

**Committee on Subsidies
and Countervailing Measures**

**MINUTES OF THE REGULAR MEETING
HELD ON 28 OCTOBER, 1 AND 8 DECEMBER 2003**

Chairperson: Ms. Olga Lozano (Colombia)¹

Vice Chairman: Mr. Naoshi Hirose (Japan)

1. The Committee on Subsidies and Countervailing Measures (the "Committee") held a regular meeting on 28 October, 1 and 8 December 2003.
2. The proposed agenda for this meeting was circulated to Members in document WTO/AIR/2196. Before asking whether any Member wished to raise any item under "other business", the Chairperson raised two brief points. First, with regard to item O "Working Party on Subsidy Notifications – Chair's Report on 27 October Meeting" she recalled that it was her feeling that the Committee could actually adopt a decision concerning the revision of the agreed subsidy notification format in document G/SCM/6. Therefore, she proposed that item O be amended to read "Working Party on Subsidy Notifications: (i) Chair's Report on the 27 October Meeting; and (ii) Committee Decision on Adoption of the Revised Notification Format." This amendment was without prejudice to the substance of the actual discussion that would take place under the item. Furthermore, in light of the fact that some Members, including non-resident Members not present at the Committee meeting, may not have been aware of this item until recently, she said that it was her intention to propose the adoption of that revised notification format on an *ad referendum* basis, that is, on the condition that no objection was received within a certain time-period.² Second, she recalled the statement of her predecessor concerning one outstanding matter of Committee business. The October 2002 Committee meeting remained suspended with respect to the review of the legislative notification of Chinese Taipei. As the former Chairman had stated at the Spring 2003 meeting of the Committee, the Committee's fall 2002 meeting would resume once there was an overall resolution of this issue and this was without prejudice to any Member's views as they were expressed at the Committee's fall 2002 meeting.
3. The Chairperson asked whether any delegation wished to raise any matter under "other business". There were no issues raised under this item.
4. The Committee therefore adopted the following agenda:

¹ The Vice Chairman of the Committee, Mr. Hirose, presided over the Committee's discussions of, and decisions relating to, Colombia's export subsidy programmes under item N "Article 27.4 Process".

² As indicated in paragraph 213, as no objections were received within that time period, the revision was adopted and circulated in document G/SCM/6/Rev.1

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5. The Chairperson stated that items A-G on the Committee's agenda dealt with the review of new notifications of countervailing duty legislation and/or regulations, in accordance with the procedures adopted by the Committee at its special meeting in April 1996 (contained in document G/SCM/W/293). Item H dealt with the previously reviewed legislative notification of China. As indicated in the airgram, due to the volume of material involved, delegations were asked to bring their own copies of the notifications. The Chairperson recalled that questions concerning new notifications of legislation were to have been submitted to the Member concerned and the Secretariat no later than three weeks before this meeting, that is, no later than 2 October 2003. As provided for in the agreed procedures, Members receiving written questions were to respond orally to timely-submitted questions during the Committee's meeting. They were also to subsequently submit written versions of their answers to all written questions received. She reminded Members that follow-up questions could be asked in the Committee meeting. If a Member posed a follow-up question and wanted to receive a written answer, the follow-up question had to be submitted in writing no later than

7 November 2003. Written answers to all written questions were to be submitted to the Secretariat no later than 8 January 2004. Certain of the notifications referred to on the Committee's agenda, and questions posed with respect to their review, had also been on the agenda of the autumn 2003 meeting of the Committee on Anti-Dumping Practices, and aspects of certain of them had been considered at that meeting.

A. ARMENIA – REVIEW OF NEW LEGISLATIVE NOTIFICATION

6. With respect to the new notification of Armenia (G/ADP/N/1/ARM/1-G/SCM/N/1/ARM/1), the Chairperson noted that the representative of Armenia was not in the room. In view of this, the examination of this item was suspended. When the Committee's regular meeting reconvened the examination of this item on 1 December 2003, the Chairperson noted that Armenia was not represented at that meeting either. There were no questions or comments from delegations.

7. The Committee took note of the statement made.

B. CHINA – REVIEW OF NEW LEGISLATIVE NOTIFICATION

8. With respect to the new legislative notification of China (G/SCM/N/1/CHN/1/SUPPL.2), the Chairperson noted that the United States (G/SCM/Q1/CHN/27) and Japan (G/SCM(Q1/CHN/31) had submitted written questions in advance of the meeting and that China had submitted written responses to the United States' questions. Japan's questions were received late. In addition, questions put to China by Mexico, in document G/SCM/Q1/CHN/29, had been included in the documents for the Committee's meeting. However, Mexico's questions related to China's previously reviewed notification, not the new notification on the agenda for the Committee's meeting. The deadline for questions on previously reviewed notifications was 11 September 2003, and as Mexico's questions were received after that date, China was under no obligation to provide answers to those questions for the Committee meeting. Written answers to Mexico's questions should be submitted no later than 8 April 2004, for consideration at the Committee's regular meeting in 2004. With that introduction, she gave the floor to the delegate of China to respond to the questions put to that delegation.

9. The delegate of China thanked the United States for its questions on China's subsidies and countervailing legislation. China's written replies were circulated in document G/SCM/Q1/CHN/34.

10. The delegate of the United States thanked China for the answers to its questions. He said that the United States appreciated the effort made and recognized that it was a long and difficult process to implement a countervailing duty regime. However, as a general matter, the United States had always been concerned about due process, specifically, making sure that parties had an ability to access information and to be able to comment upon the relevant issues in a meaningful and timely fashion. The United States wished to emphasize that point. Transparency was another key issue for the United States. The United States believed that it was very important for all the interested parties to be absolutely certain of what the procedures were and what the rules were for obtaining confidential and non-confidential information. The delegate of the United States said that he felt that China had not answered its question six on the issue of a like product. The delegate asked whether interested parties other than consumers and producers would be permitted to comment. Secondly, with respect to question seven, the United States was a little concerned about how products would be excluded from the scope of the investigation. The United States was uncertain as to how the like product group would be diminished and how that like product group would then match up with the products under investigation on the subsidy or the dumping side. Finally, on question twenty-eight, the delegate of the United States stated that the answer that non-confidential information would be provided some time between the initiation and the final determination was somewhat vague. It was a rather lengthy period of time and, in the US' view, the information should be provided as soon as reasonably

possible. Normally, the United States would consider that to be a day or two rather than some time within the span of several months. Written follow-up questions posed by the United States were circulated in writing in document G/SCM/Q1/CHN/37.

11. The delegate of Japan recalled that his delegation had submitted written questions to China contained in document G/SCM/Q1/CHN/31. He stated that the questions had been submitted after the deadline, so it was understandable that the Chinese delegation had not had enough time to reply to them. Nonetheless, Japan would be looking forward to receiving written answers to its questions. Japan reserved the right to make follow-up questions after having examined those replies.

12. The Committee took note of the statements made and concluded its review of this notification, subject to any written follow-up questions from delegations.

C. CZECH REPUBLIC – REVIEW OF NEW LEGISLATIVE NOTIFICATION

13. With respect to notification of the Czech Republic in document G/SCM/N/1/CZE/2, there were no written or oral questions.

14. The Committee took note of the statement made and concluded its review of this notification.

D. EUROPEAN COMMUNITIES – REVIEW OF NEW LEGISLATIVE NOTIFICATION

15. Regarding the notification of the European Communities (G/ADP/N/1/EEC/2/SUPPL.4-G/SCM/N/EEC/2/SUPPL.4-G/SG/N/1/EEC/2/SUPPL.1), there were no written or oral questions.

16. The Committee took note of the statements made and concluded its review of this notification.

E. MEXICO – REVIEW OF NEW LEGISLATIVE NOTIFICATION

17. Regarding the notification of Mexico (G/ADP/N/1/MEX/1/SUPPL.2 & CORR.1-G/SCM/N/1/MEX/1/SUPPL.1 & CORR.1-G/SG/N/1/MEX/1/SUPPL.1 & CORR.1), written questions had been received from Chile (G/SCM/Q1/MEX/3), the European Communities (G/SCM/Q1/MEX/1) and the United States (G/SCM/Q1/MEX/2 and /4).

18. Mexico's written responses to written questions posed by Chile can be found in document G/SCM/Q1/MEX/10. Mexico's written responses to written questions posed by the European Communities can be found in document G/SCM/Q1/MEX/5. Mexico's written responses to written questions of United States can be found in G/SCM/Q1/MEX/8 and /9.

19. The Committee took note of the statements made and concluded its review of this notification, subject to any follow-up questions.

F. PAKISTAN – REVIEW OF NEW LEGISLATIVE NOTIFICATION

20. With respect to the notification of Pakistan (G/ADP/N/1/PAK/2/SUPPL.2-G/SCM/N/1/PAK/2/SUPPL.2), there were no written or oral questions.

21. The Committee took note of the statement made and concluded its review of this notification.

G. PERU – REVIEW OF NEW LEGISLATIVE NOTIFICATION

22. Regarding the legislative notification of Peru, the Chairperson noted that the European Communities had submitted written questions and that Peru had responded in writing, in documents G/SCM/Q1/PER/19 and Add.1, and /21, respectively. The European Communities submitted written follow-up questions, which can be found in document G/SCM/Q1/PER/23. The answers to those questions can be found in document G/SCM/Q1/PER/24.

23. The United States had also submitted written questions, in document G/SCM/Q1/PER/20. Peru's written responses to these questions can be found in document G/SCM/Q1/PER/25.

24. The Committee took note of the statements made and concluded its review of this notification.

H. CHINA - REVIEW OF PREVIOUSLY REVIEWED NOTIFICATIONS

25. The Chairperson stated that the United States had submitted questions in document G/SCM/Q1/CHN/25, concerning a previously reviewed notification of China. Written answers to those questions were circulated in G/SCM/Q1/CHN/30. She asked whether any Member wished to pose follow-up questions, or have any other comments.

26. With reference to China's response to the United States G/SCM/Q1/CHN/30, the delegate of the United States stated that his delegation wished to advise the delegation of China that the reference in the question should be to Article 22.2 rather than Article 23.2.

27. The Chairperson thanked the United States for that clarification and Members for replies given. She reminded Members that they should submit follow-up questions in writing to the Member whose legislation is concerned, and to the Secretariat, no later than 7 November 2003. All written questions concerning the notifications reviewed in this Committee's meeting that were received by that date were to be answered in writing. Those written answers should be submitted to the Secretariat no later than 8 January 2004.

28. She informed Members that the new legislative notification of Jordan, document G/SCM/N/1/JOR/2, would be on the agenda of the April 2004 Committee meeting. Pursuant to the procedures for review of notifications of legislation adopted by the Committee, in order for a new notification of legislation to appear on the agenda of the fall meeting, it must circulate in three languages no later than 11 March 2004. As a practical matter, in light of translation requirements, notifications of legislative text received after 31 January 2004 would be unlikely to be translated in time to meet that deadline. The Secretariat would inform Members of any additional new notifications to be considered at that meeting in mid-March 2004. The deadline for submission of questions regarding new notifications of legislation for next fall's meeting would be 1 April 2004. However, Members were encouraged to submit their questions as early as possible, and Members receiving questions were encouraged to submit written answers in advance of the meeting to the extent possible. Pursuant to the Committee's procedures for review of notifications of legislation, in order for a previously reviewed notification of legislation to appear on the agenda of the Committee's regular meeting in April 2004, questions regarding such notification had to be submitted to the Secretariat, and to the Member whose notification was in question, no later than 11 March 2004. As is its practice, the Secretariat would issue a reminder of relevant deadlines for this Committee, and the other Rules Committees (Anti-dumping Practices and Safeguards).

29. Finally, the Chairperson expressed her continuing concern over the failure of some Members to submit any notification at all concerning legislation or regulations relevant to countervailing

measures. For many, if not most, of these Members, it was likely that a single nil notification, indicating that there was no such legislation or regulation currently in effect, would be all that was required. This seemed to be a relatively simple matter. For those Members who conduct countervailing duty investigations but had not yet notified their legislation, it was obviously important, from the point of view of all Members, that such legislation be notified, in the interest of transparency and better understanding. She encouraged Members who have not yet done so to make their notification of legislation promptly.

30. The Committee took note of the statements made.

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

31. The Chairperson reminded Members that a request for semi-annual reports for the period 1 January – 30 June 2003, to be submitted not later than 29 August 2003, was circulated to the Members in G/SCM/N/98. As was unfortunately almost always the case, a number of the semi-annual reports were received late. She reminded Members that semi-annual reports were always due at the end of August for the period January through June of the current year, and at the end of February for the period July through December of the previous year. She urged all Members to take the necessary steps to submit these notifications on time. Particularly for those Members who have taken no actions, these notifications should be purely a matter of routine, as all that was required is a one-sentence letter stating that no actions have been taken.

32. Members who had submitted semi-annual reports of countervailing actions were identified in paragraph 1 of document G/SCM/N/98, Add. 1. These Members were: Argentina; Australia; Brazil; Canada; Costa Rica; European Communities; Latvia; New Zealand; Peru; United States and Venezuela. To the extent possible, the semi-annual reports had been translated and circulated to the Committee, and were included in the documents made available for the Committee meeting. In addition to the Members who had submitted semi-annual reports of countervailing actions, 37 Members, listed in paragraph 2 of document G/SCM/N/98/Addendum 1, notified the Committee that they did not take any countervailing actions. While Members who take actions appeared generally to comply with this requirement, there remained a significant number of Members who had not responded to the request for semi-annual reports, and had therefore failed to comply with this important requirement set forth in Article 25.11 of the Agreement. These Members were identified in document G/SCM/N/98/Addendum 1, at paragraph 3.

33. The Chairperson asked whether any Member had comments or questions concerning the semi-annual reports of Argentina, Australia, Brazil, Canada, Costa Rica, the European Communities, Latvia, New Zealand, Peru, the United States and Venezuela.

34. The delegate of Colombia stated that, in document G/SCM/N/98/CRI, Costa Rica reported that on 25 April 2003 it initiated an investigation against palm olein and margarine for puff-pastry originating from Colombia. Her delegation expressed Colombia's concern due to the fact that in that investigation the consultations provided for in Article 13 of the SCM Agreement were not held. The delegate of Colombia requested that the Costa Rican authorities consider the possibility of respecting this right which all Members have and that they provide for an opportunity to reach a mutually agreed solution. The question was subsequently circulated in writing in document G/SCM/W/528.

