MINUTES OF THE MEETING HELD ON 12 MARCH 1982
Chairman: Mr. M. Ikeda (Japan)

1. The Committee on Subsidies and Countervailing Measures met on 12 March 1982. The participation in the meeting was limited to the Signatories only.

2. The Chairman recalled that the purpose of this meeting was to continue discussion of two matters which had been before the Committee since its meeting on 3 March 1982 (SCM/Spec/2, paragraphs 36-63).

3. The representative of the European Community stated that the secretariat had distributed his declaration made at the previous meeting (SCM/Spec/12) on the interpretation of Article 9 of the Agreement. He wished to invite delegations which had not yet taken any position on this matter to present their views.

4. The representative of the United States said that his delegation had referred to the Committee for conciliation the dispute with the European Communities concerning export subsidies on pasta. These subsidies being inconsistent with Article 9, the United States had, in its request for consultations, provided available evidence concerning the nature and extent of these subsidies as required by Article 12:2 of the Agreement. As the matter had been referred for conciliation, Article 17:1 was applicable. He did not propose explaining in detail his views on the applicability of Article 9 to the EC export subsidies on pasta because he did not consider conciliation as a sort of rehearsal of arguments to be put before a panel. Nevertheless he believed that it might be helpful to Committee members to have an outline of the reasons for which Article 9 did indeed apply to these subsidies. First it was obvious that pasta was not a primary product within the meaning of the General Agreement or the Subsidy Code. Pasta was clearly a processed product made from flour and other ingredients. Nor was the conversion of a natural product, the wheat, in flour and in pasta customarily required to prepare it for marketing in substantial volume in international trade. The EC representative had suggested that even if the pasta was not a primary product, export subsidies on agricultural non-primary products were not subject to Article 9 if the export subsidy was essentially limited to the primary component of the processed product. However he did not see any such rule in the Code. The subsidies paid by the European Community were paid on the export of pasta. The EC representative had also referred to the US reservation to Article XVI:4 in respect of subsidies on processed products calculated in relation to the primary component. The history of that
reservation was instructive but it led to quite the opposite interpretation from that suggested by the Community. At the 1957 session of the CONTRACTING PARTIES the United States had asked for clarification of Article XVI:4. The United States had, at that time, subsidized the exportation of cotton, a primary product, in accordance with Article XVI:3. In connexion with this subsidization a payment had been made on the exportation of domestically produced textiles which was essentially the payment that would have been made on the raw cotton consumed in the production of these textiles if the cotton had been exported in raw form. The United States had sought recognition that it might continue that practice as consistent with Article XVI:4. The reaction of other contracting parties had been to reject the United States' interpretation but they had agreed that the United States might enter into a reservation to the same effect. In this relation the representative of the United Kingdom had said that her delegation would not subscribe to the interpretation of the representative of the United States that the type of subsidization he had referred to was permissible under Article XVI. The position of the United Kingdom had been supported in this case by the delegation of Denmark, Sweden and Canada. At the 1958 session the Swedish delegate had said that the reservation by the United States Government had considerably limited the importance of the United States adherence to the Declaration giving effect to Article XVI:4. The United Kingdom, Denmark and Italy had supported the Swedish position. It was evident that contracting parties had interpreted Article XVI:4 not to allow export subsidies on non-primary products even if confined to the primary product content. The United States had had to make a reservation to continue this practise, in view of the objection of other contracting parties including several members of the European Community. Neither the United States, nor any other Signatory had made such a reservation to the Subsidy Code, nor was there any difference between the language of the Code and of the General Agreement that would make such a reservation unnecessary under the Code when it had been necessary under the General Agreement. Furthermore there was nothing in the negotiating history of the Code that would suggest that the subsidization of elements of a non-primary product was permitted.

5. The representative of Australia noted the different interpretations which the two parties to the dispute had put forward on the question of the definition of a non-primary product in the context of Article XVI of the GATT and Articles 9 and 10 of the Code. He also noted that the positions which both parties had put forward on this matter on other occasions did not conform with the positions they had enunciated in this Committee. He recalled the reference by the European Communities to the unilateral declaration which the United States had made on this matter in 1962, commenting that the Committee's attention might also be drawn to the text of Article 38 of the Treaty of Rome in which the term "agricultural products" is defined as meaning "products of the soil, of stock farming and of fisheries and products of first stage processing directly related to the foregoing." He did not consider that the Code or the General Agreement could be interpreted unilaterally and he did not accept the unilateral interpretations which had been put forward. Only the CONTRACTING PARTIES could interpret the General Agreement and the Committee was the only body that could interpret the Code where such interpretations did

1For the full text of the statement by the UK representative as quoted in this paragraph, see document SR.12/22, pages 192 and 193.
not impinge upon the General Agreement. He could not accept that there had been any agreed interpretative history of the Code other than that which was included in the Code itself and accepted by Code Signatories. He said that Australia was unaware of, and had not agreed to, any other interpretative history of the Code. It had been suggested at the previous Committee meeting that if a certain unilateral interpretation of the Code was not upheld, a group of Signatories would perhaps be unable to remain members of the Code. His response to such a position would be "so be it". He would suggest to these countries that certain aspects of the Code were unpalatable to other Signatories of the Code and to certain other contracting parties.

