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GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Anti-Dumping Practices

MINUTES OF THE MEETING HELD ON 30 OCTOBER 1986

Chairman: Mr. R.G. Wright (Canada)

1. The Committee on Anti-Dumping Practices met on 30 October 1986.

2. The Committee adopted the following agenda:

   A. Adherence of further countries to the Agreement

   B. Examination of national legislation and implementing regulations (ADP/1 and addenda)

      (i) Legislation of Korea (ADP/1/Add.13/Rev.1)

      (ii) Legislation of Pakistan (ADP/1/Add.24 and ADP/W/117, 120 and 124)

      (iii) Legislation of India (ADP/1/Add.25 and ADP/W/118, 120 and 121)

      (iv) Legislation of Sweden (ADP/1/Add.2/Suppl.1 and ADP/W/119 and 122)

      (v) Legislation of Austria (ADP/1/Add.10/Rev.1)

      (vi) Legislation of Finland (ADP/1/Add.5/Suppl.2)

      (vii) Other legislation

   C. Semi-annual reports of anti-dumping actions taken within the period 1 July 1985-31 December 1985 (ADP/26/Add.3 and Add.6)

   D. Semi-annual reports of anti-dumping actions taken within the period 1 January 1986-30 June 1986 (ADP/30 and addenda)

   E. Reports on all preliminary or final anti-dumping actions (ADP/W/114, 116, 123, 125 and Corr.1, 127 and 132)

   F. Report of the Ad-Hoc Group on the Implementation of the Anti-Dumping Code (ADP/W/83/Rev.2)

   G. Annual review and report to the CONTRACTING PARTIES

A. Adherence of further countries to the Agreement

3. The Chairman informed the Committee that since its meeting of 23 April 1986 no further countries had accepted or acceded to the Agreement. He drew the attention of the Parties to documents ADP/27 and ADP/28 containing, respectively, a communication from Hong Kong regarding its status in the Committee on Anti-Dumping Practices, and a communication from New Zealand informing the Committee that on 9 June 1986 the Government of New Zealand had decided that it should accept the Agreement.

4. The representative of the United States requested a clarification of the nature of the communication from New Zealand contained in document ADP/28.

5. The observer for New Zealand explained that, while his Government had already decided that it should accept the Agreement, more time was needed to examine the existing anti-dumping legislation of New Zealand in the light of the provisions of the Agreement.

B. Examination of national legislation and implementing regulations (ADP/1 and addenda)

(i) Legislation of Korea (ADP/1/Add.13/Rev.1)

6. The Chairman recalled that on 26 March 1986 the Agreement had entered into force for Korea. The anti-dumping law and regulations of Korea had been circulated in document ADP/1/Add.13/Rev.1 of 9 October 1986.

7. The representative of Korea said that after Korea had accepted the Agreement, the Korean anti-dumping law (Article 10 of the Customs Act) and regulations (Article 4:2-7 and 4:17 of the Presidential Decree of the Customs Act) had been revised in order to implement the rules of the Agreement. He emphasized that in the conduct of anti-dumping investigations and in the application of anti-dumping duties his authorities would fully abide by the rules of the Agreement. He also invited other Parties to submit, in writing, any comments or questions they might have concerning the revised Korean anti-dumping law and regulations.

8. The representative of the United States said that, based on a preliminary examination of the Korean anti-dumping law and regulations, her delegation had a number of questions to ask. Firstly, she pointed to the fact that under Article 10:2 of the Customs Act a petition could be filed by "any person having an interest in the domestic industry" and she wondered how this complied with the requirement laid down in Article 5:1 of the Agreement that a petition be filed by or on behalf of the domestic industry affected. Secondly, she said that Article 10:2 of the Customs Act did not require the petitioner to present "sufficient evidence" of dumping as required by Article 5:1 of the Agreement. Thirdly, she noted that, while the Korean anti-dumping law allowed "interested parties" to request hearings and make written submissions, it was unclear whether this possibility also existed for exporters.