35. On a preliminary basis, the delegate of Costa Rica stated that, under Resolution No. 001/2003 dated 7 January 2003, the Colombian Government was formally invited to hold consultations. The document was provided to the Ambassador of Colombia in Costa Rica in due course in order to comply with the provisions of Article 13.

36. The Committee took note of the statements made.

J. NOTIFICATIONS OF PRELIMINARY AND FINAL COUNTERVAILING ACTIONS

37. The Chairperson stated that lists of the notifications of preliminary and final countervailing duty actions received by the Committee were circulated to the Committee in documents G/SCM/N/97 and /100-103. Since the last meeting of the Committee, preliminary and final countervailing actions had been notified by the European Communities and the United States. There were no questions or comments on these notifications.

38. The Committee took note of the statement made.

K. EFFECT OF MEMBERSHIP ENLARGEMENT ON TRADE REMEDIES CURRENTLY IN FORCE IN THE EUROPEAN COMMUNITIES: TEN QUESTIONS – ITEM REQUESTED BY THE UNITED STATES

39. The Chairperson stated that the United States had requested inclusion of this item on the agenda. The United States had submitted written questions to the European Communities, circulated in a double-symbolled document: G/ADP/W/435 – G/SCM/W/526. In a letter from the European Communities dated 13 October 2003, the European Communities had indicated that it would provide answers to the United States questions, and proposed that the questions be dealt with only in the Committee on Anti-Dumping Practices.

40. The delegate of the United States stated that this issue had been discussed in the other Rules-related Committees. The United States was aware that the European Communities had sent a letter to the Secretariat stating that it did not intend to answer the questions posed by the United States in the Committee, as it had already done so in the Committee on Anti-Dumping Practices. The United States agreed that it was best to avoid repetition; so the US delegation would confine itself to a brief overview of the issue. As background, a useful summary of the discussion of this topic, of the spring meeting of the Committee on Anti-Dumping Practices, was contained in the minutes of that meeting, document G/ADP/M/24, beginning at page 9. Further, at the Committee on Anti-Dumping Practices which had taken place in the week of 20 October 2003, the European Communities had handed out informal written answers to the questions posed by the United States. Delegations which did not obtain a copy at that time should direct requests to the European Communities. Because these sources were available to Members, the United States would be brief in its description of the issue and the potential problems which caused the United States to raise these questions to the European Communities.

41. As discussed in the spring meeting of the Committee on Anti-Dumping Practices, the European Communities had announced a policy with respect to the effective expansion of the EC membership from 15 Member States to 25 Member States, which was scheduled to occur on 1 May 2004. With the expansion of the European Communities, the Commission announced that any trade remedies in place by the ten acceding countries would automatically be terminated. This was, of course, a welcome announcement. However, the Commission also announced that they would be replaced by the far more numerous trade remedies currently in effect in the EC-15. The geographic coverage of the EC trade current remedies would be stretched to encompass the new territory. The obvious problem that this proposed policy raised was that anti-dumping and countervailing duties were being imposed in these countries and protection was offered to the domestic industry in those countries with no determination ever being made that those domestic industries were suffering material injury. This policy not only raised questions about the EC's definitive measures but also about its numerous price undertakings. The European Communities said that it may conduct reviews of the injury determinations underlying its trade remedies but only if the exporters can produce facts

about the financial conditions of their competitors in the EU-25. In addition to this high threshold, the European Communities warned that, any time an exporter requests a review of the injury to the domestic industry in the EC-25, the Commission would also self-initiate a review of the exporters' level of duty which may increase as a result. Clearly, even if an exporter believed that the facts likely show that the EU-25 was not suffering material injury, in the face of this policy it must think very carefully about the possible repercussions of asking the European Communities to review. This proposed policy raised a number of issues which were the focus of the US questions to the European Communities. The United States hoped the European Communities would re-examine this proposed policy. The United States invited Members with an interest in this issue to discuss the answers to US questions which the European Communities had recently provided.

42. The delegate of the European Communities thanked the United States for its continuing systemic interest on the impact of enlargement on countervailing measures in force in the European Communities. He stated that the European Communities was very happy that there appeared to be a consensus to avoid repetition and he would therefore limit his intervention to highlight the main points of the EC approach. As of the day of enlargement, there would be an automatic application of the existing EU-15 anti-dumping and anti-subsidy measures in the new Member States. At the same time, existing anti-dumping and anti-subsidy measures in the individual new Member States would lapse. There would be additional possibilities for interested parties to request reviews of anti-dumping and anti-subsidy measures in force in the new EU-25, provided that they would have evidence that enlargement generated changed circumstances to an extent that those measures were no longer appropriate for the market situation in the EU-25. This approach was entirely *business as usual* and corresponded to the approach in previous rounds of enlargement. It was transparent: a notice would be published in the Official Journal and the European Communities had put up a website dealing exclusively with this issue. The European Communities had established a special enlargement helpdesk for experts available to deal with questions from economic operators on the impact of enlargement on trade defence. In a nutshell, the EC approach was as follows: the European Communities did not want to reinvent the wheel, and the same approach as in previous rounds of enlargement would be applied. The European Communities could also reassure Members that in this round of enlargement, the effects of enlargement on trade defence instruments would be managed properly. The European Communities was ready to answer any further questions Members might have.

43. The delegate of Korea recalled that this issue had been discussed in the framework of the Committee on Anti-Dumping Practices. For the record, Korea wished to reiterate its concern. The European Communities had made it clear during the Committee's meeting that the countervailing measures currently applicable in the 15 Member States of the European Union would automatically and immediately be applicable in the new acceding Members States. Korea seriously doubted how the European Communities could extend the measures to the new Member States without running foul of its obligations under the SCM Agreement, including those under Article 10, which stipulated that countervailing measures should be applicable only under circumstances provided for in Article VI of GATT 1994. First of all, the injury determinations which served as the basis for the outstanding countervailing measures could not constitute a valid basis to extend those measures to the new Member States. Secondly, the geographically extended countervailing measures to be applied after the enlargement could not possibly be considered to have met the standing requirement or the initiation requirement as provided for in Article 11 of the SCM Agreement. Besides, the ongoing investigations conducted by the EC on the basis of current Member States could not support the application of countervailing measures covering enlarged EU membership.

44. Korea was of the view that the only way to overcome the problem of lack of parallelism between the scope of the investigation and the application of the measures was to first conduct individual reviews on the basis of the EU-25 geographical scope of all the outstanding countervailing

measures including provisional ones, as well as ongoing investigations; and, secondly, to postpone the extended EU-wide application of the outstanding countervailing measures pending completion of such reviews. The alternative suggested by the European Communities, that is, the "changed circumstances" review under Article 21.2 of the Agreement, could not be the solution.

45. The delegate of Australia stated that, in addition to the US questions, her delegation was interested in whether the European Communities could provide the modalities that it implemented during the last enlargement and which were referred to in two EC documents cited by the United States in document G/SCM/W/526. The EC documents noted that exporters may request a suspension of measures on the basis that injury would not be likely to recur. The Australian delegate asked whether the European Communities could elaborate on: the procedures envisaged; the evidentiary requirements relating to this request; whether the burden of proof would be on the exporter; and how the extension of the trade defence measures would not automatically vary the subsidization and injury determinations.

46. The delegate of the United States expressed his delegation's appreciation to the European Communities for their brief response in their statement to the Committee. He stated that the European Communities had noted in their statement that this procedure was *business as usual*. One Member adding on ten new other Members was hardly *business as usual* in the view of the US delegate. The United States also appreciated the EC attempts to resolve this issue through an establishment of a helpdesk. The United States wished to repeat its earlier appreciation to the European Communities for its general policy of terminating the countervailing duty orders in place by the new acceding Member States as a theoretical matter. As a practical matter, looking through the semi-annual reports, the United States noted that only one new acceding Member State had reported countervailing duty actions, Latvia, and that Latvia's only countervailing duty action was against another newly acceding Member State, Poland. As a final note, the United States had filed formal questions with the Committee and with the Committee on Anti-Dumping Practices. The United States looked forward to the European Communities filing formal responses. The United States might pose follow-up questions when those formal responses were received.

47. The delegate of the European Communities stated that, while he did not want to repeat the answers which the European Communities had given to follow-up questions in the Committee on Anti-Dumping Practices, he considered that it was appropriate to provide a brief reply to them since the follow-up questions put in the Committee on Anti-Dumping Practices had been reiterated. With respect to the follow-up questions from the United States, he stated that it was correct that only one of those new Member States currently had a countervailing duty measure in place, but the European Communities wanted to note that new Member States had several other trade defence measures in force, currently 51, which would lapse and this should also be seen in connection with the approach that the European Communities applied in the area of countervailing measures. With regard to the form of filing of any responses to questions, the European Communities thought that the approach taken in making those replies available to all Members was sufficient. As the United States had suggested, every WTO Member who had not received a copy of the replies could contact the EC directly and the European Communities would be happy to provide them again.

48. Concerning the follow-up questions put by Australia, the delegate of the European Communities first dealt with the issue of the suspension of countervailing measures. He gave a brief outline of how this instrument was applied in the European Communities. The principle of suspension of countervailing duties was that a significant, exceptional and obvious change on the domestic market would require an urgent intervention in terms of suspension of currently applicable countervailing duties. The changes were of temporary nature; this was tied in with the normal time span of a suspension which is nine months. The changes had to be urgent and obvious and must not justify a complete abolition of the measures. In terms of procedure, the delegate of the European

Communities stated that suspension investigations were initiated by the Commission. Interested parties could apply to the Commission for a suspension of countervailing duties but they would not have a right to have that investigation initiated. In practice, parties would have to bring *prima facie* evidence relating to the conditions for the suspension of the countervailing duties, that is, changes in the Community market which were urgent, obvious and temporary and evidence that there was no recurrence of injurious subsidization in case of a suspension. In the investigation, the Commission would obtain data from the Community industry and other economic operators. In this regard, the most recent data would be taken into account. Such investigations were conducted in the shortest possible period of time. In the EC practice, this meant in a few weeks. In case of a decision to suspend, the market would be closely monitored afterwards and a reinstatement of measures would occur automatically after nine months, or after a maximum of 21 months. This was a rather swift instrument but it was rarely used. The changes had to be of a temporary nature and, in view of that, the relevance of the instrument in case of enlargement, would appear to be relatively limited. With regard to the issue regarding the impact of reviews to injury on anti-dumping and subsidy margins, the European Communities had already explained in the Committee on Anti-Dumping Practices that the change in circumstances due to enlargement might lead to a change in the injury picture, but it might also lead to a change with regard to dumping and subsidization. Therefore, such reviews and reassessments would have to cover both aspects.

49. Concerning the statements by the Korean delegation, he stated that the European Communities did not believe that, generally speaking, the findings made in previous investigations were not valid any more to the enlarged Community. To the contrary, as a hypothesis, in particular in macro-economic terms, the addition of GDP would only amount to between 5 to 10 per cent. It would not be very practical to start a whole review of all the measures in force, since reviews are a rather time-consuming and resource consuming process. It might not be in the interest of all interested parties to reply to questionnaires being sent around for no particular reason. If there was a specific reason which pointed to a "change in circumstances", then the European Communities would be entirely open to initiate a review. The European Communities did not want to discourage reviews; the European Communities encouraged economic operators to come with *prima facie* evidence in case there was a feeling that the original findings were not appropriate any more.

50. The delegate of the United States asked the European Communities to provide the reasons for its apparent unwillingness to provide formal written answers to its formal written questions on this particular issue so that they could be circulated to all Members and in particular to non-resident Members who might have an interest in this issue.

51. The delegate of the European Communities stated that his delegation had made the replies widely available in the Committee on Anti-Dumping Practices that took place in the week of 20 October 2003. The European Communities would be able to do the same again for anybody who wished to ask them. The European Communities was obviously expecting that those replies were recorded in the minutes of the Committee on Anti-Dumping Practices. He stated that the European Communities would be perfectly happy for them to be included in the minutes of the Committee in such a way that they could be circulated to all Members.

52. The Chairperson asked whether the European Communities agreed that the responses be included in the minutes but not circulated in an official document.

53. The delegate of the European Communities stated that the United States had circulated the questions as a "working" document. The delegate stated that the European Communities felt that those questions did not arise in the course of a legislative notification; therefore, the particular procedures for legislative notifications did not apply. The European Communities felt that they

provided responses, included in writing, to those questions. He stated that he took note of the questions and would report them back to relevant authorities.

54. The delegate of the United States stated that he would appreciate a clarification either from the Chairperson or the Secretariat with respect to the procedures of the Committee with respect to formally submitted questions to the Committee, in particular, whether Members were formally entitled to receive written answers.

55. The delegate of Korea stated that, in Korea's eyes, the arguments given by the European Communities did not provide any justification for the European Communities to act in violation of their obligations under WTO rules, including the SCM Agreement. Korea recognized the rights of Members to respond to changed circumstances, in this case enlargement. Korea acknowledged that it was legitimate, but if a Member anticipated any violation of obligations in responding to changed circumstances, that Member should take measures to avoid this anticipated violation. This was especially the case when it came to a responsible Member of the WTO.

56. The delegate of Australia thanked the European Communities for answering some of the questions posed by her delegation. Australia asked again about the previous enlargement and the modalities that the European Communities used at that time because Australia recalled that in discussions with the European Communities in the Committee on Regional Trade Agreements, a number of concerns had been raised which remained unresolved. Australia was asking whether there was any clear view on what the modalities were last time.

57. The Chairperson gave the floor to the Secretariat to reply to the US question.

58. The Secretariat stated that it would seem that under the Rules of Procedure of the Committee, representatives were entitled to give oral statements during a meeting, a summary of which, at the representatives' request, might be reflected in the records, or in the minutes of the meeting. That being said, it had been shown that in other special procedures adopted by the Committee, such as those for legislative notifications and subsidy notifications, a written exchange of questions and answers greatly facilitated delegates' work.