6. The representative of the Community agreed with the Australian representative that the Committee was the only body that could interpret the Code. Accordingly, no individual party to the Code could claim to have the true answer. Accordingly, the fundamental question at issue was one for the members of the Committee, and no single member of the Committee could lay down the law for the others. That was why the Community had asked the members of the Committee for an interpretation of Article 9.

7. The representative of Chile said that his delegation fully shared the position expressed by the representative of Australia. The problem of interpretation of Article 9 was extremely complex. The European Community had every right to request that the members of the Committee should state their position on this matter at a certain point. However, because of the extreme complexity of the matter, many delegations were not prepared to state their final position at this meeting. His delegation could not accept a unilateral interpretation of the Agreement. Furthermore, as his country had never subscribed to the Declaration on Article XVI:4 he did not feel bound by its provisions nor by any interpretative statements or reservations made in this context. His delegation was only bound by the provisions of Article XVI as well as all provisions of the Code. As to the procedure he wanted to stress that conciliation should be undertaken by the Signatories only, but if the Committee was to discuss the matter of general interpretation then this should be done in the presence of observers. The issue before the Committee was of such importance that it might affect the position of several contracting parties that were considering or intending to accede to the Code. Consequently, in the future, when issues of general interest were discussed, observers should be invited to attend.

8. The Chairman said that the matter of general interpretation was normally of great importance. The matter before the Committee had been presented in the context of a concrete dispute and it would not be possible to separate the general and particular aspects of it. For these reasons it was appropriate that the discussion was taking place among the Signatories only.

9. The representative of Finland said that he fully agreed with the representatives of Australia and Chile that unilateral interpretations were not valid. As to the question of subsidies on processed agricultural products he considered that it was possible to make a difference between agricultural and industrial components. If one looked at this question from the point of view of the processing industry, it was obvious that such an industry could buy the raw material either at the world market price or procure it from the domestic market at the domestic market price. If the difference between these two prices was not compensated for, every enterprise would buy at the world market price and the end result in the terms of export price of the product in
question would be such that nobody could reproach anything to it. However, from the point of view of the government concerned, it would be of interest to make available the domestic raw material at a price comparable to the world market price. To achieve this result such a government could, in accordance with Article XVI:3 of the General Agreement and Article 10 of the Code, subsidize its raw material incorporated in the exported product. The question, therefore, should not be whether the transformed product was subsidized but whether the subsidy on its export was limited to the agricultural raw material component. He could not see any other logical approach to this question. The Committee should therefore make a clear distinction between the primary and non-primary component of a transformed product and arrive at a valid and equitable interpretation. In the view of his Government such an interpretation had been accepted for quite a long time. This practice pre-dated the negotiations of the Subsidy Code. During the negotiations this practice had never been contested and his Government had signed the Subsidy Code in good faith on the understanding that its rights in this respect would not be affected.

10. The representative of Pakistan said that any interpretation which would result in new obligations that had not originally been envisaged under the Code would affect the rights of Signatories under the Code and under the General Agreement. For this reason he saw considerable merit in the suggestion made by the representative of Chile that this matter be examined in the presence of observers, in particular those who wished to sign the Code in the near future. He also shared the view that as there was no agreed interpretation of Article 9, unilateral interpretations were not valid. He considered that any agreed interpretation should not add new obligations to those which had been initially envisaged.

11. The representatives of Sweden and Norway associated themselves with the views expressed by the representative of Finland.

12. The representative of Canada said he was disturbed by the way in which the Committee was proceeding. The Committee had before it a request from the United States for conciliation. At the last session of the Committee the delegation of the European Community had said that it would need eight days in order to decide whether it would agree to conciliation. He would like to know whether that decision had been taken. The representative of the European Community said that his delegation participated in the meeting to fulfill its obligations.