9. The representative of Korea replied that he would consult his authorities regarding the questions put by the representative of the United States.

10. The representatives of the EEC, Australia and Japan said they would submit written questions on the anti-dumping law and regulations of Korea.

11. The Chairman requested the Parties to submit their written questions to the secretariat by 19 December 1986 and concluded by saying that the Committee would revert to the legislation of Korea at its next meeting.

(ii) Legislation of Pakistan (ADP/1/Add.24 and ADP/W/117, 120 and 124)

12. The Chairman recalled that at its meeting of 23 April 1986 the Committee had started its examination of the anti-dumping legislation of Pakistan (Ordinance No. III of 1983). Written questions on the Pakistan anti-dumping law had been received from the United States (ADP/W/117), Australia (ADP/W/120) and the EEC (ADP/W/124). Furthermore, at the meeting in April the representative of Hungary had put a question on the meaning of Section 2:10 (ii) of the Ordinance.

13. The representative of Pakistan said he was in a position to reply to some of the questions that had been raised and that he would revert to the other questions at a later stage. He reiterated that the Pakistan anti-dumping law was a framework law and that the authority to make implementing rules, provided for in Section 11 of the Ordinance, had not yet been used. In making such rules his authorities would take into account comments from other Parties to the Agreement.

14. In reply to a question put by the United States (item 1 in ADP/W/117) the representative of Pakistan said that the implementing rules would contain detailed provisions on the method for establishing weighted averages envisaged in Section 2:7 of the Ordinance. The implementing rules would also lay down in detail the rules and procedures for the conduct of an anti-dumping investigation in case the country of export was not the country of origin of the product concerned (item 4 in ADP/W/117).

15. The representative of Pakistan noted that the United States, Australia and the EEC had raised some questions on the definition of the injury criterion in Section 3:1 of the Ordinance. In particular the question had been raised why that Section referred to "injury" and not to "material injury" (item 8 in ADP/W/117, item (ii)(a) in ADP/W/120 and item 1 in ADP/W/124). He explained that the word "injury" in Section 3:1 had the same meaning as "material injury" as these words were used in the Agreement; in this context he pointed out that Section 3:3 of the Ordinance contained a number of criteria which should be taken into consideration in a determination of injury under Section 3:1 and that these criteria were similar to those mentioned in Article 3:3 of the Agreement.

16. With regard to a question put by the United States on the type of preliminary investigation required before provisional measures could be taken (item 7 in ADP/W/117) the representative of Pakistan stated that the implementing regulations would specify the rules and procedures for the initiation and conduct of preliminary investigations.

17. Referring to a question put by the EEC on the method used for the calculation of a definitive anti-dumping duty (item 2 in ADP/W/124) the representative of Pakistan stated that this would be laid down in more detail in the implementing rules. Furthermore, regarding the term "as [the Federal

Government] may think fit (Sections 3:1 and 4:1 of the Ordinance) he said that this term should not be interpreted as permitting any arbitrariness in the determination of the level of provisional duties; such duties would be limited to the margin of dumping found in the preliminary investigation.

18. In reply to a question put by the EEC on Section 4:2 of the Ordinance (item 3 in ADP/W/124) the representative of Pakistan said that the term "soon after the issue of the notification" meant a reasonably short period after the issue of a notification of the application of final duties. The term "[customs officer] shall pass orders for the difference" meant that the customs officer should pass orders in accordance with the relevant provisions in Article 11 of the Agreement.

19. Referring to a question put by the EEC on the type of evidence required for a publication under Section 6:1 of "a notice that an additional duty is proposed to be levied" (item 4 in ADP/W/124) the representative of Pakistan said that Section 6 had to be read in conjunction with Section 3; consequently a notice under Section 6:1 could only be published after consideration of the evidence of dumping and consequent injury or threat thereof to the domestic industry.

20. The representative of Pakistan, referring to a question put by Australia (item (iii)(a) in document ADP/W/120), said it was not correct to interpret Section 6 of the Ordinance as requiring that an investigation be terminated within thirty days from the opening of the investigation; the period of thirty days mentioned in Section 6:2 concerned the period within which interested parties could exercise the right to make comments and did not set a time limit to the conduct of the investigation.