59. The Chairperson thanked the Secretariat for that clarification. She stressed that, in her view, putting answers in writing would greatly facilitate the Committee's work.

60. The delegate of the European Communities apologised to the delegate of Australia for having missed one out of the three questions, the question relating to the modalities of the previous round of enlargement. He stated that the European Communities published a notice in the Official Journal in February 1995 inviting all interested parties to request a review on the basis of "changed circumstances", taking into consideration that the "changed circumstances" was the enlargement of the European Communities. The European Communities was ready to open a review for any party which had requested it. However, the European Communities never received any review requests on that basis. For further information on the previous modalities, the EC delegate referred to the minutes of the Committee on Anti-Dumping Practices' meeting of 1995 which is contained in G/ADP/M/2, at paragraphs 66 and following.

61. The delegate of the United States appreciated the additional information just provided by the European Communities. He expressed the US' regret that answers to the US written questions were not going to be formally circulated.

62. The Committee took note of the statements made.

L. SUBSIDY NOTIFICATIONS

63. The Chairperson recalled that a special session for the review of 2003 new and full subsidy notifications had taken place on 27 October 2003, and that, in accordance with the procedures adopted by the Committee in May 2003, two more such special sessions would be convened, in conjunction with the spring and fall 2004 Committee meetings. However, there were several subsidy notifications from earlier years (1998-2001) which were on the agenda for review at the Committee.

64. The first such notification on the agenda was Brazil's 2001 new and full notification, which could be found in document G/SCM/N/71/BRA. This was a double-symbolled document, and the 2003 new and full portion of the notification would be up for review at the special spring 2004 session. However, with respect to the 2001 notification, no written questions had been received. She asked whether any Member would have any comments or questions with respect to Brazil's notification.

65. The delegate of the United States indicated that his delegation would most likely have questions with respect to Brazil's 2003 subsidy notification.

66. The notification of Bulgaria was a multiple-symbolled document: G/SCM/N/25, /38, /48, /60 and /71/BGR, which could be reviewed at the same time. No written or oral questions were received on any of these notifications.

67. Iceland had multiple notifications, which could also be reviewed together. Those notifications were contained in documents G/SCM/N/48/ISL/Rev. 1, G/SCM/N/60/ISL and G/SCM/N/71/ISL. The United States had posed written questions, and that Iceland had responded to those questions in documents G/SCM/Q2/ISL/7 and 8, respectively. There were no additional questions or comments.

68. The final 2001 new and full notification on the Committee's agenda was the "nil" notification of Myanmar, which could be found in document G/SCM/N/71/MMR. This document was a double-symbolled document. The 2003 new and full notification that it also contained would be up for review at the special spring 2004 session. However, with respect to the 2001 notification, no written or oral questions had been received.

69. The Chairperson stated that any written follow-up questions were to be submitted to the Member concerned and to the Secretariat no later than 7 November 2003. Written responses to any such questions were to be submitted to the Member concerned and to the Secretariat no later than 8 January 2004.

70. The Committee took note of the statements made and concluded its review of the notifications.

M. TRANSITION REVIEW UNDER PARAGRAPH 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA TO THE WORLD TRADE ORGANIZATION

71. The Chairperson recalled that paragraph 18 of the Protocol of Accession of the People's Republic of China to the World Trade Organization provided that all subsidiary bodies, including this Committee, "which have a mandate covering China's commitments under the WTO Agreement or [the] Protocol shall, within one year after accession ... review, as appropriate to their mandate, the implementation by China of the WTO Agreement and of the related provisions of [the] Protocol." China was to provide relevant information in advance of the review, including information specified in Annex 1A to the Protocol. China could also raise issues relating to any reservations under Section 17 or to any other specific commitments made by other Members in the Protocol, in

subsidiary bodies which had a relevant mandate. The Chairperson said that this Committee had to report the results of the review promptly to the Council for Trade in Goods. Review was to take place after accession in each year for eight years, with a final review in year 10 or at an earlier date decided by the General Council.

72. The Chairperson said that there were no procedures set out for the conduct of the transition review in the Protocol, except that China was to provide relevant information in advance of the review. In this regard, the Chairperson noted that Annex 1A specified China was requested to provide information on the following to this Committee in accordance with Article 18.1 of its Accession Protocol: "Pricing Policies": (a) "application of existing or any other price controls and the reason for their use"; and (b) "pricing mechanisms of China's state trading enterprises for exported products". She said that China had submitted a notification in this respect on 24 October 2003, which had been circulated as document G/SCM/N/104.

73. The Chairperson noted that the delegations of the European Communities, Mexico and the United States had submitted questions and comments in the context of the transition review, which had been circulated in documents G/SCM/Q2/CHN/4-6. Before proceeding to these questions, the Chairperson opened the floor for any general comments from Members.

74. The delegate of the United States recognized China's efforts over the past year as it worked to fashion a countervailing duty and subsidies regime that was transparent, subject to the rule of law and in compliance with WTO rules. He stated that this process was, however, not complete and that, in the spirit of the Transitional Review Mechanism ("TRM"), they were taking the opportunity to highlight areas where further improvements could be made. To assist in making this review as productive as possible, the United States had also submitted written questions. The United States noted that written questions and answers were the most practical and appropriate form of accurately transmitting technical information. It further noted that it was in the interests of all Members, including China, to promote a free exchange of information through the mechanisms provided by the WTO, including the TRM.

75. The United States applauded China's ongoing efforts to establish and complete the legal framework of its countervailing duty regime prior to imposing measures. China had issued Ministerial rules on industry injury investigations, as well as judicial rules on hearing countervailing duty appeals. Nonetheless, gaps remained in this legal structure, including in the areas of interim and expiration reviews, rules and procedures on access to non-confidential information, and undertakings.

76. The United States noted that China had notified many of its countervailing duty laws and regulations to the WTO. Other such laws and regulations, including those concerning judicial review of countervailing duty measures, had not been notified. The delegate of the United States recalled that notification of such laws and regulations was required by the WTO, specifically, Article 32.6 of the Subsidies Agreement, to increase the transparency of Members' countervailing duty regimes, including the judicial review process. The United States therefore expected China to notify, to the SCM Committee, all laws and regulations that had a bearing on countervailing duty investigations and reviews.

77. China had informed the SCM Committee that the roles played by the Ministry of Foreign Trade and Economic Cooperation and the State Economic and Trade Commission were now subsumed under the Ministry of Commerce. The role of the State Council Tariff Commission was still not completely clear, however. Nor did it appear that China had issued regulations governing the actions of the Tariff Commission in countervailing duty investigations or reviews. The United States urged China to clarify the oversight role of the State Council Tariff Commission, including when it may exercise discretion in the course of an investigation. The United States further encouraged China

to establish procedures for publicising the Tariff Commission's decisions in countervailing duty actions.

78. In the area of subsidies, the delegate of the United States stated that the United States was disappointed with China's failure to submit its annual subsidy notification, required under Article 25.1 of the Subsidies Agreement. In fact, China had not made an Article 25.1 notification since joining the WTO nearly two years ago. The United States urged China to submit a new and full notification of its subsidies as soon as possible and, in any event, China should immediately notify what it could, even if such a notification was not comprehensive. By not participating in the notification process, China undermined the transparency that Members had worked hard to develop and hampered the ability of Members to confirm that China was complying with its obligations under the Subsidies Agreement and its Protocol of Accession.

79. In the view of the United States, an example of the uncertainty that China's lack of notification fostered concerned subsidies provided to certain state-owned enterprises which were running at a loss. According to China's Protocol of Accession, this subsidy was to end in 2000. The representative of China had told the SCM Committee the previous year that the programme had been eliminated in 2001. However, the delegate of the United States stated that, according to recent Chinese press reports, the Government was currently working to eliminate this programme. He explained that by providing more detailed information on the programme, such as the decrees that ended or would end the programme at the central and local levels, China would help dispel confusion among other Members concerning the status of these subsidies.

80. The United States welcomed China's efforts to increase the transparency of its countervailing duty regime and to bring it into conformity with WTO rules and urged China to do the same with regard to its subsidies. The United States stated that it wished to foster mutual cooperation and understanding on this front through multilateral mechanisms, such as a TRM process, and through bilateral technical exchanges.

81. Finally, the United States asked that the Committee's TRM report to the Council for Trade in Goods reflect not only the discussion under the TRM agenda item but also the earlier discussion with regard to China's CVD laws and regulations and China's subsidy practices that had not yet been notified. It further requested that all the relevant minutes, Members' questions and China's responses be appended to, or referenced in, the report.³

82. The Chairperson thanked the United States for its statement and invited other delegations to make comments. She reminded the Committee that the questions raised by Mexico, the European Communities and the United States in the transition review context could be found in documents G/SCM/Q2/CHN/4, 5 and 6, respectively. The delegate of China was invited to take the floor to respond to the questions and comments that they had received.

83. The delegate of China thanked the Chairperson for giving the floor to address the Committee on the implementation of China's commitments and to respond to the questions raised by Members in that meeting with regard to subsidies and countervailing measures in the past year within the framework of paragraph 18 of China's Protocol of Accession.

³ As indicated in the minutes of agenda item B, the Committee reviewed, through the exchange of questions and answers referred to there, China's new legislative notification (document G/SCM/N/1/CHN/1/Suppl. 2). As indicated in the minutes of agenda item H, the Committee reviewed, through the exchange of questions and answers referred to there, China's previously reviewed legislative notification (document G/SCM/N/1/CHN/Suppl.1).

Part I – Implementation of the Agreement and China’s commitments.

84. The delegate of China stated that China had submitted relevant information to the Committee prior to the meeting pursuant to the requirement of Annex I(A) of the Protocol on China’s Accession.⁴ Since last year, China had notified five ministerial rules and regulations on countervailing measures, namely: provisional rules on initiation of countervailing investigations⁵; provisional rules on public hearings of countervailing investigations⁶; provisional rules on questionnaires of countervailing investigations⁷; provisional rules on on-the-spot inspection in countervailing investigations⁸; and rules on investigations and the determination of industry injury in countervailing investigations.⁹

85. China stated that on 11 September 2002, the Supreme People’s Court had adopted the provisions on questions relating to the application of law in adjudicating administrative countervailing cases, which had come into force on 1 January 2003, in an effort to further explain acceptance and hearing of the administrative countervailing cases by the People’s Court. It added that these would be notified to the WTO according to the notification procedures.

86. The delegate of China said that in the past year China had initiated no countervailing investigations.

Part II – Responses to Members’ questions.

87. The delegate of China mentioned that some questions had reached them just one day ahead of the meeting. She said that this was not only inconsistent with WTO practice, but also extremely unhelpful for making meaningful accurate and appropriate responses, thus undermining the value and the necessity of the TRM exercise. However, in the spirit of cooperation, China had tried to address these questions in the best possible manner.

88. First, with regard to the question of granting of subsidies at a national and a sub-national level to enterprises, she stated that China had terminated all export subsidies. For example, at present, China maintained no subsidies or subsidy schemes in the textile industry, which was in conformity with China’s accession commitments. The China National Textile Industry Council referred to in the questions had not engaged in any work related to subsidy schemes. The delegate of China stressed that the reports were not true. Since accession to the WTO, China had embarked upon extensive efforts in the collection of subsidy information. A number of difficulties had been encountered during the process, including the partial understanding of the WTO notification requirements by local officials, under-performance of the domestic information collection system and varied criteria on statistics. Measures were being taken to address these issues, both on the national and sub-national level, for example, the strengthening of the communications between ranks of officials, briefings by WTO experts, and the translation of the technical cooperation handbook on WTO notification requirements. China was vigorously pushing forward work but that they were not in a position to give a specific timeframe for the completion of it.

89. Second, on the question on the requirements for a company to be considered a foreign direct investment enterprise devoted to exports and income tax exemptions or rebates granted to such enterprises, the delegate of China stated that Article 3 of the Law of the PRC on Wholly Foreign-

⁴ Circulated in document G/SCM/N/104.

⁵ Circulated in document G/SCM/N/1/CHN/1/Suppl.1.

⁶ Circulated in document G/SCM/N/1/CHN/1/Suppl. 1.

⁷ Circulated in document G/SCM/N/1/CHN/1/Suppl. 1.

⁸ Circulated in document G/SCM/N/1/CHN/1/Suppl. 1.

⁹ Circulated in document G/SCM/N/1/CHN/1/Suppl. 2.

owned Enterprises stipulated that the establishment of a wholly foreign-owned enterprise shall be conducive to the development of China's national economy. The State encouraged the establishment of wholly foreign-owned enterprises with export orientation and adoption of advanced technology. Article 17 stipulated that wholly foreign-owned enterprises shall pay taxes in accordance with relevant state regulations and may enjoy preferential treatment of tax reduction or redemption. Paragraphs 7 and 8 of Article 75 of the Rules of Implementation of the Income Tax Law of the PRC for Enterprises with Foreign Investment and Foreign Enterprises stipulated that after expiration of the period of income tax exemption and the reduction the foreign investment enterprises whose export volume for a year exceeded 7 per cent of their production for the same year were entitled to a 50 per cent rebate of the normal rate of income tax as provided by tax law. The enterprises located in special economic zones, or economic and technology development zones, or any other exporting enterprises that already enjoyed an income tax rate of 15 per cent, would pay income tax at the rate of 10 per cent if they also met the above requirements. The consistency of this provision with the SCM Agreement was currently being reviewed.

90. Third, on the question on the export performance requirement in the Wholly Foreign-Owned Enterprises Law for wholly foreign-owned enterprises to be eligible for tax breaks, China noted that there were three laws governing foreign investment enterprises, namely the Law on Chinese Foreign Equity Joint Ventures, the Law on Chinese Foreign Contractual Joint Ventures, and the Law on Wholly Foreign-Owned Enterprises. Among these three laws, only the Law on Wholly Foreign-Owned Enterprises used to contain the requirement on export performance. As part of the preparations for joining the WTO in October 2000, Article 3.1 of the Law on Wholly Foreign-Owned Enterprises was amended as follows: the establishment of a wholly foreign-owned enterprise shall be conducive to the development of China's national economy. The State encouraged the establishment of wholly foreign-owned enterprises with export orientation and adoption of advanced technology. The original provision, that the establishment of a foreign invested enterprise must adopt advanced technology or export all or most of its products, had been replaced.

