee should be acted upon. It was in the interests of the dispute settlement system and the credibility of the Subsidies Code and the GATT system to do so, and the United States reaffirmed its strong commitment to this goal and its willingness to work with the Chairman in whatever endeavours he might think fruitful to achieve it.

64. The representative of the EEC said that aside from the issues of principle which might have led to this situation regarding panel reports, there were still unresolved trade issues. He reiterated the EEC's view that the dispute settlement process was primarily directed at resolving trade disputes; that was the first objective of the whole process. One might disagree with the blockage of the adoption of panel reports, but not to take any action to solve at least the trade aspect of the dispute defeated the whole purpose of dispute settlement. The EEC was ready to explore possible solutions to this situation, but a precondition for the EEC was that the trade aspect of all disputes be resolved in a manner satisfactory to all the parties involved. He had been informed that negotiations with Canada on the beef dispute were continuing and had received no indication that a solution was in sight.
65. The representative of Canada said that he had no information on whether a solution was in sight in Canada's discussions with the EEC, but Canada was continuing to discuss the issues raised in the Panel Report at the highest levels in the EEC. Canada remained willing to engage constructively in any process the Chairman might want to put in place that would lead to resolving these cases. However, all panel reports would have to be treated equally in any such solution.

66. The Chairman asked whether in the Committee at present there were no problems with any of the legal issues in these panel reports.

67. The representative of the EEC said that the legal issues in these panel reports were under active consideration in the Uruguay Round negotiations, and it was hoped that a satisfactory solution would be found in that context.

68. The Chairman said that although there were no formal links between these reports, each of which had to be discussed and adopted separately, the common feature of all of them was that their adoption had been blocked by the party which had lost the case, and this attitude of opposition had always found some form of support among other members of the Committee. He had sought to test, by his question, whether that appraisal was correct, which it seemed to be. Three previous chairmen had tried to find a practical solution which would permit the adoption of these reports and would remove the negative trade effects of the incriminated measures. He too had made efforts to enhance this process of seeking a solution, and would continue to do so. However, despite a number of assurances and expressions of good will, no such solution had been accepted. He was being told that the main obstacle was the lack of a practical "no trade effect" solution in the dispute between the EEC and Canada on manufacturing beef, and that the subsequent consultations between these two parties had as yet to produce any results. This seemed to be an endless process, and all parties would finally have to face up to their responsibilities. Thus, he advised the Committee that he might, as soon as there was an agreed text on dispute settlement in the Uruguay Round, call a special meeting of this Committee and put all five cases, including the non-rubber footwear case, to the test of the new dispute settlement system, so that all could see and confirm how serious they were about the resolution of disputes in the GATT. He would not necessarily make that meeting contingent on that issue, but certainly intended to call a meeting in the latter context.

69. The representative of Canada agreed that the lack of a "no trade effects" solution was one of the issues under consideration in the negotiations between the EEC and Canada, but it was by no means the only or the main obstacle in that negotiation. There were other issues under consideration which Canada had discussed in its participation in the Chairman's efforts to resolve these disputes, and discussion was continuing on all of those issues.
70. The representative of the EEC said that his delegation appreciated the Chairman's continuing efforts to find a solution to these matters. The EEC agreed in particular with the statement that one should do something when a panel report was issued. The EEC had done something, even though it strongly disagreed with some of the principles expressed in the panel reports. These disagreements had not disappeared. There were several issues of principle which were very important to the EEC and to other parties involved in these disputes and, indeed, to all members of this Committee. Aside from the issues of principle, the EEC had hoped that all parties would be willing to do something when a dispute had arisen and there were trade effects. In cases where something had not been done, it was not for lack of trying on the part of the EEC.

71. The Chairman said that while parties might have difficulties with panel reports which made findings against them, that was the implication of the dispute settlement process. He trusted that by the time the Committee next met, in the light of what emerged from the negotiations on dispute settlement generally, there would be a changed environment in which what had been agreed might be applied to particular cases.

72. The representative of the EEC said that the EEC would reflect carefully on the statement concerning the implications of the ongoing negotiations on dispute settlement for the situation of the panel reports in this Committee. He asked whether the secretariat could provide some guidance as to whether it would be possible to apply a newly negotiated procedure to outstanding disputes.

73. The Chairman said that quite irrespective of the technical coverages, there were common-sense coverages. As Chairman, he hoped that all of these panel reports would be resolved prior to the adoption of any new dispute settlement procedures. The Committee decided to revert to these matters at its next meeting.