13. The representative of New Zealand said that he associated himself with the remarks made by the representatives of Australia and Chile. The interpretation of Article 9 was an extremely complex matter and his delegation was not, as yet, in a position to embark on it. As far as this meeting was concerned the question of substance was the request of the United States for conciliation. In this regard he did not consider that the EC representative had answered the question asked by the representative of Canada. The representative of the European Community said that he wished to make it clear that his delegation was ready to accept conciliation.

14. The representative of Chile said that the Committee was in an awkward situation because it was discussing two different things, on two different levels, at the same time. He did not think that it was the best way to deal
with either of the two problems. He believed that these problems should be separated in order to enable the Committee to make some progress in the discussion.

15. The representative of the United States said that he was in agreement with several points which had been made. First, no party was authorized to unilaterally interpret the Code. Second, the process of conciliation implied seeking the advice of the members of the Committee and he wished to join the European Community in requesting such advice. He reiterated his previous observation that the Code itself contained no language which even implied that the product under consideration was other than a non-primary product. Nor was there any other interpretation in Article XVI. He was surprised that the European Community could conceive that a programme which subsidized producers, not of primary agricultural products but of manufactured products, could be something other than an export subsidy prohibited by the Code. The United States' complaint was based upon the type of programme maintained by the Community, the clear language of the GATT, the clear language of the Code and on common sense. He was also surprised that there was so much confusion as to whether an export subsidy paid to producers of manufactured products fell under Article 9. That was the reason why he could concur with the Community that it was important that other Signatories had an opportunity to speak on this subject. He believed that the Committee was in the conciliation process and it was important that all members expressed themselves.

16. The representative of Chile said that he would like to ask the representative of the European Community whether his position was that the EC producers of pasta were allowed to buy wheat on the internal market at subsidized prices, or whether the manufacturing industry as such was subsidized but this subsidization was limited to the raw material element contained in its final product. The representative of the European Community said that he could accept what had been said by the United States-in SCM/Spec/8, namely that the amount of the subsidy was calculated in relation to the amount of Durum Wheat determined by the Commission to be necessary to produce pasta.

17. The representative of Australia asked whether the most recent US intervention was a request for members of this Committee to pronounce themselves on the Article 9 issue. The representative of the United States said that the issue of whether pasta was a primary or non-primary product was central to the conciliation process. The European Community had agreed to conciliate. He hoped that members of the Committee would express themselves with regard to this matter in an effort to help the disputants to resolve the issue short of a full panel.

18. The representative of Australia said that he had sought the clarification referred to in the previous paragraph as he did not wish in any way to prejudice the dispute settlement procedure and for this reason, he had not earlier expressed an Australian opinion as to whether pasta was a primary or non-primary product. He wished to reiterate his earlier comment that any individual interpretations of obligations under the Code were not binding and therefore it was irrelevant as to what the practise might be in certain groups of countries. His view as to whether pasta was a primary or non-primary product was based on the Code and on the General Agreement. On the basis of the Interpretative Note to Section B of Article XVI (which he cited), he considered that the transformation of durum wheat into pasta was not customarily required to prepare it for marketing in international trade, and
indeed a separate and significant market existed for durum wheat. The transformation of durum wheat into pasta was a two-stage process and was so substantial as to preclude consideration of pasta as a primary product. For those reasons, based not on unilateral interpretations but on the letter of the General Agreement and the Code, he had no doubt that pasta was not a primary product and therefore it was subject to the provisions of Article 9 of the Code.

19. The representative of Canada said that his delegation was also reluctant to get into this question, in view of the position taken by the United States delegation at the previous meeting, and that to do so might prejudice the resolution of this issue should it go to a panel. Given the US representative's request at this meeting he could only associate himself with the position expressed by the representative of Australia.

20. The representative of Switzerland said that he had hesitated greatly over intervening at the current juncture of the discussion to the extent that it was a very delicate matter to influence a procedure that might lead to a dispute. Nevertheless, he wished to express some reflections on a matter of fundamental interest. In the first place, the question that had been raised should be formulated in such a way as not necessarily to call for a definition dividing all existing products into only two categories: primary products covered by Article 10 and "industrial" products covered by Article 9. A whole series of products existed that were a combination of component elements, some of which were primary products and others industrial products. In examining the relative scope of Article 9, it was appropriate, therefore, to start from the premise that there was not just one clear differentiation between the two categories but that there was also an intermediate category - that termed processed agricultural products. Consideration should also be given to the nature of the subsidies concerned, i.e. as to whether subsidies on the primary product were granted to the same extent and on the same basis as subsidies on the same primary products marketed in the unaltered state, or whether there were any additional subsidies in respect of those primary products when they had undergone processing.