91. Fourth, on the question about alleged information provided by the web site of the Shanghai Foreign Investment Centre, the delegate of China stressed that the web site of the so-called Shanghai Foreign Investment Centre was not a government web site and information it posted was not authoritative and did not have binding power. She stated that Members could get access to the relevant laws and regulations through the government designated journal: the China Foreign Trade and Economic Cooperation Gazette.

92. Fifth, on the question on alleged different prices for energy, transport, water and telecommunications suggested in the information from the above said web site, the delegate of China said that she would like to make some clarifications in this regard, although the source of the information remained unclear. She stated that there was no such practice as different pricing for energy, water, power, transportation and telecommunications between state-owned enterprises and other types of enterprises. The practice of multiple pricing for one commodity or service had been entirely eliminated in China. State pricing and government guidance pricing only applied to goods and services, regardless of the ownership of the enterprises. Enterprises of all types, including state-owned enterprises, foreign investment enterprises and foreign enterprises in China were treated on an equal footing in the process of determining government pricing and guidance pricing.

93. Sixth, on the question on the new scheme of the VAT redistribution system for copper production, the delegate of China noted that questions in this regard had already been addressed in the TRM of the Committee on Market Access on 20 October 2003. China felt it preferable not to repeat those responses in the Committee meeting due to the limited time.

94. Seventh, on price control and government guidance pricing, the delegate of China stated that China had reduced the scope of products and services and the government price control and that

vegetable oil had been lifted from the list of Annex 4 of China's Accession Protocol in 2001. She further stated that China had not, and did not, plan to expand the scope of products in services subject to state pricing or guidance pricing and that any changes to the scope of these products and services would be published in the China Foreign Trade and Economic Cooperation Gazette.

95. Before giving the floor to another colleague in the Chinese delegation, the delegate of China said that she hoped that the information provided prior to the meeting and the explanation she had just made would help facilitate the review. She invited her colleague to provide additional comments concerning other comments or statements.

96. The delegate of China thanked the United States for the interest it had shown in the TRM process and for its recognition of the progress that China had made in the field of subsidies and countervailing measures. Before responding to the points raised in the US statement, he noted that although the points contained in the statement were presented as "general comments", those points were actually like questions, so, in effect, they had a list of questions. He encouraged the US to have posed those questions in a list in advance of the meeting, so as to facilitate China's preparations for making appropriate responses.

97. The delegate of China stated that there were a number of points contained in the US statement. Concerning the request for making written replies to the questions raised by the relevant Members, he noted that under paragraph 18 of China's Accession Protocol, the only requirement was for China to provide the information, including the information specified in Annex I(A) of the Protocol, in advance of the review. He stated that China had already provided such information in writing to this Committee prior to the convocation of the meeting¹⁰ and, in addition, the statement which had just been made by the head of the Chinese delegation would also be made available in written form after the meeting to interested Members. China believed that the information just referred to in written form, plus the oral responses to the replies it had made during the meeting, were already sufficient for warranting a meaningful and effective review, as well as an exchange of information. He stated that to request otherwise would not only be inconsistent with the mandate of paragraph 18, but also place an unforeseen and undue burden on China.

98. The delegate of China noted that there was another procedural request contained in the last paragraph of the statement by the US, namely to reflect China's CVD laws and regulations on Chinese subsidy practices which had not yet been notified in the TRM report of the Committee to the Council for Trade in Goods, as well as that the relevant minutes, Members' questions and China's responses be appended or referenced in that report. The delegate of China stated that he wished to consult his colleagues from the US as to the legal basis for such a request before China made appropriate responses to this request.

99. The delegate of China wished to address other questions, such as the request for not only legislative notifications, but also subsidy notifications. He emphasized that China also attached great importance to making such notifications because it was their view, and they believed that it was also the view shared by many, that making such notifications was conducive to the sharing of information and also for improving the transparency of the domestic processes of different countries. China wished to reaffirm its commitment to fulfilling its notification obligation.

100. The delegate of China said that there had been a question concerning the gaps that remain in China's legal structure, for example, in the areas of interim and expiration reviews in the field of countervailing measures. He pointed out that, so far, China had not initiated any countervailing investigations but that China was, however, in the process of making such legislation just in case such

¹⁰ Annex 1A information circulated in document G/SCM/N/104.

an investigation might be initiated in the future. He stressed that delegates could be reassured that China would honour its commitments in the WTO and continue to bring its legislation in line with WTO rules, including in the field of countervailing investigations.

101. Regarding the role of the Tariff Commission of the State Council of China, the delegate of China noted that this question had been repeated a number of times both in the Committee on Safeguards and in the Committee on Anti-Dumping Practices. He stated that the role of the Tariff Commission was quite clear, as referred to, or provided for, in the three regulations that China had so far promulgated, namely the regulations on anti-dumping investigations, the regulations on countervailing investigations and the regulation on safeguards. The role, to put it simply, was for the Tariff Commission to make determinations on the rates of the anti-dumping, countervailing or safeguards duty on the proposal of the former MOFTEC, now MOFCOM. He added that the duty rates that it decided would not exceed the proposed rate of MOFCOM. He believed that this had already been made quite clear by China.

102. The delegate of China noted the question concerning subsidies provided to certain state-owned enterprises running at a loss. He confirmed that it was established policy to eliminate such subsidies provided to state-owned enterprises running at a loss. He noted that allegations had been made in the US statement that, according to some recent Chinese press reports, the Government was still in the process of eliminating this programme instead of terminating the whole programme by the year 2002. He requested the US delegation to provide China with more detailed information with regard to these press reports, such as the source of the reports, the time when the reports had been published and the sectors, industries or enterprises which were involved in such reports, so as to facilitate China's efforts in making appropriate responses to the question.

103. The delegate of China concluded that he could not see any further questions in the US statement and hoped that his responses would be satisfactory to the US.

104. The representative of the European Communities stated that, at the last TRM exercise, his delegation had raised four distinct issues: compliance of subsidy notifications; export subsidies; price controls, in particular *vis-à-vis* state-owned enterprises; and, finally, countervailing duty laws and regulations. He stated that, since last year, a lot of progress had been made concerning one of those four items – the countervailing duty law and regulations – and he thanked China for providing legislation, implementing regulations and replying extensively to Members' questions.

105. He noted, however, that with regard to the other three items, there were even more concerns regarding the compliance of China with WTO rules than one year ago. This was a rather disappointing situation. Many of these concerns had been created by a lack of transparency. He had taken careful note of China's reaffirmation of its commitments to abide by its transparency obligations. However, he stressed that words would have to be followed by deeds. He further noted that two years after China's accession to the WTO, delegations were still waiting for a subsidy notification, despite the fact that a decent subsidy notification had already been produced by China in the context of the accession process.

106. The representative of the European Communities stated that whether or not WTO Members complied with notification obligations was not just an academic question. As an example, he referred to the issue of possible subsidies to the copper industry. He noted that replies to EC questions concerning this particular issue had not been given at the meeting. These were very specific questions, asking for information in the subsidy notification format, information that had certainly not been requested in this format in other Committees.

107. Turning back to the example of copper, the representative of the European Communities noted that a severe distortion of international trade with regard to the supply of copper scrap, which

was input for refined copper, had taken place towards smelters and refiners in China. Detailed research, in which the EC had had to resort to web sites because there was no other information available, had revealed that the reasons for this shift were schemes which apparently constituted subsidies. The very purpose of notification obligations, however, was to ensure transparency from the start and an imbalance regarding transparency as it currently existed was highly unsatisfactory. Furthermore, he noted that, while they had listened carefully to statements that export subsidies were a thing of the past and that a preferential pricing for state-owned firms had ended, they still had difficulties with reconciling this with commercial reality. Commercial reality was also reflected in the way certain information was being provided to economic operators. He stressed that, again, this was an issue of transparency. He further noted that they did not have any official information provided by China in the required format and that that was why they had to resort to information from different sources. Again, he stressed, this was an issue of transparency which had to be addressed.

108. The representative of the European Communities carefully noted the statement that under certain provisions of Chinese laws, income tax advantages were contingent upon export volumes exceeding certain thresholds. The European Communities held the view that this was a clear indication of export contingency within the meaning of Article 3 of the Subsidies Agreement and they encouraged China quickly to finalize its analysis with regard to WTO compliance of those provisions.

109. In conclusion, the delegate of the European Communities stated that the situation with regard to the three items that he had mentioned was highly unsatisfactory and he strongly encouraged China to not only continue, but to increase, its efforts in this area.

110. The delegate of Mexico thanked China for the answers provided to their questions, which he thought would be very useful. He noted that many of the questions Mexico had posed, and which had been replied to, referred to technical or sector-specific issues. Therefore, he thought it appropriate for China to provide Mexico with written answers, as requested in their document, and if possible to attach the relevant legislative instruments to enable a better understanding. He noted that this would avoid Mexico posing additional questions.

111. The delegate of the United States wished to continue the dialogue with respect to the US statement and China's response. He thanked China for its statement with respect to its subsidy programmes and thought that it would be helpful for all delegations to gain a greater appreciation for the programmes involved. He expressed an interest in obtaining a copy of the written statement that had been read by the head of Chinese delegation. The United States wished to echo the comments of the European Communities with respect to benefits that are contingent upon export performance. The United States shared the view that these were export subsidies potentially in violation of Article 3 of the Subsidies Agreement and took note of China's agreement to eliminate such subsidies in the course of their accession.

112. Secondly, the United States took note of China's commitment to provide a subsidy notification. The delegate of the United States said that he understood the difficulties of providing such a notification and working with sub-federal governments and he empathized with the difficulties that he felt sure China was having. However, he felt the need to echo the comments of the European Communities that concrete actions would have to be taken in this respect.

113. The delegate from the United States said that his delegation would appreciate further details being provided in the meeting with respect to the new VAT scheme. He thought that some subsidy issues had been raised and, as he had not been in the Market Access Committee meeting, he would appreciate if further details could be provided in the SCM Committee meeting.

114. Finally, with respect to the subsidies to state-owned enterprises running at a loss, the delegate of the United States said that, if he was not mistaken, this programme had been described in China's

accession documents. He questioned whether it was other Members' responsibility to point out to China a programme that China itself had previously described to the WTO. The United States confirmed that they had a press report from which they had gained the information used in their statement. This press report, entitled "Finance Ministry overhauls state enterprise subsidies to comply with WTO rules", was dated 20 September 2003. The United States stated that they would happily provide China with a copy of the press article at the end of the meeting. However, the delegate of the United States again emphasized that, in the view of the United States, it was not their responsibility to hunt for programmes and bring them to China's attention. He stated that the notification obligation was an exercise in transparency that all delegations had undertaken. He admitted that it was a difficult exercise and that all delegations had suffered difficulties. He therefore encouraged China to move forward as rapidly as it could.

115. The Chairperson thanked the United States for its statement. She recalled to the delegate of the United States that China had asked for clarification on the legal basis for the requests made by the United States with regard to general comments.

116. The delegate of the United States replied that it was his understanding that this was a part of the normal TRM process that had been followed the previous year.

117. The Chairperson thanked the United States for the clarification, and offered the floor to Japan.

118. Japan stated that it would like to share the concerns raised by the United States and the European Communities because their industry, especially the smelting copper industry, had a very keen concern about the issue of the VAT redistribution system scheme. It had been very difficult for Japan to get relevant information about this scheme and, for this reason, Japanese industry had grave concerns about this issue. This had meant that the Japanese Government had been requested to provide cooperative assistance to the copper industry. In this sense, Japan would appreciate any information China could give on this issue.

119. The delegate of China thanked the delegates from the European Communities, Japan, Mexico and the United States for the follow-up questions and offered to respond to some of the questions that had been raised. Concerning the notification obligation of China, China stated that it was very serious about fulfilling its notification obligations and that it was in the process of improving its notification system so as to be up to the standard set by the WTO.

120. On other specific issues, the delegate of China noted that the question regarding the so-called VAT redistribution scheme for scrap copper had been raised by both the European Communities and Japan. He wished to make some small clarifications. On this scheme, starting from 2000, China had started to introduce the policy of refining part of the income of value added tax for the imported copper for some of the state-owned copper smelters and refineries. After China's accession to the WTO in December 2001, it had modified this policy to make it consistent with the principle of national treatment. Starting from 2002, the scope of this policy had been extended to cover all enterprises regardless of their ownership types. He therefore considered that China had already brought this policy in line with the WTO requirement. Regarding other follow-up questions, both China's policy and practice was to eliminate export subsidies, and, thanks to the efforts that it had made in recent years, China believed that it had already brought its system in line with WTO requirements.

121. The delegate of China noted that Mexico had made a request for provision of written replies to questions under the TRM agenda item. He stated that the reasons for not accepting this request had already been given at the meeting. To make such written replies, in China's view, would be going beyond the mandate of paragraph 18 of the Accession Protocol of China. He stated, however, that it was China's intention and practice to provide all the information necessary for a very meaningful and

effective review under this agenda item. He said that China had kept open the channels of bilateral consultations with Members concerned and assured the Committee that China would provide very ample and adequate opportunities for the exchange of relevant information requested by the Members.

122. The delegate of the European Communities thanked the delegation of China for its replies to some of their follow-up questions, in particular on the VAT scheme. He thanked the delegation of China for its statement that this scheme had been modified in order to comply with national treatment obligations. However, he noted that the question put by his delegation had been somewhat different. The European Communities was interested in understanding how this programme worked, what the subsidy actually was, and to whom the subsidy was provided. The delegate of the European Communities stated that his delegation was still lacking any information with regard to this type of information. He strongly encouraged China to provide information on that scheme in the format which was set out for Article 25 subsidy notifications. He noted that an almost brand new version of the notification format was contained in a room document at the meeting.¹¹ He asserted that his delegation would be flexible and not insist that every piece of information be put under the correct heading. They were principally interested in -- and again this was not merely an academic question, but rather a question of high economic importance for EC industry -- receiving information about how this subsidy programme worked. He added that the European Communities would appreciate such information as soon as possible.