21. In reply to a question put by Australia on the provisions for a review contained in Section 7 of the Ordinance (item iv in ADP/W/120) the representative of Pakistan said that his authorities were not contemplating any provisions for a review after the expiration of the period of fifteen days mentioned in that Section as the Agreement did not require a review at a later date. However, if practical experience would indicate the need for reviews at a later date his authorities would reconsider this issue.

22. Regarding a question put by the EEC and Australia on the possibility of price undertakings (item 5 in ADP/W/124 and item (iii) (d) in ADP/W/120) the representative of Pakistan said that the fact that the Ordinance was silent on the use of price undertakings did not mean that they were ruled out. The implementing rules would contain provisions on such price undertakings in accordance with Article 7 of the Agreement.

23. The representatives of the United States, the EEC and Australia expressed their appreciation for the answers provided by the representative of Pakistan. They indicated they needed more time for further reflection and requested the representative of Pakistan to provide written copies of the answers. In addition they said they were interested in obtaining the implementing regulations.

24. The Chairman invited the representative of Pakistan to provide a written text of the answers he had given and concluded by saying that the Committee would revert to the legislation of Pakistan at its next meeting.

(iii) Legislation of India (ADP/1/Add.25 and Corr.1, ADP/W/118, 120 and 121)

25. The Chairman recalled that at the meeting of 23 April 1986 the Committee had begun to examine the anti-dumping law and regulations of India (The Customs Tariff (Second Amendment) Act of 1982 and the related Customs Tariff Rules of 1985). Written questions on the Indian anti-dumping legislation had been received from the United States (ADP/W/118), Australia (ADP/W/120) and the EEC (ADP/W/121). In addition at the meeting in April the representative of Hungary had put a question on item b(ii) on page 5 of document ADP/1/Add.25 and the representative of Switzerland had asked a question on Section 7(2)(b) and 7(2)(c) of the Customs Tariff Rules.

26. The representative of India first replied to a number of questions that had been put by the United States (ADP/W/118). Two questions raised by the United States concerned the definition of "domestic industry" in Section 2(c) of the Customs Tariff Rules as "the domestic producers as a whole engaged in the manufacture or production of the same or like articles and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in which case such producers shall be deemed not to form part of domestic industry". The United States had requested a clarification of the meaning of the term "and any activity connected therewith" and asked how the inclusion of such "connected activities" related to Article 4:1 of the Agreement which defines the concept of domestic industry in terms of producers of the like product. In addition the United States had asked why Section 2(c) of the Customs Tariff Rules mandated the exclusion from the domestic industry of producers who are also importers. In reply to the first question, the representative of India said that the definition of industry in Section 2(c) was intended to make clear that the activities of the domestic producers related to manufacture or production, as well as activities connected with manufacture or production such as sales should be taken into account. If the concept of industry were interpreted in a narrow manner as including only activities of the domestic producers within factory premises related to manufacture or production it might not be possible to safeguard the interests of the domestic industry as a whole. The definition of industry in Section 2(c) had also to be seen in the light of the provisions of the Agreement relating to the determination of injury. In this regard he referred in particular to Article 3:5 and said that this provision made it clear that the impact of dumped imports on sales of the industry concerned was an important element in the consideration of injury. With regard to the second question put by the United States on the exclusion from the domestic industry of producers who were also exporters, he said that the mandatory exclusion of such producers as provided for in Section 2(c) was not in conflict with Article 4:1(i) of the Agreement.

27. A third question which had been put by the United States in ADP/W/118 concerned the definition of the injury standard in the Indian anti-dumping legislation. In particular the United States had asked why some provisions of the Indian legislation referred to "injury to any established industry in India" and if this implied that injury to any industry, even an industry not engaged in the production of the like or most similar product, would be sufficient to justify the imposition of anti-dumping duties. The

representative of India said that Section 2 of the Customs Tariff Rules defined the concept of domestic industry and that this definition was also applicable to those provisions dealing with the determination of injury. It was therefore not correct to draw the conclusion that injury to an industry which was not engaged in the production of like products could justify the imposition of anti- dumping duties.