G. Draft Guidelines on the Application of the Concept of Specificity (SCM/W/89)

74. The representative of the United States pointed out that the concept of specificity was not referred to in the General Agreement or in the Subsidies Code. It had been developed in the United States and evolved through US practice, and document SCM/W/89 largely reflected the US practice in the past. His delegation had, over the past several months, intensively analyzed this concept, and had concluded that it had no economic justification. This Committee was not the place to debate this issue, and in light of the negotiations in the Round, the development of history and the view just expressed, the United States sincerely questioned whether it would be fruitful to keep this document on the agenda of this Committee. The issue would be dealt with one way or another in the Uruguay Round, which was the proper place to deal with it. Therefore, his delegation formally requested that SCM/W/89 be removed from further consideration by the Committee.
75. The representative of the EEC disagreed with the United States that this was not the place to debate this issue. This Committee was certainly a relevant forum for such a debate. If a solution to this issue were found in the Uruguay Round negotiations, there might be no further need to debate the issue in this Committee, but it remained to be seen whether a solution would be found in the Round. This was the EEC's hope, as the concept of specificity did have a very useful function, and the EEC would like to see it fully debated and a solution found. He recalled that in the Committee, the United States had said that the Omnibus Trade and Competitiveness Act of 1988 contained a provision on specificity which was consistent with the letter and spirit of SCM/W/89. The United States was now saying that this concept had no economic meaning, and the EEC wondered how this was reconciled with the existence of such a provision in US law.

76. The representative of the United States said that pending successful results in this and other areas of the Uruguay Round, the United States had not changed its practice. Obviously, the specificity concept was still embedded in US law and regulations. However, the United States had concluded that the concept, which it had created and promoted, did not have the degree of attractiveness once attributed to it. The United States had the intellectual honesty to so admit, and it would seek to convince others in the proper negotiating forum of that change in view.

77. The representative of the EEC said that the EEC had taken note of the statement that US law and practice had not changed in respect of this issue, and was somewhat reassured by this.

78. The representative of Canada said that one could conclude that specificity was still a live issue and that it should therefore remain on the Committee's agenda pending the outcome of the Uruguay Round.

79. The Chairman said that as there was no consensus to delete this item from the agenda, the Committee would revert to it at its next meeting.

H. United States - Initiation standards for countervailing duty investigations (SCM/105)

80. The Chairman recalled that the Committee had examined this matter, at the request of the delegation of Canada, at its meeting of 24 April 1990 and had agreed to revert to it at the present meeting. The delegation of Canada had circulated a paper explaining its position on this issue (SCM/105).

81. The representative of Canada recalled that his country had been concerned with the United States' initiation standards both in countervailing duty cases and in the anti-dumping context for some years, and had expressed this concern at the Committee's most recent meeting. Canada's main focus had been the examination of "sufficient evidence" by the US authorities before an investigation was initiated. Canadian producers had gone bankrupt awaiting the final disposition of US countervailing duty cases that had been initiated on questionable grounds.
Canadian exporters were forced to undertake costly legal defences which, together with the uncertainty as to the future availability of a product subject to a countervailing duty investigation, called into question the alleged openness and transparency of the US trade remedy system. Canada was concerned that the low standards for initiation employed by the United States might not be consistent with the Subsidies Code, in particular Article 2:1 of the Code which stated, in part, that a request for a countervailing duty investigation should include sufficient evidence of the existence of a subsidy, injury, and a causal link between the two. As to the term "sufficient evidence", a common definition - according to a noted American authority - of "evidence" was something which furnished proof, while "sufficient" was defined as enough to meet the needs of a situation or a proposed end. In determining the proposed end for which evidence was required, it was important to recall the intent of the Subsidies Code as stated in its Preamble, particularly to the effect that countervailing measures should not unjustifiably impede international trade. In Canada's view, therefore, sufficient evidence should be interpreted to mean enough proof of the existence of subsidization, injury and causality, to prevent the unjustified harassment of exports through the initiation of unwarranted countervailing duty investigations. Any lower threshold of evidence would allow petitioners to request investigations purely on speculative grounds, so as to cause uncertainty in the market and in fact to increase the cost of exporting to the petitioner's market. The US authorities were not requiring sufficient evidence when they initiated countervailing duty investigations. Three investigations had been initiated on Canadian exports - plastic tubing corrugators, standard wheel-based limousines and thermostatically controlled appliance plugs and internal probe thermostats - even though the petitions in question not only contained no evidence that the industries received subsidies, but also failed to support an allegation that they were even eligible to receive subsidies. In all three cases the petitions merely contained generalized descriptions of programmes that had been found countervailable in other cases. In Canada's view, US practice had also been deficient regarding allegations pertaining to import volume, import penetration and underselling: these were either unsupported or had been based on misuse of import statistics and other data. The petitioner's claim rested on two highly speculative statements involving estimates for which there was no basis. The petitioner had also claimed that the US industry had suffered from substantial decreases in domestic production, employment and sales, yet he had also asserted that he represented total US production, and that his production, sales and employment had not declined but had remained constant; the case had nevertheless been initiated. In Canada's view, the US authorities might not be applying properly the requirements of Article 2:1 of the Subsidies Code. Initiation of countervailing duty investigations on the grounds of unsubstantiated allegations appeared to contradict the sufficient evidence requirement of that Article and frustrated the intent of the Code by allowing harassment of exports through the misuse of countervailing duty laws.
82. The representative of the United States said that as his delegation had just received Canada's submission, he could not respond in any detail to the specific allegations raised in the context of the individual cases cited. He referred the Committee to the two previous discussions of this issue (SCM/M/44, paragraph 131 and SCM/M/46, paragraph 70), in which the United States had already asserted that two of the three investigations mentioned by Canada, limousines and thermostats, had been initiated on the basis of sufficient evidence as interpreted under the Subsidies Code. Indeed, in both cases the investigations had been initiated on only those programmes where the US had already found there to be subsidies in previous countervailing duty cases involving Canada. The United States had not initiated investigations where the petitioner had not provided adequate information demonstrating the existence of a subsidy, for example, the provision of subsidized energy; and in the limousine case the United States had not initiated an investigation of a programme because the petitioner had not demonstrated that there were any limousine manufacturers located in the area to which the subsidy programme applied. He assured both Canada and the members of the Committee that (a) the United States believed that its initiation standards conformed with its obligations under the Subsidies Code, and (b) it was neither the intention nor the effect of US practice to harass exports from Canada or from any other country. Regarding the issue of "standing" in the first paragraph of Canada's submission, he recalled that this issue had been addressed by a panel under the Anti-Dumping Code, and the US position on this issue would be revealed in that Committee.