123. The delegate of Mexico thanked China once again. He noted China's explanations on information that they would be able to give Mexico as well as China's offer of a bilateral meeting with different delegations. The delegate of Mexico wished to make it clear to China that it was ready to meet with them on a bilateral basis, if that could help solve the problem. The Mexican delegate believed that this would be a very useful way of moving forward.

124. The delegate of China thanked all delegations that had spoken for their interventions and for the positive observations made during the meeting. He stated that China's experts were sensitive to the questions raised during the discussion in which China was beginning to make constructive new exchanges and discussions with Members, both in and out of the context of the TRM. However, he thought that the questions had to be exhausted at some point and that the bilateral context -- the technical context -- could also be used. China suggested that the inquiry point set up in MOFCOM would also be an important source of information to address the concerns of Members.

125. The Committee took note of the statements made.

126. Turning to the Committee's report on the transitional review, the Chairperson noted that there were no guidelines for the report contained in the Protocol. Following the review at last October's regular meeting, the Chairperson, acting on his own responsibility, had prepared a brief, factual report, with references to the documents concerned, and attaching the portion of the minutes of the meeting which related to the transitional review. The Chairperson asked Members whether this procedure should be followed again.

127. The Committee so agreed.¹²

N. ARTICLE 27.4 PROCESS

128. At the 28 October 2003 session of the meeting, the Chairperson recalled that the transition periods for certain export subsidy programmes of certain developing country Members had been

¹¹ Subsequently circulated in document G/SCM/6/Rev.1.

¹² This report was circulated in document G/SCM/111.

extended in 2002, for calendar year 2003, through the decisions adopted by the Committee pursuant to Article 27.4 of the Agreement. Under Article 27.4, the Committee was only authorized to grant such extensions one year at a time, on the basis of consultations with the Members concerned. The Article 27.4 decisions taken by the Committee in 2002 could be broadly divided into two categories: first, the so-called "fast-track" decisions, adopted pursuant to the procedures in G/SCM/39 and, in respect of Colombia, paragraph 10.6 of the Doha Ministerial *Decision on Implementation-Related Issues and Concerns*; and second, the decisions based on Article 27.4 alone. She recalled that *all* of the decisions (that is, the "fast-track" decisions as well as those based on Article 27.4 alone) contained standstill and transparency obligations which the Committee had to review in 2003. Thus, agenda item N.1 provided for Committee review of transparency and standstill in respect of *all* of the decisions taken (that is, fast-track *and* those based on Article 27.4 alone). Concerning this review, many of the Article 27.4 notifications were dual-symbolled documents that also contained the 2003 new and full subsidy notifications of the Members concerned. Largely for this reason, many of the questions posed concerning the notifications had been circulated in two document series (that is, the G/SCM/Q2 series for questions on new and full subsidies notifications in the context of Articles 25 and 26, and the G/SCM/Q3 series for the Article 27.4 process). The review of the notifications in the G/SCM/N/99 document series for the purposes of Article 27.4 was legally distinct from, and without prejudice to, the Committee's normal transparency review, pursuant to Article 26, of the 2003 new and full subsidies notifications in document series G/SCM/N/95. The review of 2003 new and full subsidy notifications submitted pursuant to Article 25 general transparency obligation was subject to special procedures adopted by the Committee at its May 2003 meeting. These special procedures envisaged a series of three special meetings, in conjunction with the Committee's autumn 2003 regular meeting, and Spring and Fall 2004 regular meetings. The dual-symbolled notifications that the Committee was reviewing in the Committee meeting in the context of the Article 27.4 process would also appear on the agenda of the Spring 2004 special meeting, as 2003 new and full notifications, for the normal transparency review, and of course might be subject to further questions from Members in that context.

129. The Chairperson also noted that in addition to the Article 27.4 review, the agenda of the Committee's meeting, in item N.2, also envisaged Committee decisions in respect of the continuation of extensions for eligible programmes of *certain* developing country Members for 2004. This item was intended to address in particular the continuation of the fast-track extensions, as foreseen in the procedures in G/SCM/39. As provided in paragraph 1(e) of those procedures, through the end of 2007, and "subject to annual reviews ... to verify that the transparency and standstill requirements ... are being fulfilled, Members of the Committee shall agree to continue the extensions". Thus, for those fast-track extensions where the Committee's review in respect of standstill and transparency appeared to have been satisfactorily completed, the Chairperson intended to propose that the Committee take decisions to continue the extensions for calendar year 2004. In accordance with the fast-track procedures, the Committee's decisions to continue the extensions for a further year, calendar year 2004, would be on the same basis and subject to the same requirements as the original decisions.

130. Because Colombia was one of the Members with fast-track extensions, and thus was on the agenda under this item, the Chairperson asked the Vice-Chairman of the Committee, Mr. Naoshi Hirose, to preside over the part of the discussion pertaining to Colombia, in the three sessions of the Committee meeting (28 October, 1 and 8 December 2003). Given this, to avoid having to change chairmanship more than once, she suggested that the Committee first review all of the notifications concerning fast-track extensions based on the procedures in G/SCM/39, and then consider the proposed decisions to continue those extensions, where it appeared that the Committee had completed its review of transparency and standstill to Members' satisfaction. Then the Vice Chairman would take the chair, for the discussion of all issues relating to Colombia's two fast-track extensions. After that, she would return to the chair for the Committee's review of the notifications pertaining to the non-fast-track extensions.

131. The Committee so agreed.

132. Turning to the transparency and standstill review of the fast-track extensions based on the G/SCM/39 procedures, the Chairperson recalled that those procedures called for annual updating notifications to be provided by the Members concerned, and reviewed by the Committee, to verify that the standstill and transparency requirements in respect of the programmes were being met. Members would recall that pursuant to the procedures, the Committee undertook an extensive transparency process in 2002, involving notifications as well as exchanges of written questions and answers, to determine whether the programmes for which extensions had been requested met the eligibility criteria of the procedures. At the Committee's Spring 2003 meeting, Members agreed on deadlines for the submission of the 2003 required updating notifications, as well as for the exchange of questions and answers, for the purposes of the 2003 review by the Committee.

133. All of the Members with fast-track extensions had submitted notifications, and there had been an exchange of written questions and answers. All of these notifications had been, as well, open for discussion at informal consultations held on 17 October 2003. On the basis of the relatively smooth progress of the review process, and the relatively few questions and comments that had been raised, the Chairperson was confident that the Committee would be in a position to complete its review of most, if not all, of the notifications that were submitted in a timely manner pertaining to the "fast-track" decisions. To the extent that this was the case, the Committee would be in a position to take the decisions called for in the G/SCM/39 procedures, to continue the extensions for calendar year 2004, on the same basis and subject to the same requirements as the original decisions. She invited Members to make any statements concerning the Committee's review, either of a general nature, or in respect of a particular programme. She proposed then to go through the extensions programme by programme (with the exception of those of Colombia which would be taken up separately by the Vice Chairman) for any specific comments Members wished to make.

134. The delegate of the United States expressed his delegation's appreciation to the Chairperson and to the Secretariat as well as the countries that were seeking the continuation of their extensions for, for the most part, providing timely notifications and prompt responses to the questions that had been raised. The United States thought that the process had been working well in terms of both the transparency and substantial aspects of the Committee's work, and was pleased to approve the decisions of the vast majority of those programmes at the Committee's meeting. In fact, there were only two programmes that the United States had identified where it would need further information in respect of a few small technical issues before being able to take a decision.

135. The first such programme was that of Papua New Guinea ("Section 45 of the Income Tax"), for which the notification had arrived too late to be reviewed and considered for decision at the 31 October Committee meeting. The delegate noted that under the G/SCM/39 mechanism, paragraph 3(a), updating notifications should follow the agreed format for subsidy notifications under Article 25 of the SCM Agreement. He asked the Secretariat to contact Papua New Guinea and share with relevant authorities the agreed format in the hope that the Committee would receive a revised notification.

136. The second programme for which the United States hoped to receive further information was Fiji's programme relating to "Export Processing Factories Scheme", also known as the "Tax Free Zone Factories Scheme". The United States had follow-up questions relating to the responses provided by Fiji in document G/SCM/Q2/FJI/8- G/SCM/Q3/FJI/12 of 1 October 2003 to questions raised by the European Communities.

137. The delegate of the European Communities echoed the US appreciation for all the efforts that had been made to make this process work smoothly. His delegation was also grateful for the remarks

made by the Chairperson at the start of this item, namely that the timetable for review under Article 25 of new and full subsidy notifications was slightly different from the timetable for review of Article 27.4 notifications. Therefore, questions in regard to some of these issues could still be raised under the Article 25 process. His delegation understood the US concerns with respect to the programmes of Papua New Guinea and Fiji, and would be ready to return to these two matters at a later stage.

138. The Chairperson thanked the European Communities and the United States for their interventions, and expressed her gratitude to all Members for the constructive way in which they had dealt with this process. The Committee completed its mandated standstill and transparency review in respect of the following programmes:

Antigua & Barbuda

- Fiscal Incentive Act Cap 172 (December 1975)
- Free Trade and Processing Zone Act No. 12 of 1994

Barbados

- Fiscal Incentive Program
- Export Allowance
- Research & Development Allowance
- International Business Incentives
- Societies With Restricted Liability

Belize

- Fiscal Incentives Act
- Export Processing Zone Act
- Commercial Free Zone Act
- Conditional Duty Exemptions Facility under Treaty of Chaguaramas

Costa Rica

- Duty Free Zone Regime
- Inward Processing Regime

Dominica

- Fiscal Incentives Program

Dominican Republic

- Law No. 8-90 to "Promote the Establishment of New Free Zones and Expand Existing Ones"

El Salvador

- Export Processing Zones and Marketing Act, as amended

Fiji

- Short-Term Export Profit Deduction
- The Income Tax Act (Film Making and Audio Visual Incentive Amendment Decree 2000)

Grenada

- Fiscal Incentives Act No. 41 of 1974
- Statutory Rules and Orders No. 37 of 1999
- Qualified Enterprises Act No. 18 of 1978

Guatemala

- Exemption from Company Tax, Customs Duties and Other Import Taxes for Companies under Special Customs Regimes
- Exemption from Company Tax, Customs Duties and Other Import Taxes for the Production Process Relating to Activities of Managers and Users of Free Zones
- Exemption from Company Tax, Customs Duties and Other Import Taxes for the Production Process of Commercial and Industrial Enterprises Operating in the Industrial and free Trade Zone

Jamaica

- Export Industry Encouragement Act
- Jamaica Export Free Zone Act
- Foreign Sales Corporation Act
- Industrial Incentives (Factory Construction) Act

Jordan

- Partial or Total Exemption from Income Tax of Profits Generated from Exports under Law No. 57 of 1985, as amended

Mauritius

- Export Enterprise Scheme
- Pioneer Status Enterprise Scheme
- Export Promotion
- Freeport Scheme

Panama

- Official Industry Register
- Export Processing Zones

St. Kitts and Nevis

- Fiscal Incentives Act No. 17 of 1974

St. Lucia

- Fiscal Incentives Act No. 15 of 1974
- Free Zone Act, No. 10 of 1999
- Micro and Small Scale Business Enterprises Act, No. 19 of 1998

St. Vincent & Grenadines

- Fiscal Incentives Act No. 5 of 1982, as amended

Uruguay

- Automotive Industry Export Promotion Regime

139. The Chairperson stated that it would not be possible to complete the review of the one programme each of Fiji (Export Processing Factories Scheme) and Papua New Guinea (Section 45 of the Income Tax) during the Committee's 28 October session. She stated that those Members who had questions on either of these programmes should submit them to the Secretariat by 7 November 2003, with the replies provided by 21 November 2003. When the Committee had concluded its review of those programmes of Fiji and Papua New Guinea, she would be able to propose, for them, draft decisions for adoption by the Committee. The meeting was therefore suspended in respect of the transparency and standstill review of the fast-track extensions requested by Fiji and Papua New Guinea for the Export Processing Factories Scheme and Section 45 of the Income Tax programmes, respectively.

140. The Chairperson proceeded to the second agenda sub-item under item N, which concerned the fast-track continuation decisions pursuant to the procedures in G/SCM/39. A draft decision text was available in the room for each of the fast track extensions for which the Committee had completed its review and thus appeared to be in a position to take a decision to continue the extension for 2004, as foreseen in the procedures in G/SCM/39. The text of the draft decisions was the same as the generic text that had been sent to Members by fax on 14 October 2003, and discussed at the 17 October 2003 open-ended informal consultations. In preparing the so-called "generic" fast-track text, the Chairperson had carried out some initial consultations with Members most directly concerned, so that the 14 October 2003 text transmitted to all Members already took into account the interests and concerns of a broad range of interested Members. As a result of this process, and particularly given the constructive informal discussions by the whole Committee, it was her firm belief that the proposed text reflected a consensus which could form the basis of the decisions to be proposed.

141. The Chairperson briefly introduced the text. In general terms, the attempt was to ensure that what was being done was to continue, on the same basis and terms and conditions, the fast-track extensions that were granted in 2002. This was explicitly in accordance with the fast-track procedures, and the drafting mirrored the text of those procedures as much as possible.

142. Turning to the details, each decision document would be an Addendum to the corresponding decision taken in 2002. Next, in the text itself, the first two paragraphs stated the legal basis for the continuation decisions, namely that, like the original fast-track extensions, the continuations were as provided for in the G/SCM/39 procedures, which the Ministers at Doha had directed the Committee to apply. The third paragraph and its footnote referred to the documents submitted to date in respect of the extension and continuation. The fourth paragraph simply recalled that the Committee, in the context of the original extension, considered the Member in question to have met the eligibility criteria of the procedures. In other words, this was not a new conclusion as to eligibility, as the procedures called for that assessment only once, in the context of the original extension. The fifth paragraph indicated that the Member concerned confirmed that the programme had not been modified since the beginning of 2003 so as to make it more favourable in terms of scope, coverage and intensity of benefits than it was on 1 September 2001, the date which served as the baseline for the standstill commitment. The sixth paragraph established the basis of the extension decision, namely the review undertaken by the Committee, pursuant to the procedures, of the information provided by the Member in the context of the transparency and standstill requirements. The final, operative paragraph, mirrored the language of the procedures by stating that the Committee "agrees" to "continue" the extension for calendar year 2004, and then simply reiterated what that extension was, using exactly the same language as in the original extension decisions. The final sentence was intended to preserve, in respect of the continuation, the terms and conditions and other provisions of the original extension. Again, this emphasized that the decision was a continuation of the original extension, not a stand-alone decision.