21. The representative of the European Community said that enough had been said to indicate to the members of the Committee that both of the parties to the dispute were asking for the advice of all the Signatories on the problem before the Committee. As to the problem itself he said that whether the product in question was a primary product was only a part of the question, the other part of the question was whether, in the light of established interpretations in GATT, Article 9 of the Code was to be interpreted as saying that subsidization of a primary element of a product was in fact forbidden. It was important to distinguish between these two parts of the question. It was also important to note that for at least twenty years certain practices had developed in GATT and they had never been challenged. This fact should be taken into consideration in any interpretation of Article 9.

22. The representative of Egypt said that he considered the matter as very important and after due consideration of it by his authorities he would be willing to engage actively in the discussion. The representative of Austria said that remarks by the representative of Switzerland merited further reflection and that he would express his opinion on the matter at the next meeting of the Committee.
23. The representative of Chile said that he had hesitated to pronounce himself on the question of interpretation for the same reasons as the delegations of Australia and Canada. However, as a question had been explicitly asked by both parties to the dispute he wished to say that pasta was not a primary product and therefore it fell under the obligations of Article 9 of the Code. However there was also another issue, namely whether a subsidy paid by the European Community was legal under Article 9. It was very difficult to answer this second question, as it was extremely complex. The remarks made by the representative of Switzerland were very pertinent in this context.

24. The representative of Australia said that he too had been struck by the questions posed by the representative of Switzerland. He would like to ask some additional questions: Was the subsidy in this case paid to the pasta producers or to the durum wheat growers? The EC representative had said that the amount of the subsidy was calculated on the quantity of durum wheat used in the manufacture of pasta. In this relation, was it not a fact that the subsidy took the form of an export refund on the exportation of pasta as opposed to anything to do with durum wheat?

25. The representative of Finland asked whether the intent of the subsidy in question was to guarantee a certain price to the durum wheat producers or whether it had some other aims. The representative of the United States said that the EC programme provided that certain products, including pasta, while exported were eligible for export refund. The refund on the processed product was intended to cover the difference between quotations of prices for cereals on the world market and prices offered in the Community for the same products. The Community calculated export refunds according to a conversion factor which took into account the amount of wheat necessary to produce a given amount of pasta. This conversion factor was approximately 1.6-1.7. The EC scheme was used to compensate producers of the finished manufactured product, not the farmers, for using the product of European Community origin.

26. The representative of the Community said that the explanation given by the United States representative was correct. Nevertheless, the Community was not alone in applying a conversion factor. For example, at the request of the United States, that procedure had been used for calculating the contributions of members of the Food Aid Convention within the context of the International Grains Arrangement. In addition, he drew the Australian delegation's attention to the fact that in its notification under Article XVI (L/5102/Add.8), Australia had stated that a rebate equal to the difference between the world price for sugar and the price for sugar sold in Australia was granted to exporters of fruit products and other approved products, according to the sugar content of the products.

27. The representative of the United States wanted to know whether it was the Finnish view that subsidies in excess of the difference between domestic and world prices of a primary product incorporated in a manufactured product were subject to Article 9 prohibition. The representative of Finland said that his view went along the same lines as that expressed by the representative of Switzerland. He found it difficult to treat a processed agricultural product as purely a primary or a non-primary one. Therefore subsidies limited to the raw material component should be falling under the provisions of Article 10 of the Code. However if the processing as such was subsidized, and in particular
if the subsidization was over and above the raw material component then, obviously, such a subsidy would have to be treated in terms of Article 9 of the Code.

28. The representative of Canada referred to the question of whether it was within the scope of the Code to permit export subsidization of the basic raw materials incorporated in processed goods, and said that his authorities' view was that the intent of Article XVI:4 of the General Agreement and of Article 9 of the Code was to cover subsidies regardless of whether the export subsidy was paid on only certain portions of the exported product represented by the value of the primary component. Otherwise the discipline built up in the General Agreement and in the Code would be seriously undermined.

29. The representative of the Community said that it was not possible to reply clearly to the question raised by the United States since everything depended on what was meant by the term "primary product". The Community was not questioning the definition given in the interpretative note to Article XVI. Nevertheless, that definition was much less simple than might be thought and the GATT rules were not clearly spelt out in relation to one another. It would be appropriate, therefore, for the Committee to pursue its examination of those very complex questions, in particular in the light of all the various comments that had been made.

30. The representative of Canada agreed that the questions were very complex and therefore it would be preferable if they were put through the regular dispute settlement procedures under the Code. The representative of the United States said that the Committee was already involved in the dispute settlement procedure. He also wished to stress that the language of the Code was very clear. Had the words of the Code and of the General Agreement been clear, how could any Signatory or country wishing to join them ever not have known how to interpret them. In the light of this nobody should have any doubt that pasta was not a primary product.