83. The representative of Canada noted the US statement that US authorities appeared to use a previous finding that a programme was countervailable as a basis for initiating a case. He referred to the last line of the second paragraph of Canada's submission. The US practice of referring to a previously countervailable programme only encouraged the use of the countervail instrument for harassment purposes.

84. The representative of the United States said that often the only reliable evidence of the existence of subsidies in another country available to a petitioner was the record of previous investigations conducted by the US authorities. Therefore, his delegation took issue with the contention that reference to previous cases was not a reliable basis for developing allegations and available information concerning the extent to which, in a new proceeding, a different industry might be adversely affected by subsidy programmes.

85. The representative of Canada said that the issue was not whether or not a programme existed but whether subsidization had taken place, injury had occurred, and there was a causal link between the two. The fact of a previous countervail finding on a product relating to a particular programme was on its own quite an insufficient basis on which to develop a case on a different product.

86. The representative of the United States said that his delegation agreed that on its own, such a previous countervail finding was an insufficient basis for the initiation of an investigation.
87. The representative of Finland, on behalf of the Nordic countries, supported Canada's statement. These countries shared some of the thrusts and concerns in Canada's statement regarding the US practices in the initiation of countervail proceedings. The Nordic countries hoped that the United States would indeed abide by its obligations and would not use such practices as harassment.

88. The representative of Japan said that his delegation shared the concern expressed by Canada and believed that the initiation standard was a crucial element in countervail as well as anti-dumping actions. Canada's submission seemed to indicate that the United States was not abiding by this important standard, and Japan hoped that the US would act in conformity with the Subsidies Code regarding its countervailing duty investigations.

89. The representative of Switzerland said that his delegation shared some of the concerns expressed in Canada's submission. Switzerland too was concerned about the obligation to verify the standing of petitioners prior to the initiation of a countervail investigation. This was one aspect of GATT rules that needed to be confirmed in the Uruguay Round negotiations.

90. The representative of Korea said that his delegation fully shared Canada's concerns and believed that countervail measures should not be used as a means of protection.

91. The representative of Colombia said that his delegation believed that Canada had a valid case and therefore supported its position. Colombia believed that there should be separate investigations and sufficient evidence for each countervailing duty case, which should include proper verification of the standing of the petitioner.

92. The Committee took note of the statements and agreed to revert to this item at its next regular meeting.

I. Annual review and Report to the CONTRACTING PARTIES


Date of the next regular session

According to the decision taken by the Committee at its April 1981 meeting (SCM/M/6, paragraph 36), the next regular meeting of the Committee will take place in the week of 29 April 1991.