143. The Chairperson indicated her intention to ask the Committee to take the proposed decisions set forth in the room documents to continue the extensions for calendar year 2004 for the programmes in question, and then to open the floor for any statements for the record. She emphasized that this approach was entirely without prejudice to any suspended items and to the respective positions of delegations. The review of standstill and transparency obligations in respect of those programmes remained before the Committee, as did the question of eventual Committee decisions concerning continuation of the respective extensions. The purpose of the suspension was simply to provide the Committee with some additional time to resolve the outstanding issues. She stated that both she and the Vice Chairman would remain in very close contact with the delegations concerned, and would convene informal consultations as necessary, to reach a speedy resolution of all issues so that all reviews could be completed.

144. The Committee approved the decisions to continue the extensions of the transition period for the following programmes (the document symbols of the decision documents are shown in parentheses):

Antigua & Barbuda

- Fiscal Incentive Act Cap 172 (December 1975) (G/SCM/50/Add.1)
- Free Trade and Processing Zone Act No. 12 of 1994 (G/SCM/51/Add.1)

Barbados

- Fiscal Incentive Program (G/SCM/52/Add.1)
- Export Allowance (G/SCM/53/Add.1)
- Research & Development Allowance (G/SCM/54/Add.1)
- International Business Incentives (G/SCM/55/Add.1)

- Societies With Restricted Liability(G/SCM/56/Add.1)

Belize

- Fiscal Incentives Act (G/SCM/57/Add.1)
- Export Processing Zone Act (G/SCM/58/Add.1)
- Commercial Free Zone Act (G/SCM/59/Add.1)
- Conditional Duty Exemptions Facility under Treaty of Chaguaramas (G/SCM/60/Add.1)

Costa Rica

- Duty Free Zone Regime (G/SCM/61/Add.1)
- Inward Processing Regime (G/SCM/62/Add.1)

Dominica

- Fiscal Incentives Program (G/SCM/63/Add.1)

Dominican Republic

- Law No. 8-90 to "Promote the Establishment of New Free Zones and Expand Existing Ones" (G/SCM/64/Add.1)

El Salvador

- Export Processing Zones and Marketing Act, as amended (G/SCM/65/Add.1)

Fiji

- Short-Term Export Profit Deduction (G/SCM/66/Add.1)¹³
- The Income Tax Act (Film Making and Audio Visual Incentive Amendment Decree 2000) (G/SCM/68/Add.1)

Grenada

- Fiscal Incentives Act No. 41 of 1974 (G/SCM/69/Add.1)
- Statutory Rules and Orders No. 37 of 1999 (G/SCM/70/Add.1)
- Qualified Enterprises Act No. 18 of 1978 (G/SCM/71/Add.1)

Guatemala

- Exemption from Company Tax, Customs Duties and Other Import Taxes for Companies under Special Customs Regimes (G/SCM/72/Add.1)
- Exemption from Company Tax, Customs Duties and Other Import Taxes for the Production Process Relating to Activities of Managers and Users of Free Zones (G/SCM/73/Add.1)
- Exemption from Company Tax, Customs Duties and Other Import Taxes for the Production Process of Commercial and Industrial Enterprises Operating in the Industrial and free Trade Zone (G/SCM/74/Add.1)

Jamaica

- Export Industry Encouragement Act (G/SCM/75/Add.1)
- Jamaica Export Free Zone Act (G/SCM/76/Add.1)
- Foreign Sales Corporation Act (G/SCM/77/Add.1)
- Industrial Incentives (Factory Construction) Act (G/SCM/78/Add.1)

¹³ With respect to **Fiji's** "Short-term Export Profit Deduction" programme, the Chairperson recalled that footnote 2 of the decision clarified that, as was the case for the original decision (G/SCM/66), this decision did not cover Fiji's Export Finance Facility ("EFF") and Export Credit Ratio ("ECR") programmes.

Jordan

- Partial or Total Exemption from Income Tax of Profits Generated from Exports under Law No. 57 of 1985, as amended (G/SCM/79/Add.1)

Mauritius

- Export Enterprise Scheme (G/SCM/80/Add.1)
- Pioneer Status Enterprise Scheme (G/SCM/81/Add.1)
- Export Promotion (G/SCM/82/Add.1)
- Freeport Scheme (G/SCM/83/Add.1)

Panama

- Official Industry Register (G/SCM/84/Add.1)
- Export Processing Zones (G/SCM/85/Add.1)

St. Kitts and Nevis

- Fiscal Incentives Act No. 17 of 1974 (G/SCM/90/Add.1)

St. Lucia

- Fiscal Incentives Act No. 15 of 1974 (G/SCM/87/Add.1)
- Free Zone Act, No. 10 of 1999 (G/SCM/88/Add.1)
- Micro and Small Scale Business Enterprises Act, No. 19 of 1998 (G/SCM/89/Add.1)

St. Vincent & Grenadines

- Fiscal Incentives Act No. 5 of 1982, as amended (G/SCM/91/Add.1)

Uruguay

- Automotive Industry Export Promotion Regime (G/SCM/92/Add.1)

145. The Chairperson thanked Members for their constructive participation in the review process and in the adoption of these decisions by the Committee.

146. The delegate of the European Communities stated that the Committee was one of the most, if not the most, productive in the WTO in terms of decisions taken. The European Communities was very pleased that so many decisions had been taken at the Committee's regular meeting and congratulated all Members concerned. There was just one remark the European Communities wanted to make for the record: in several of the notifications, and in answers to questions the European Communities had raised, it was clear that benefits under the programmes concerned were scheduled to extend beyond the transitional period for the elimination of all export subsidies provided in document G/SCM/39. The European Communities suggested that this matter be given careful attention by the Committee. It was clear that the procedures in G/SCM/39 did not apply to any extension beyond 2007. It was also clear that the extensions the Committee had granted at the Committee's meeting were of the transitional period for the elimination of export subsidies. The European Communities anticipated returning to this issue in 2004.

147. The delegate of the United States stated that the European Communities had raised a very good point: to encourage Members benefiting from extensions to outline how they were going about phasing out the programmes that they had in place. The United States realized that it was not a legal obligation under G/SCM/39 but wished to avoid any sort of implementation problems. The United States would be following with interest any kind of comments Members could offer with respect to plans that they had for the phase-out of the programmes.

148. The Chairperson thanked the United States and the European Communities for their interventions.

149. On 28 October 2003, the meeting was then suspended in respect of the Committee's review of one remaining programme each of Fiji and Papua New Guinea.¹⁴

150. The Vice Chairman took the Chair for the discussion of Colombia's fast-track extensions, beginning with the review of Colombia's standstill and transparency and other commitments undertaken in the extension decisions adopted in December 2002 pursuant to the procedures in G/SCM/39 and paragraph 10.6 of the Ministerial Decision on Implementation (G/SCM/93 and G/SCM/94). In this connection, on the basis of informal consultations that he had been conducting with interested delegations, and the recent exchange of written questions and answers, he was aware that there remained concerns on the part of certain Members relating to this review. He also was aware that any such concerns would have a bearing on discussion by the Committee of draft decision language that could be used for the continuation of those extensions.

151. The Vice Chairman stated that, in the first part of the discussion, he would invite substantive comments and questions on the notification and other information provided by Colombia, but would not be seeking views as to the question of continuation decisions in respect of Colombia's two programmes. Rather, he would take up that question in the second part of the discussion.

152. He recalled that Colombia's notification was contained in G/SCM/N/COL/99, which had been submitted on 30 June 2003, the deadline established by the Committee. Although no written questions concerning Colombia's notification were received by the 30 September 2003 deadline, some had been received since then. In particular, on 10 October 2003, Colombia provided written answers (in document G/SCM/Q3/COL/21) to certain oral questions that had been posed in informal consultations. On 14 October 2003, Ecuador submitted written questions to Colombia in document G/SCM/Q3/COL/22, and, on 23 October 2003, Colombia provided written answers in document G/SCM/Q3/COL/23. Subsequently, Peru submitted written questions and Ecuador submitted additional written questions, circulated in documents G/SCM/Q3/COL/24 and 25, respectively. The written questions submitted concerned both of Colombia's programmes for which extensions had been granted in 2002.

153. The Vice Chairman had been conducting informal consultations with the interested Members to clarify the situation in respect of the review of Colombia's notification. On the basis of those consultations, as well as the exchange of written questions and answers, he was aware that certain substantive issues remained outstanding in respect of the programmes, at least some of them having to do with the terms and conditions of the decision taken in 2002.

154. He opened the floor for any comments on Colombia's programmes, first with regard to the "Free-Zone Regime" (G/SCM/93) and subsequently with respect to the "Special Import-Export System for Capital Goods and Spare Parts (SIEX)" (G/SCM/94).

155. The delegate of Ecuador thanked the Chairman for the consultations which he had conducted and, for the Members' information, he stated that they were still ongoing at the time of the meeting. He believed that, with further dialogue, the Committee would be able to come to a resolution on the two programmes.

156. The delegate of Colombia expressed gratitude to Ecuador for its constructive comments. Colombia wished to achieve sufficient clarification of Peru and Ecuador's questions and to be able to resolve any issues relating to the extension of those programmes as soon as possible.

¹⁴ The meeting subsequently resumed on 1 December 2003. See para. 164.

157. The delegate of Bolivia stated that her delegation was also part of this process of consultations because Bolivia had a special interest in these two programmes.

158. The delegate of Venezuela stated that Venezuela also was participating actively and had shown its interest in certain questions submitted by Ecuador and Peru.

159. The Vice Chairman thanked all delegations for their constructive engagement in this important process. He felt that there was goodwill on the part of all delegations concerned to reach a satisfactory resolution, which would allow the Committee to complete its review of Colombia's notification. Once the review was completed, the Committee would be in a position to consider decisions to continue the extensions concerned, for calendar year 2004, as foreseen in, and subject to the same terms and conditions as, the original decisions adopted in 2002. Given that the process had not yet reached that point, he intended to suspend the meeting with respect to Colombia's review to allow time for the development of any additional information and for bilateral contacts, as well as for informal consultations that he intended to convene at an appropriate time.

160. Before concluding the discussion, the Vice Chairman stated that the decisions adopted in 2002 in respect to Colombia's two programmes foresaw the continuation of the extensions for calendar 2004, subject to the transparency, standstill and other commitments undertaken by Colombia in the decisions. In this connection, on 14 October 2003 on his own responsibility and without prejudice to any Member's substantive views, he had sent to all Members, by fax, a draft decision text for continuations for Colombia, in three languages. As was the case for the original fast-track extension decisions taken in 2002 for Colombia, the Colombia-specific draft continuation text mirrored as closely as possible the generic text used for the other fast-track extension decisions, while also reflecting the particularities of the 2002 extension decisions that were taken in respect of Colombia. Given the substantive concerns that had been expressed by some Members in the review of Colombia's two programmes, and the suspension of the meeting in respect of that review, it was the Vice Chairman's impression that the Committee was not in a position to adopt continuation decisions in respect of Colombia's two programmes at the Committee meeting. In light of this, he proposed that the Committee not undertake an in-depth paragraph-by-paragraph discussion of the Colombia-specific draft decision text.

161. However, and without prejudice to the position of any Member or to any eventual Committee action, there were differences between this draft text and the generic text that the Committee had used in the fast-track continuation decisions adopted earlier in the Committee meeting. As far as the Colombia-specific draft was concerned, the few necessary differences, reflecting the particularities of the original extension decisions in respect of Colombia's programmes, were the following. First, the third paragraph recalled verbatim the specific additional commitments of Colombia in paragraph 10 of the original decisions in G/SCM/93 and /94. Second, in the fourth paragraph there was a reference to paragraph 10.6 of the Ministerial Decision on Implementation. This paragraph was identical to the one appearing in the extension decisions concerning Colombia adopted in 2002, and reflected the particular basis of Colombia's request and extension. The third difference in wording, in the fifth paragraph, beginning "Recalling", also mirrored exactly the corresponding language in the original decisions adopted in 2002. The fourth difference appeared in the paragraph beginning "Taking note that...". The square brackets were introduced to indicate that the generic wording might need to be modified and expanded upon to take into account Colombia's particular circumstances. The fifth difference appeared in the paragraph beginning "On the basis". The reference was not only to the procedures in G/SCM/39 but also to paragraph 10 of the original decision which also referred to the Committee's review. In addition, at the end of the paragraph there was a reference to the additional obligations undertaken by Colombia which also were subject to review by the Committee. The final, operative paragraph was identical to that in the generic text.

162. The Vice Chairman recalled that he was not seeking comments or questions about the draft, as he believed that this would be premature, and stated that he would remain in close contact with the interested delegations, with a view to reconvening the Committee at the earliest possible moment on this issue.

163. The meeting was suspended with respect to the review of Colombia's standstill and transparency and other commitments undertaken in the extension decisions adopted in December 2002 pursuant to the procedures in G/SCM/39 and paragraph 10.6 of the Ministerial Decision on Implementation (G/SCM/93 and G/SCM/94).

164. When the Committee's regular meeting re-convened on 1 December 2003, the Chairperson recalled that *all* of the decisions (that is, the "fast-track" decisions as well as those based on Article 27.4 alone) contained standstill and transparency obligations which the Committee had to review in 2003. Under agenda item N.1, at the 28 October 2003 session of the meeting, the Committee had completed its standstill and transparency review in respect of almost all of the decisions, with the exception of one programme of Fiji, one programme of Papua New Guinea and two programmes of Colombia. These were the programmes for which the Committee's Review was continuing. In addition to the Article 27.4 review, the meeting's agenda, in item N.2, also envisaged Committee decisions in respect of the continuation of extensions for eligible programmes of certain developing country Members for 2004. Thus, for those fast-track extensions where the Committee's review in respect of standstill and transparency was satisfactorily completed, the Committee had taken decisions to continue the extensions for calendar year 2004. Given that Fiji's and Papua New Guinea's answers to questions had only been received a few days before the Committee meeting, the Chairperson did not intend to propose any decisions in respect of the remaining programmes of these two Members concerned, but she did hope that the Committee would be able to satisfactorily complete its review thereof. She intended again to suspend the meeting with respect to any Committee decisions for Fiji and Papua New Guinea, and to resume the meeting on 8 December 2003.