28. The fourth question put by the United States in ADP/W/118 concerned Section 21:2 of the Customs Tariff Rules which required that anti-dumping duties be imposed on a non-discriminatory basis. The United States had asked whether this provision meant that India would apply an across-the-board anti-dumping duty to all firms and all countries. The representative of India replied that this non-discrimination requirement applied only to all imports found dumped and, where applicable, causing injury. In this context he also drew attention to Section 21:1 of the Customs Tariff Rules and to Article 8:2 of the Agreement.

29. The representative of India provided the following answers to questions which had been put by the EEC (ADP/W/121). Regarding the first question put by the EEC whether Section 9 A(i) of the Customs Tariff Act permitted the imposition of provisional duties before any preliminary finding had been made he referred to Section 13 of the Customs Tariff Rules which provided for the application of provisional duties after a preliminary finding of dumping and, where applicable, injury, on the basis of the "best" information available to the investigating authorities. With respect to the second question asked by the EEC (in ADP/W/121) he pointed out that under Section 15:2(b) of the Customs Tariff Rules an investigation could be terminated or suspended if the exporters undertook to revise prices so as to eliminate the injurious effect of dumping. A third question which had been put by the EEC was whether an exporter from a country to which Section 9 A of the Customs Tariff (Second Amendment) Act applied could ask for a final determination of injury and what would be the consequences of a negative final determination of injury. The representative of India replied that Section 9 A of the Act did not provide for injury determinations; such determinations were subject to Section 9 B. Final determinations of injury for exporters from countries to which Section 9 B of the Act applied were provided for in Section 16 of the Customs Tariff Rules. From Section 16(b) it could be concluded that an exporter from such a country did not have to request that a final determination of injury be made as this was mandatory. Furthermore, Section 19:2 of the Customs Tariff Rules provided that if the final determination of injury was negative the designated authority should terminate the investigation and that the Central Government should refund any provisional duty or additional duty collected to the party concerned.

30. The representative of India then replied to a question put by Australia on Section 15:1 of the Customs Tariff Rules (ADP/W/120, item 2). This Section, inter alia, provided for the suspension or termination of an investigation "at the discretion" of the designated authority when, in the course of an investigation, the designated authority was satisfied that there was not sufficient evidence of dumping or, where applicable, injury to justify continuation of the investigation. The delegation of Australia had asked how this provision complied with Article 5:3 of the Agreement which provides that in such a case the investigation shall be terminated. The representative of India replied that in the circumstances mentioned in

Section 15:2(h) the designated authority would certainly exercise the option of terminating the investigation as there would be no other option.

31. With respect to a question put by the representative of Hungary at the meeting of 23 April 1986 (ADP/M/17, paragraph 15), the representative of India said that item b(ii) on page 5 of document ADP/1/Add.25 did not cover cases referred to in paragraph 2 of the Note to Article VI of the General Agreement.

32. At the meeting of the Committee on 23 April 1986 the representative of Switzerland had asked why paragraphs 2(b) and 2(c) of Section 7 of the Customs Tariff Rules contained the words "where applicable" (ADP/M/17, paragraph 16). The representative of India explained that Section 9 B (2) of the Act made it clear that the injury test was applicable to certain countries only; the words "where applicable" in Section 7 of the Customs Tariff Rules had to be interpreted in the light of Section 9 b (2) of the Act.

33. The representative of the United States reiterated his concerns about the definition of industry in the Indian anti-dumping legislation and in particular the reference to "any activity connected therewith". In his view the reference in Article 3:3 of the Agreement to "sales" should be interpreted in the light of the provisions of Articles 3:1 and 4:1 which limited the meaning of the term "domestic industry" to the domestic producers of the like product. Secondly, he asked whether under the Indian legislation provisional duties could be imposed on the basis of the best information available without there having been any preliminary investigation in which exporters could defend their interests.