31. The representative of Switzerland said that it was not clear whether the Committee was speaking of the case of pasta or, in general, of interpretation of Articles 9 and 10. It was often not possible to make a definitive and uniform differentiation between products falling either under Article 9 or under Article 10. If such a differentiation were possible, there would be primary products on which subsidies could be paid and industrial products, including processed products, on which no subsidy could be paid. That would mean, for example, that the Community would be allowed to subsidize its wheat exports but could not subsidize its exports of pasta (in respect of the wheat content). Consequently, the United States could purchase wheat subsidized by the Community, process it into pasta, and re-export the latter to third markets, even to the Community, and thus enjoy a commercial advantage solely because of strict interpretation of Articles 9 and 10.

32. The representative of the Community said that the situation mentioned by the Swiss representative was not hypothetical for the simple reason that the United States was exporting wheat under PL 480 - hence subsidized - to the Philippines where it was processed into pasta and re-exported to the United States. In the view of the United States, was the Philippines then less guilty than the Community?
33. The Chairman concluded that both parties to the dispute had requested the advice of the Committee on a very important matter of concern to all the Signatories. The Committee had discussed this matter at two subsequent meetings and different views had been presented both on its substance and on procedural aspects. The discussion had not been, as yet, conclusive. In addition, several Signatories had indicated that, in the light of the importance of the matter, they needed more time for reflection. The Committee should, therefore, have another opportunity to continue its discussion. He proposed that the Committee meet on Wednesday, 24 March at 10 a.m. It was so decided.

34. The representative of the United States recalled that, at the request of the United States, a panel had been established to examine the dispute between the United States and the Community concerning subsidies on export of wheat flour. The agreed terms of reference had been reproduced in the annex to SCM/M/Spec/1. The United States believed that the panel could properly address whether the EC measures at issue in this dispute conform to Article 9 as well as to Articles 8 and 10. He asked the Committee to take note that this issue was currently pending before the panel, including the application of Article 9 to the EC measures.

35. The representative of the Community said that the Committee had made a decision on establishing a panel on the basis of a complaint filed by the United States. That complaint had been the subject of a formal explanation in writing on the grounds that the Community was not observing the provisions of Articles 8 and 10 of the Agreement. The Committee had decided on a specific request and before that the Community had had consultations with the United States on the basis of a specific request, namely that flour was a primary product. The consultations had been followed by the conciliation phase, the question of Article 9 had never been posed and the Committee had never lent its good offices regarding the question whether or not flour was in fact a primary product. The United States delegation was now saying that it was asking the Committee to "take note" but was it normal, mid-way, to change the subject matter and the cause? Could the Committee relinquish its own rôle - in the matter, namely, its conciliation rôle? The Committee would have to decide on that aspect.

36. The representative of the United States said that the purpose of his comments had been to inform the Committee that the United States regarded the panel's consideration of this subject as appropriate and would abide by whatever decision the Committee would make in this regard. The Committee would discuss this issue when the panel made its report. The United States' view was that the panel was seized with the issue and had it under consideration. The only purpose in making this statement was to be sure that the European Community was aware that the issue was under consideration by the panel. The panel was also an appropriate forum to consider the arguments presented by the European Community with regard to the alleged procedural irregularities.

37. The Chairman said that the Committee would respect the independence of the panel and therefore it was not in a position to intervene at the stage at which the work of the panel had already started. The Committee could only take note of the two statements on the understanding that the matter should be decided by the panel itself.
38. The representative of the Community expressed full agreement with the Chairman. Once a matter was before the Panel, the Committee must clearly respect the latter's independence. The Committee had indeed entrusted to the Panel a task which had been the subject of a mandate that had been accepted by the Committee. The Committee had asked the Panel to clarify whether, given that flour was a primary product, the Community was observing its obligations under Article 10. That was the complaint filed by the United States and the Community had not accepted that the Panel should concern itself with any other question, in any case not at the current juncture. Moreover, the Committee had not fulfilled its role in respect of the second question regarding Article 9 which was now being posed by the United States and had never been the subject of conciliation before the Committee. Consequently, and so far as the Committee was concerned, the Panel's mandate was to examine the complaint brought before the Committee by the United States. That complaint had never stated that flour exported by the Community was not a primary product.

39. The Chairman said that intervention by the United States did not imply any change to the terms of reference already decided upon. It was up to the panel to decide on the exact scope of its terms of reference. If it felt that this particular aspect was relevant it was their judgement.

40. The representative of the United States said he wished to inform the Committee that the United States would request, in the very near future, a conciliation with regard to the sugar dispute.