165. In regard to Fiji's notification contained in document G/SCM/N/99/FJI, the Chairperson recalled that the United States had submitted written questions since the 28 October meeting and that answers had been received, in documents G/SCM/Q3/FJI/14 and /15.

166. The delegate of the United States expressed his delegation's appreciation to Fiji for providing the answers to the United States' questions. The answers were detailed and also contained some legislation which the United States had requested. Because of the complexity of the information, the United States was not yet prepared to comment on the answers that had been provided. The United States intended to review the answers which it had received to see whether it had any follow-up questions.

167. Turning to Papua New Guinea's notification contained in document G/SCM/N/99/PNG, the Chairperson recalled that this notification was only received on 17 October. Thus, not only had it missed the 30 June 2003 deadline, it had also come in after the deadlines for both written questions and written replies. The Committee therefore had not had the agreed interval of time, or the chance to engage in the agreed written question and answer process, in respect of this notification before its 28 October 2003 meeting. Since then, the United States had posed written questions and Papua New Guinea had submitted its response, which was in the agreed subsidy notification format and which also constituted a supplement to its notification. These could be found in documents G/SCM/Q3/PNG/6 and /7.

168. The delegate of the United States expressed his delegation's appreciation to Papua New Guinea for the Article 25 notification that it provided on 25 November 2003. The United States had not yet had an opportunity to begin reviewing the notification, and therefore, as it had in the review of

Fiji's programme, the United States reserved the right to pose follow-up questions in respect of the programme of Papua New Guinea.

169. Based upon this exchange, and given that no questions remained outstanding, the Chairperson stated that it was her sense that the Committee had completed its required transparency and standstill review in respect of the programmes of Fiji and Papua New Guinea, subject to any follow-up questions. It was therefore her intention to propose, at the resumed session of the Committee on 8 December, as foreseen in the fast-track procedures, that the Committee adopt decisions for the programmes concerned to continue the extensions for a further year, calendar year 2004, on the same basis and subject to the same requirements as the original decisions, and taking into account the discussions in the Committee meeting.

170. The meeting was suspended in respect of the Committee's review of the programmes of Fiji and Papua New Guinea.¹⁵

171. The Vice Chairman of the Committee took the Chair for the Committee's discussion of Colombia's fast-track extensions. He intended first to report on the review of Colombia's standstill and transparency and other commitments undertaken in the extension decisions adopted in December 2002 pursuant to the procedures in G/SCM/39 and paragraph 10.6 of the Ministerial Decision on Implementation (G/SCM/93 and G/SCM/94). Second, he intended to briefly summarize his impression of where the Committee stood in respect of Colombia's programmes and the additional steps to be taken. Finally, purely for the information of Members, he would recall the situation in respect of the draft decision texts for Colombia. He stated that it was not his intention to open the floor for discussion on any of these three points. Rather, following his report, he would suggest that the Committee suspend this meeting, and resume it on 8 December.

172. On the review of the notification and information provided by Colombia, since the 28 October meeting, Ecuador had posed further written questions, in documents G/SCM/Q3/COL/26 and 27, and Colombia, in documents G/SCM/Q3/COL/28 and /29, had provided written answers to these, as well as to questions posed by Peru on 27 October.

173. As for where the Committee stood and further steps to be taken, on the basis of informal consultations that he had been conducting with interested delegations, and the exchange of written questions and answers following the 28 October meeting, the Vice Chairman commended all of the delegations involved for their constructive participation in this valuable transparency exercise. It was his impression that there was goodwill on the part of all delegations concerned to reach a satisfactory resolution, which would allow the Committee to complete its review of Colombia's notification. After completing the review, the Committee would be in a position to consider decisions to continue the extensions concerned, for calendar year 2004, as foreseen, and subject to the terms and conditions, in the original decisions adopted last year.

174. Given that the process had not yet reached that point, the Vice Chairman intended to suspend the meeting with respect to Colombia's review to allow delegations additional time to seek a resolution. On the issues that were pending in this respect, he had met on numerous occasions with the delegations concerned to seek clarification as to where they were in their bilateral contacts. On the one hand, they all had assured him that their contacts were continuing, including at very high levels back in capitals. On the other hand, he was informed that unfortunately these issues had not yet been fully resolved. He had assured all of those delegations that he was ready to assist them in any way that he could, should they find it useful. He also encouraged all of them to redouble their

¹⁵ The meeting subsequently resumed on 8 December. See para. 180.

bilateral efforts, and to think as creatively as possible concerning solutions. Time was very short, and Members had to make every effort to make progress in this matter.

175. Third, as for the any draft decision text for the programmes of Colombia, given the concerns that had been expressed by some Members in the review of Colombia's two programmes, and the suspension of the meeting in respect of that review, it seemed that the Committee was not yet in a position to adopt continuation decisions in respect of Colombia's two programmes.

176. The Vice Chairman recalled that the decisions adopted in 2002 in respect those programmes foresaw the continuation of the extensions for calendar 2004, subject to the transparency, standstill and other commitments undertaken by Colombia in the decisions. In this connection, on 14 October, on his own responsibility and without prejudice to any Member's substantive views, he sent to all Members, by fax, a draft decision text for continuations for Colombia, in three languages. As was the case for the original fast-track extension decisions taken in 2002 for Colombia, the Colombia-specific draft continuation text mirrored as closely as possible the generic text used for the other fast-track extension decisions, while also reflecting the particularities of the 2002 extension decisions that were taken in respect of Colombia. He recalled that, at the 28 October session, he had briefly introduced that draft text on Colombia's programmes. That was without prejudice to the position of any Member or to any eventual Committee action, to simply point out the differences between this draft text and the generic text that the Committee had used in the other fast-track continuation decisions. He stated that it was his intention to fax a revised draft decision text out to all Members for purposes of transparency, and again without prejudice to the position of any Member or to any eventual Committee action. He said that he was confident that this draft text would reflect the particular concerns of certain delegations and trusted that it would be positively received by WTO Members.

177. Given these considerations, it did not seem that the Committee could productively consider details of legal drafting.

178. The Vice Chairman intended to remain in close contact with interested delegations, before reconvening the meeting, and asked Members to be ready to join him for informal consultations.

179. The meeting was suspended with respect to the review of Colombia's standstill and transparency and other commitments undertaken in the extension decisions adopted in December 2002 and adoption of continuation decisions in respect of Colombia's two programmes.

180. When the meeting reconvened on 8 December 2003, the Chairperson asked whether Members had any additional questions or comments with respect to Fiji's "Export Processing Factories/Export Processing Zones Scheme".

181. The delegate of the United States drew Members' attention to footnote 2 of the draft decision G/SCM/67/Add.1. He stated that, during the course of the Committee's review, several other programmes had come to light about which the United States had questions. The United States would be asking those questions in the appropriate forum and not in this session of the Committee meeting. Therefore, the United States wanted to make clear that the Committee's review and any decision that it took at the Committee meeting with respect to this programme applied solely to the Export Processing Factories/Export Processing Zones Scheme.

182. The Chairperson thanked the United States for this clarification and asked whether there were any comments or questions regarding Papua New Guinea's "Section 45 of the Income Tax". There were no comments. The Chairperson thanked Members for their constructive participation in this review process and stated that it was her sense that the Committee could confirm the completion of its

required transparency and standstill review in respect of the programmes of Fiji and Papua New Guinea.

183. The Chairperson stated that the Committee thus was in a position to consider adopting the decisions to continue for 2004 the fast-track extensions pursuant to the procedures in G/SCM/39 for these two programmes. The text of the draft decision was the same as the text that formed the basis of the other fast-track continuation decisions adopted at the Committee's meeting of 28 October 2003. In the case of the decision pertaining to Fiji's "Export Processing Factories/Export Processing Zones Scheme", the Chairperson noted that footnote 2 had been added at the request of some Members to clarify that, although questions and answers had been exchanged concerning Fiji's Duty Suspension Scheme programme, that programme was not part of the programme covered by the continuation decision.

184. The Committee agreed to continue the extensions for (the document symbols of the decision documents are shown in parentheses):

Fiji

- Export Processing Factories/Export Processing Zones Scheme (G/SCM/67/Add.1)

Papua New Guinea

- Section 45 of the Income Tax (G/SCM/86/Add.1)

185. The Chairperson thanked Members for their constructive participation in the review process and in the adoption of those decisions by the Committee and opened the floor for any statements.

186. The Vice Chairman took the Chair for the discussion of Colombia's fast-track extensions. He proposed first to take up the review of Colombia's standstill and transparency and other commitments undertaken in the extension decisions adopted in December 2002. Second, he intended to introduce the draft decision texts relating to Colombia's programmes, and to propose that the Committee adopt these decisions. Thereafter, he intended to open the floor for any statements for the record.

187. On the basis of informal consultations that he had been conducting with interested delegations, and the further recent exchange of written questions and answers concerning Colombia's two programmes between the 28 October meeting and the resumed 1 December 2003 sessions, the Vice Chairman commended all of the delegations involved for their constructive participation in this review process. No further written questions had been received since the resumed session on 1 December 2003 and all written answers had been circulated to Members. He asked whether he could assume that the Committee had completed its review of the two programmes which are the Free-Zone Regime (G/SCM/93) and the Special Import-Export System for Capital Goods and Spare Parts (SIEX) (G/SCM/94).

188. As there were no requests for the floor, the Vice Chairman thanked all delegations and, as the Committee had completed its review of the two programmes of Colombia, he proposed turning to the draft decision text for the continuation of the extension for these two programmes.

189. The Vice Chairman recalled that the decisions adopted in 2002 with respect to those programmes foresaw the continuation of the extensions for calendar year 2004, subject to the transparency, standstill and other commitments undertaken by Colombia in the decisions, and again recalled the draft text for Colombia's programmes, which he had introduced at the 28 October meeting under his own responsibility and without prejudice to any Member's substantive views or any eventual Committee action. He recalled that the proposal in respect of Colombia had not, as of the 28 October or 1 December 2003 sessions of the Committee, attracted a full consensus.

190. Since that time, the Vice Chairman had continued to be in close contact with the interested delegations, through bilateral contacts and plurilateral consultations, and the delegations also had been consulting among themselves almost continuously. During these various processes, a number of additional proposals had been made as to the possible basis for decisions to be taken. All of these proposals had served a very useful purpose in clarifying the situation and the positions of the respective delegations, and had played a very constructive role in the process. On 4 December 2003, the Vice Chairman had faxed out a revised draft of Colombia-specific decision language, again on his own responsibility, based on his intensive and constructive consultations with interested delegations. This was without prejudice to the position of any Member or to any eventual Committee action. Those texts contained certain language in square brackets as there remained at that time various options that were still under consideration in capitals. He was pleased to report that there had been significant further developments since then which allowed him to prepare a new text without any bracketed language. He had convened open-ended informal consultations during the morning of 8 December 2003 to discuss the situation and an updated version of the text had been discussed at that time. The document that was in the room for consideration during the Committee meeting reflected the discussion held in those informal consultations and additional informal contacts among interested Members.

191. The Vice Chairman introduced this revised draft text, pointing out the differences between this draft text and the draft text introduced at the 28 October session. He noted that paragraph numbers had been added in each decision. Regarding the draft decision on the Free Zones programme (draft G/SCM/93/Add. 1), paragraph 2 was new and simply stated Colombia's obligation to eliminate all export subsidies. Paragraphs 3-7 had been in the draft of 14 October 2003 but had simply been reordered for logic of presentation. Paragraph 8 was new and was a reaffirmation by Colombia of its commitments undertaken in the original (2003) extension decision as well as the commitments to be undertaken in the 2004 continuation decision. Paragraph 9 was new and referred to a schedule for legislative amendment schedule which Colombia presented in respect of the Free Zones programme. Copies of the schedule were available in the room.¹⁶ Paragraph 9 indicated the end date for that legislative process, namely 31 December 2004. Paragraphs 10, 11 and 12 were not new. Paragraph 11 had new language at the end pertaining to transparency. Paragraph 13 was new and stated the obvious, namely that the continuation was only in respect of the subsidies subject to the original extension decision. Finally, paragraph 14 simply stated that this decision had no implications for decisions by the Committee in respect of programmes of other Members.

192. With respect to the "Special Import-Export System for Capital Goods and Spare Parts" (SIEX) draft decision, the Chairman stated that the first 8 paragraphs were identical to those in the Free Zone draft text. Paragraph 9 dealt with the VAT deferral aspect of the SIEX programme and, in particular, contained a commitment by Colombia that for all projects approved under the programme on or after the date of the Committee's decision, payment of the VAT should occur no later than 31 December 2006, with an explanatory footnote concerning the word "projects". To this end, the decision provided that Colombia should implement, no later than the date of the decision, the legal and/or regulatory or other reforms required, such that the period permitted for payment of deferred VAT could not be extended beyond 31 December 2006 for such projects. Finally, for projects approved prior to the date of the decision, payment of deferred VAT had to occur not later than five years after the grant of the deferral. There was a footnote explaining that the date of the deferral was the date of importation for purposes of the decision. Paragraphs 10, 11 and 12 were the same as their counterparts in the Free Zones draft decision and paragraph 13 was essentially the same as paragraph 13 in that draft. Paragraph 14 was specific to the SIEX decision and was meant to reflect the fact that the decision did not have implications for questions of legal interpretation on issues of

¹⁶ Subsequently circulated in document G/SCM/93/Add.1/Suppl. 1.

timing pertaining to subsidies. Paragraph 15 was identical to paragraph 14 of the Free Zone draft. These drafts had been elaborated on the basis of a very intensive process of informal consultations and the Vice Chairman firmly believed that they represented the basis for consensus that accommodated the interests of all Members.