34. The representative of Australia said he was pleased to hear that under Section 15 of the Customs Tariff Rules the Indian authorities would terminate an investigation if there was no evidence of injury. He suggested that if in such a case the investigating authorities had no other option than to terminate the investigation, the words "at its discretion" were unnecessary.

35. The representative of the EEC shared the concerns expressed by the representative of the United States about the definition of domestic industry in the Indian anti-dumping legislation; he noted with interest that the United States was of the view that this concept only included domestic producers of the like product.

36. The representative of India said he would like to revert to the issue of the criteria and procedures for the imposition of provisional duties after seeking clarification from his authorities.

37. The Chairman thanked the representative of India for the responses he had provided and concluded by saying that the Committee would revert to the legislation of India at its next meeting.

(iv) Legislation of Sweden (ADP/1/Add.2/Suppl.1 and ADP/W/119 and 122)

38. The Chairman recalled that at its meeting of 23 April 1986 the Committee had begun its examination of the Ordinance on Dumping and Subsidy Investigations (ADP/1/Add.2/Suppl.1). Written questions on this Ordinance

had been put by the United States (ADP/W/119) and the EEC (ADP/W/122). Furthermore, at the meeting in April the representative of Canada had requested further clarification with regard to the method used by the Swedish authorities to determine normal values and export prices.

39. The representative of Sweden said his delegation had provided written replies to the questions put by the United States and the EEC (ADP/W/131). As for the question of the Canadian delegation he considered that he had already replied to this question at the meeting in April.

40. The representative of the EEC expressed his appreciation for the fact that Sweden had replied in writing; he would like to further reflect on those replies and have the possibility to revert to them at the next meeting of the Committee.

41. The Chairman concluded that the Committee would retain the anti-dumping legislation of Sweden on the agenda for its next meeting.

(v) Legislation of Austria (ADP/1/Add.10/Rev.1)

42. The Chairman said that at the meeting in April the Committee had continued its examination of the Austrian Anti-Dumping Law of 1985 on the basis of questions which had been put at the meeting of October 1985 and further questions in writing that had been received from Romania and the Nordic countries. Although the representative of Austria had replied in detail to many of the questions that had been asked, certain delegations had requested further clarification on some issues (ADP/M/17, paragraphs 28 and 29).

43. As there were no further comments or questions on the legislation of Austria, the Chairman concluded that the Committee had terminated its examination of this legislation.

(vi) Legislation of Finland (ADP/1/Add.5/Suppl.2)

44. The Committee had before it document ADP/1/Add.5/Suppl.2 reproducing the text of an amendment to the Finnish Act on Prevention of Dumping and Subsidized Imports. This amendment concerned the use of various alternative methods to calculate normal values.

45. The representative of Finland recalled that the Finnish Anti-Dumping Law had been notified in March 1980. Article 6 of that law contained the methods for the calculation of normal values as provided for in Article 2 of the Agreement. Subsequently, it had been considered necessary by his authorities to supplement the methods for the calculation of normal values laid down in Article 6 of the law with the alternative methods provided for in Article 15 of the Agreement on Subsidies and Countervailing Measures. As a result of the enactment of an additional Article 6a which introduced those methods into Finnish domestic law, Finland was now able to take anti-dumping action against all dumped imports. The new provision had entered into force on 1 August 1986.

46. The Committee took note of the statement made by the representative of Finland.

(vii) Other legislation

(a) Legislation of Singapore

47. The Chairman recalled that in April 1986 the representative of Singapore had informed the Committee that her authorities were drafting an anti-dumping law.

48. The representative of Singapore said she had no additional information to provide; her authorities were still examining a first draft of an anti-dumping law and the Committee would be informed as soon as this law had been finalized.

