the EEC requested the Committee on Subsidies and Countervailing Measures ("the Committee") to establish a panel to examine a dispute between the EEC and the United States regarding amendments to the definition of industry made in the United States Trade and Tariff Act of 1984 and concerning wine and grape products. review

the facts of the matter referred to the committee by the EEC in SCM/54 and, in the light of such facts, present to the Committee its findings concerning the rights and obligations of the signatories party to the dispute under the relevant provisions of the General Agreement as interpreted and applied by the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade".

1.4 The Panel met with the two parties on 19 November 1985 and 20 January 1986. In addition, the Panel met on 21 January, 25 February and 26 February 1986. On 26 February 1986 the Panel submitted its conclusions to the parties.

II. Factual aspects

2.1 Subtitle D (General provisions), Section 771 (Definitions; Special Rules) of the United States Tariff Act of 1930 was amended by the Trade and Tariff Act of 1984, Section 612(a)(1), to read as follows (new language is underlined):

"For the purposes of this title -

(4) INDUSTRY -

(A) IN GENERAL - The term "industry" means the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product; except that in the case of wine and grape Products subject to investigation under this title, the term also means the domestic producers of the principal raw agricultural product (determined on either a volume or value basis) which is included in the like domestic product, if those producers allege material

III. Main arguments

3.1 The US delegation in the first instance reaffirmed before the Panel the position which it had taken in the Committee deliberations that, in the sense of even the filing of a countervailing duty petition in the United States, the issue was purely hypothetical and not ripe for consideration by a panel. It agreed that when the US industry had filed a petition in September 1985, the

's negative determination of material injury on 28 October 1985. Termination of the countervailing duty investigation meant that no countervailing duties would be levied regardless of how the legislation at issue might have been interpreted domestically or internationally. In these circumstances, when the practical basis of the dispute had ended, the panel could appropriately conclude that the dispute was resolved without prejudice to the legal merits.

3.2 The US delegation recognized that US law left open the possibility of appeal of the USITC decision to US courts but it suggested that a fair solution would be to suspend the panel proceeding until such time, if any, as a countervailing duty investigation under the law at issue were resumed. The US delegation considered that any material EEC interests would be protected m in this way, since such an examination would be timely without being so clearly hypothetical or academic as the dispute at that time appeared to them. The matter contested by the EEC had, so far, no trade effects and the actual effect of application of the US law proved to be nil.

3.3 Expanding on this point, the US delegation argued that for a countervailing duty to be levied against any imports of EEC wine as a result of Section 612(a)(1) it would still require fulfilment of a string of conditions, none of which had yet been met. The courts would first have to find that the USITC erred in the standard applied in terminating the countervailing duty case at the stage of the preliminary determination. The investigation would have to resume. The Department of Commerce would have to find subsidization at the preliminary and final stage and the USITC would have to make a final affirmative determination of material injury caused by the subsidized imports. Even then, Section 612(a)(1) might still not be relevant, since the USITC might find, as was the case in the negative preliminary determination, that the US wine industry was suffering material injury regardless of whether wine-grape growers were included in the industry. The US delegation explained that the negative decision of the USITC in its preliminary determination was based on absence of an adequate causal link between imports and the material injury.

3.4 The EEC delegation considered that the Panel should continue its proceedings in accordance with its terms of reference since the basic issues at stake brought by the EEC before the Panel were not resolved by the USITC's recent decision. Furthermore, the EEC maintained its view that the interests of its exporters continued to be threatened by the existence of the US legislation. In any event, in the new case brought by the US grape growers, the EEC noted that an appeal to the US Court of International Trade requesting a reversal of the negative USITC decision had already been made by the complainants and that in a previous similar case involving the US wine industry, the Court of International Trade had ruled that the USITC had applied an excessively stringent injury test.

3.5 The EEC delegation also noted that provisions of the Trade and Tariff Act of 1984 which, in its view, violated the Code, might be renewed before their expiry at the end of September 1986. In addition, the EEC had observed that new legislative bills pending in the US Congress would seek to extend the concept of definition of industry under the countervailing duty statute so as to associate producers of raw agricultural products with processed agricultural products and even to associate producers of industrial components with producers of end-use industrial products.

3.6 The US delegation maintained that proposals for legislation by US Congressmen or the actual possible practice of other countries referred to by the EEC delegation were not within the panel's terms of reference. These other matters, however, might be a further reason, in the US view, for the panel to exercise caution in a difficult area of Code interpretation, and for the Committee members to examine the generic problem and attempt to

(i) the product "grape"

3.13 The US delegation considered that there was an obvious relationship between grapes and wine and that, even with modern wine-making techniques, wine was essentially grapes that had been crushed and allowed to ferment. The majority of grape varieties used in wine were grown for no other purpose than to produce wine. It also pointed out the differences in the structure of the wine industry in the EEC and the United States. In the EEC

the imports under investigation. Indeed, exclusion of wine-grape growers from the industry would make no difference in any case where the condition of the "independent" processor was the same as the farmer. On this basis, it argued that the whole issue raised by the EEC was of little consequence, even theoretically. However, the absence of any practical consequence in the dispute and the limited practical consequence of the issue even in theory was not a satisfactory reason to narrow the availability of relief from injurious subsidized imports.

3.17 The EEC delegation contested the US interpretation of Article VI of the General Agreement (see paragraph 3.12 above). The EEC delegation recalled that in 1959 the CONTRACTING PARTIES had already adopted a report which addressed Article VI and provided that "… as a general guiding principle, judgements of material injury should be related to … national output of the like commodity concerned". (BISD, 8S/150, paragraph 18). This principle had been subsequently incorporated in the Code under Article 6:5 and made more precise. The present text was unequivocal and left no possible room for doubt

totally different purposes. On the one hand, the definition of Article 9 which related to Article XVI of the General Agreement was designed to establish a broad categorization between certain primary products and other products in order to draw a simple dividing line between those products for which special rules relating to certain primary products applied and those which fell under the general disciplines of the Code. On the other hand, Article 6:5 which related to Article VI of the General Agreement was designed to determine the scope of the industry for the defence of which anti-dumping or countervailing duties might be applied. Article VI of the General Agreement constituted an exception to the general principles of Article I and therefore had to be subject to a narrow interpretation; in addition, by their very nature, anti-dumping and countervailing duties were