193. With respect to the "Special Import-Export System for Capital Goods and Spare Parts (SIEX)", the representative of Colombia stated that several delegations had asked about the approval process and use of authorizations. He explained that the approval procedure entailed the presentation of investment programmes and export programmes which were the fruit of these investments so as to be entitled to the benefits of the programme, i.e. foregoing import duties on capital goods and deferral of VAT. To get the approval of such programmes, the private sector had to take on some export commitments, and then both the government and the private investors had a great deal of incentive to import the capital goods rapidly so as to be able to fulfil the export requirements. In other words, these were not mere vague commitments, they were commitments signed with guarantees. If an investor were not to fulfil the commitments, this would entail the immediate payment of a guarantee taken on by an insurance company. In this sense, the private sector also had all the incentives necessary to import rapidly in order to be able to fulfil the commitments which they had signed and which were supported by insurance companies. Imports based on authorizations which had been granted prior to 8 December 2003 already would have been made, or if that was not the case, then those imports would be made in the first few months of 2004. Those were the clarifications that Colombia wanted to give in respect of questions that some delegations had posed to his delegation during the informal consultations held during the morning of 8 December 2003.

194. The delegate of the United States expressed his delegation's appreciation to Colombia for the explanation of the SIEX programme.

195. The delegate of the European Communities also expressed his delegation's appreciation for the extremely helpful clarification.

196. The Committee adopted the following decisions in respect of the programmes of **Colombia**:

- Free Zone Regime (G/SCM/93/Add. 1, including Suppl. 1, containing the legislative schedule)
- Special Import-Export System for Capital Goods and Spare Parts (SIEX) (G/SCM/94/Add. 1)

197. The delegate of Ecuador thanked the Vice Chairman for all the work that had been done in the informal consultations which had taken place in November and December 2003. His delegation considered that the very objective, impartial and constructive way the Chair had led these meetings made it possible for Ecuador to be in a position to join in the consensus so as to go through with the decisions on Colombia. He stated that Ecuador had invested a lot of time in these informal consultations but, as the Ambassador of Colombia said, these efforts had been very fruitful. He thanked other Members involved in the process.

198. The delegate of Peru thanked the Vice Chairman for the way the consultations had taken place and Colombia for the explanations given on the SIEX programme.

199. The delegate of Venezuela thanked the Chair for his efforts to achieve the appropriate conditions for the Committee to be able to adopt the decisions on the two Colombian programmes. His delegation also thanked the efforts of the other delegations which had participated

in this process; the Secretariat for all its efforts; and the Colombian delegation for the flexibility to give guarantees which were in line with the obligations under the SCM Agreement.

200. The delegate of Bolivia joined those who had congratulated the Vice Chairman for the brilliant way in which he had led the consultations. Bolivia also wished to express its satisfaction with the content of these decisions which were the result of efforts made by Members, and in particular, Colombia in making the required clarifications in this annual review process.

201. The delegate of the European Communities also congratulated all those concerned, especially the delegation of Colombia and the other Andean delegations, the Chairperson, the Vice Chair and the Secretariat. For the record, his delegation attached particular importance to the final sentences starting as follows "No inferences ..." of both the decisions taken with respect to Colombia. He stated that these sentences were important both in case any cross interpretation were attempted between these decisions and other decisions which perhaps did not have all the fullness of the wording of these decisions. It was also important to underline that it could not be assumed that any particular approach the Committee followed in these decisions would necessarily be the appropriate path to follow in other cases because each case had its own particularities, so the European Communities attached importance to those particular sentences.

202. The representative of Colombia thanked the Vice Chairman for his wonderful job of chairmanship on this issue. He also thanked all Andean colleagues because their delegations had been able to work in a very positive fashion. In 2003, their delegations had done a lot of technical and very objective work, which helped them to develop a good dialogue. Colombia thanked all the delegates from the Andean countries for their understanding, and their very serious and professional work. He also thanked the Secretariat. He thanked all the other Members and, in particular those who were most involved in this work, which had shown a lot of flexibility in reaching an agreement.

203. The Vice Chairman thanked all delegations for their work during this very long process. He had felt during the consultations a vast amount of goodwill and a constructive approach and, even if the substance of the issues was very complicated, each delegation involved had a very large stake in this process. He also thanked the Secretariat, especially Ms. Morgan, Ms. Hainsworth and Mr. Do Prado, for helping the Committee and all Members to put this together. Without the professional assistance of these three individuals in the Secretariat, the decisions would never have been achieved.

204. At the 28 October session of the regular meeting, the Chairperson resumed the Chair of the Committee for the Committee's discussion of the Article 27.4 "non-fast-track" decisions.

205. With respect to the required transparency and standstill review of the extensions of non-fast-track decisions, the Chairperson recalled that, pursuant to Article 27.4, the Committee had granted extensions for certain programmes of four Members on the basis of a "one plus two" approach, with the "one" being an extension for calendar 2003 and the "two" being the final two year phase-out period referred to in Article 27.4. Pursuant to the decisions, the Committee was called upon to carry out a review of standstill and transparency commitments of these decisions taken last year, in respect of 2003. She recalled that the four Members with programmes that were extended for 2003 on the basis of Article 27.4 alone were Barbados, El Salvador, Panama and Thailand. She pointed out that there had been no written questions posed in respect of any of these programmes during the period following the 30 June 2003 deadline for the submission of updating notifications. She stated that a very useful and constructive exchange of views had taken place at the 17 October 2003 informal consultations with respect to the review of transparency and standstill in connection with these extensions. For the purposes of the Committee's review, she invited comments in respect of:

Barbados (G/SCM/N/99/BRB)

- Export Grant and Incentive Scheme (G/SCM/95)
- Export Rediscount Facility (G/SCM/96)
- Export Credit Insurance Scheme (G/SCM/97)
- Export Finance Guarantee Scheme (G/SCM/98)

El Salvador (G/SCM/N/99/SLV)

- Export Reactivation Law (G/SCM/99)

Panama (G/SCM/N/99/PAN)

- Tax Credit Certificate (G/SCM/100)

Thailand (G/SCM/N/99/THA)

- Industrial Estate Authority of Thailand (G/SCM/101)
- Board of Investment Programme (G/SCM/102)

206. There were no comments or questions raised.

207. The Chairperson proposed that the Committee conclude the review of those notifications. She noted that the Committee's understanding in respect of these programmes seemed to be that, with the expiry of the one-year extension on 31 December 2003, the final two-year phase-out period provided for under Article 27.4 would begin for each of these programmes on 1 January 2004.

208. Concerning the 2004 Article 27.4 notifications and review, the Chairperson proposed that, for 2004, the Committee follow the same deadlines and procedures as had been used in 2003. In particular, she proposed that the required notifications in respect of all programmes covered by Article 27.4 extensions, which included those programmes in the final two-year phase-out period, be submitted not later than 30 June 2004. She further proposed that any questions pertaining to such notifications be submitted by 1 September 2004, and that answers be submitted by 6 October 2004. The review of transparency and standstill thus would take place at the Committee's fall regular meeting. She asked whether this proposal was acceptable Members.

209. The Committee took note of the statements made and agreed to proceed accordingly.

O. WORKING PARTY ON SUBSIDY NOTIFICATIONS – (I) CHAIR'S REPORT ON 27 OCTOBER MEETING; AND (II) COMMITTEE DECISION ON ADOPTION OF THE REVISED NOTIFICATION FORMAT

210. The Chairperson recalled that the Working Party on Subsidy Notifications had met on 27 October 2003. The purpose of the meeting was to continue the discussion on further possible steps to facilitate notification by Members. The Chairperson recalled that she had drawn Members' attention to the list compiled by the Secretariat on the capital-based officials with the responsibility of subsidy notifications. She stated that it was expected that that list would serve Members' capital-based officials to get in touch with their counterparts, as necessary, to better understand the notification procedure and to improve the quality of subsidy notifications. She asked Members to inform the Secretariat (Ms. Hainsworth or Mr. Yano) of any updates or additions to the list. In this connection, the Chairperson reported to Members that Guatemala had kindly offered that its officer in charge of notifications could act as a kind of "regional hub". The United States had also kindly offered to have the officials on their list available to help other countries with the notification, in terms of offering advice and assistance over the telephone or even to arrange a visit to another Member to assist with the preparation of a subsidy notification. The European Communities had expressed its willingness to offer advice to foreign notification-related officials, as necessary, on an *ad hoc* basis. She thanked these delegations for their kind offer and asked Members to let the

Secretariat (Ms. Hainsworth or Mr. Yano) know if any other Members intended to follow those good examples.

211. The Chairperson stated that she continued the discussion on possible steps to facilitate notification, particularly on the possibility of amending the notification format. She stated that Members seemed to be close to agreeing on the revision of the format. She mentioned that she had made available the latest draft as faxed to Members in June 2003 and took into account the comments made in the Working Party on Subsidy Notifications' meeting on 27 October 2003. In particular, a footnote had been added to indicate that the document replaces G/SCM/6 and was without prejudice to the legal obligations in the SCM Agreement. She asked whether Members agreed on this draft.

212. As there were no requests to take the floor, the Chairperson stated that the revision would be adopted *ad referendum*, that is, unless any Member communicated its objection in paper by Friday, 7 November.

213. The Committee so agreed.¹⁷

214. The delegate of the United States said that his delegation wished to offer a suggestion with respect to the continuing work of the Working Party on Subsidy Notification. In the US' view the Working Party had accomplished many things, in terms of the timing of the notifications, and during the Committee meeting with respect to the revision of the notification format. The United States questioned whether Members should continue with the Working Party at this point. The United States would be willing to consider continuing with the Working Party provided additional new approaches that would be worthwhile pursuing were proposed by Members. Absent specific proposals to explore particular approaches, the United States considered that the work of the Working Party should be discontinued for the time being.

215. The delegate of Chile said that her delegation agreed with the United States regarding the Working Party's work and achievements. However, she stated that an end to this Working Party should not be decided so quickly. It was true that new approaches were needed. Members should have another opportunity, at least until the next meeting, so they could all think this through and see in what way the Working Group could be used. If the Committee came to the conclusion that this was not possible, then it would be a good idea to put an end to it.

216. The delegate of Costa Rica supported what the delegate from Chile had said. It was important and necessary to keep this Working Party alive for the time being. The Committee should have the opportunity to see what other issues the Working Party could look into.

217. The delegate of the European Communities agreed with previous speakers that the main task that the Working Party had was to work on subsidy notification formats, and that this objective would be achieved. He stated that the European Communities could go either way on the issue being discussed. However, if the Committee were unable to find new topics, the delegate pointed out that it would not be efficient just to keep the Working Party alive for the sake of having a Working Party.

218. The delegate of the United States stated that his delegation did not disagree with Chile and Costa Rica in the sense that, if there were additional new ideas that would be worthwhile pursuing, the United States would be willing to go forward. Absent new ideas, his delegation questioned whether it would be productive to move in that direction.

¹⁷ As no objections were received by that time, the revision was adopted and circulated in document G/SCM/6/Rev. 1.

219. The Chairperson thanked Members for their interventions. She said that, in the Working Party's meeting of 27 October 2003, she had asked Members to help her identify the areas where the Working Party could focus its work. However, she had not received much guidance from delegations on that. She said that there was some interest by some Members that the Working Party continue its work. Therefore, as far as the following meeting of the Working Party was concerned, she suggested that it be convened only if there was a new contribution or a document from Members which would allow Members to touch upon a matter in the Working Group. She said that this would be an incentive to all Members to think productively about new ideas for the Working Party.

220. The Committee took note of the statements made and agreed to proceed accordingly.

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

221. The Chairperson recalled that pursuant to the Doha Ministerial Decision on Implementation-Related Issues and Concerns (document WT/MIN(01)/17, para. 10.1), Ministers had agreed that Annex VII(b) to the Agreement includes the Members that are listed therein until their GNP per capita reaches US\$1,000 in constant 1990 dollars for three consecutive years. She stated that, as of 1 January 2003, the methodology set forth in G/SCM/38, Appendix 2 applies. As foreseen in that document, the Secretariat had circulated, in document G/SCM/110, updated calculations on the basis of the appropriate World Bank data. As indicated in the 14 October 2003 fax to Members, for transparency, Secretariat staff members had given an explanation of the methodology applied and were prepared to answer any technical questions on the application of the agreed methodology in calculating the results for 2000 and 2001. This had occurred at the 17 October 2003 informal consultations.

222. The Secretariat would circulate the next update, covering 2002, when the data concerned were received from the World Bank, which would most likely occur around mid-2004.

223. The Committee took note of the Chairperson's statement.

Q. PERMANENT GROUP OF EXPERTS – ELECTION OF EXPERTS

224. The Chairperson recalled that the Committee had to elect an expert to replace Professor Flores, with a five-year term from 2003-2008. She also recalled that, as of the deadline for submitting suggestions, two suggestions were received. Subsequently, as she informed Members in her fax dated 11 July 2003, Mr. Jorge Castro-Bernieri, who was elected to the PGE for the term 2001-2006, resigned from the PGE upon taking a position in the WTO Secretariat. She stated that, on the basis of the procedures agreed at the Committee's 8 May 2003 regular meeting, and the procedures outlined in the 11 July 2003 fax, Members agreed to elect both Mr. Yuji Iwasawa and Mr Terence Stewart to the Permanent Group of Experts. As had occurred in the past in similar circumstances, the issue of which of these expert's terms would expire in 2006, and which would expire in 2008, had been resolved by drawing lots within the Permanent Group of Experts. As a result of the drawing of lots, Mr. Iwasawa assumed the term until spring 2008 and Mr. Stewart assumed the term until spring 2006.

225. The Committee took note of the Chairperson's statement.

R. OTHER BUSINESS

226. There were no items raised under "Other Business".

S. DATE OF NEXT REGULAR MEETING

227. The Chairperson stated that the Committee agreed at its meeting of 21 February 1995 that regular meetings normally would be held in the last week of April and the last week of October. She stated that the Committee on Anti-Dumping Practices had the same schedule, as did the Safeguards Committee. In order to accommodate all three bodies' meetings, she proposed that the next regular meeting of the Committee be in the week of 26 April 2004.

228. The Committee so agreed.

T. ANNUAL REPORT TO THE COUNCIL FOR TRADE IN GOODS (ARTICLE 32.7)

229. The Committee adopted its annual report. The report was subsequently circulated in document G/L/655 and Corr.1.

230. The meeting was adjourned.