(b) Legislation of Australia

49. The Chairman said that at the meeting held in April 1986 the Committee had been informed by the representative of Australia that at the request of his Government a review of the operation of the Customs Tariff (Anti-Dumping) Act was being conducted by an academic expert. One of the issues to be considered in this review was the desirability of the introduction of a "national interest" clause. Copies of the report containing the results of this review had been made available to interested delegations for consultation in the GATT secretariat (ADP/W/128).

50. The representative of Australia said the report was now before his Government and he expected that a decision on the recommendations contained in this report would be taken shortly. He would provide further information as soon as his Government had taken a decision on the report.

51. The Committee took note of the statement by the representative of Australia.

(c) Legislation of the United States

52. The representative of India noted that at its meeting held in April 1986 the Committee had agreed to terminate its examination of the anti-dumping legislation of the United States (ADP/M/17, paragraph 39). He recalled that not only in the Committee but also in the Ad-Hoc Group where this issue was presently being examined, his delegation had expressed its serious concerns regarding the issue of mandatory cumulative injury assessment and asked whether the fact that the United States anti-dumping legislation had been dropped from the Committee's agenda meant that there had been no pronouncements on the conformity or otherwise of this practice with the provisions of the Agreement. In this connection he also referred to the semi-annual report submitted by the United States for the period 1 July 1985-31 December 1985 (ADP/26/Add.6) which included a number of cases in which imports from a particular country subject to an anti-dumping investigation accounted for as little as 0.1 per cent of domestic consumption in the United States of the product concerned. Furthermore, in one case the percentage of allegedly dumped imports from the country concerned amounted to only 0.005 per cent. In his view anti-dumping measures with respect to countries with such small market shares constituted a form of trade harassment. He wished to know whether the United States had satisfied itself in such cases that, before applying anti-dumping duties, it had

explored the possibilities of constructive remedies, as provided for by Article 13 of the Agreement. Moreover in general he asked how the United States anti-dumping law and regulations reflected the provisions of Article 13.

53. The Chairman said that while it had indeed been agreed to drop the anti-dumping legislation of the United States from the agenda of the Committee, he had also indicated at the meeting in April that the Committee would maintain, as a general item on its agenda, the possibility for Parties to raise any question on the legislation of other Parties.

54. The representative of the United States said his country recognized that Article 13 was part of the Agreement. He considered that the United States had explored constructive remedies before applying duties; however, given the mandatory nature of the United States anti-dumping law and most factual circumstances his authorities considered that in general duties were the appropriate remedy. With respect to the question of cumulative injury assessment, he said that it was the cumulative impact of dumped imports that was important in an investigation, and that where imports from a particular source were small such imports could nevertheless have contributed to the overall harm to the United States industry.

55. The representative of India said that his delegation was not entirely satisfied that the United States had made every effort to explore constructive remedies. In his view the mandatory nature of United States law led to extremes. He suggested that the United States authorities should reconsider their position on what they regarded as "de minimis" imports and give special regard in this respect to the interests of developing countries.

56. The representative of the United States said that the Ad-Hoc Group on the Implementation of the Anti-Dumping Code was considering the question of the application of Article 13 of the Agreement. He noted that the Indian anti-dumping legislation did not contain any provision for differential treatment of other developing countries and said that it would be useful to examine how all Parties were applying Article 13.

57. The representative of India replied that Article 13 provided for special regard to be given by developed countries to the special situation of developing countries; he further pointed out that the concept of special and differential treatment of developing countries, as used in GATT, concerned an obligation of developed countries towards developing countries.

58. The Committee took note of the statements made.

59. The Chairman said that the Committee would maintain the item "Other legislation" on its agenda in order to allow the Parties to revert to particular aspects of national anti-dumping laws at a later stage, e.g. in the light of the actual implementation of such laws.

C. Semi-annual reports of anti-dumping actions taken within the period 1 July 1985-31 December 1985 (ADP/26/Add.3 and Add.6)

Sweden (ADP/26/Add.3)

60. The Chairman recalled that at its meeting in April 1986 the Committee had examined a semi-annual report submitted by Sweden; as some questions had

been raised concerning an anti-dumping investigation involving wood particle board from Poland and Czechoslovakia the Committee had decided to revert to this report at its next meeting.

61. The representative of Poland made the following points with respect to the Swedish anti-dumping investigation on imports of wood particle board. Firstly, she recalled that the investigation had been opened on 15 August 1985 and that the Polish exporter concerned had received a questionnaire on 26 August 1985. However, prior to the expiration of the period within which the exporter had to reply to the questionnaire the Swedish authorities had imposed a provisional duty. This decision to impose a provisional duty had been based only on information supplied by the petitioner and was therefore in conflict with Article 6 of the Agreement. Secondly, for the purpose of the determination of injury the Swedish authorities had cumulated imports from Poland with imports from other sources and this seemed to point to a discrepancy between the views expressed by the Nordic countries on the problem of cumulative injury assessment in the Ad-Hoc Group and the Swedish practice. Thirdly, the provisional duty, imposed on 1 October 1985, had remained in force for more than five months which was not in conformity with Article 10:3 of the Agreement. It was clear that this action had a significant impact on the interests of the Polish exporter and she therefore reserved all the rights of her Government under the Agreement and in particular under Article 15. Fourthly, she pointed to the fact that the Swedish authorities had used Norwegian prices in the determination of normal value. She considered that Norway was not a country of a comparable level of economic development and that prices prevailing in Norway were much higher than those prevailing in Poland. It was therefore inappropriate and unfair to take Norway as the country of comparison. Moreover, the Polish exporter had suggested to the Swedish authorities that they use Swedish prices in the determination of normal value; this suggestion had been based on an offer received by the Polish exporter from a Swedish exporter of the same product at the time of the filing of the anti-dumping complaint. The prices offered by this Swedish exporter were similar to those prevailing in Poland. Fifthly, she said that this case had caused much harm and that in 1986 Polish exports to Sweden of wood particle board would not exceed 5 per cent of the level of 1984. Finally she stated that her Government was still examining certain provisions of the anti-dumping law of Sweden in the light of their actual implementation and she therefore requested that the Swedish legislation be retained on the agenda for the next meeting of the Committee. She also requested the Swedish representative to explain why Sweden had not notified the measures it had taken in this case in its semi-annual report for the period 1 January 1986-30 June 1986 (see ADP/30/Add.1).

62. The Chairman recalled that under item 2(B) of the agenda the Committee had already agreed to revert to the legislation of Sweden at its next meeting.

63. The representative of Sweden said that many of the issues raised by the representative of Poland had been discussed at the meeting held in April 1986; he was of the view that at that meeting he had already replied to most of the comments made on this case. He said that prior to the formal initiation of the anti-dumping investigation on wood particle board an informal investigation had been carried out by the relevant authorities; consequently, when the investigation was formally opened (15 August 1985)

much information had already been gathered and the evidence of injury was sufficiently strong to justify the application of a provisional duty. During the informal investigation there had been contacts with the Polish exporter and it was therefore incorrect to say that the decision to impose a provisional duty had been based only on the information supplied by the petitioner. On the issue of cumulative injury assessment he said that Sweden had acted in conformity with the letter and the spirit of the Agreement. In this case it had been impossible to make a separate assessment of injury caused by imports from Poland and injury caused by imports from Czechoslovakia. With regard to the duration of the provisional duty he said that this duty had been introduced on 1 October 1985 and revoked on 1 February 1986 which was in conformity with the Agreement. Finally, he stated that the selection of Norway as the country of comparison for the purpose of the normal value calculation was consistent with the Agreement.

64. The representative of Czechoslovakia said he understood that a definitive decision on this case had not yet been taken; he had been informed that the exporters were negotiating an undertaking with the Swedish authorities. He reserved the right to revert to this matter at the next meeting of the Committee.

65. The representative of Sweden said that Sweden had notified that it had not taken any anti-dumping action within the period 1 January 1986-30 June 1986; the provisional duty on wood particle board had expired and no further measures had been taken in this case.

66. The representative of the United States said it would have contributed to more transparency if Sweden had notified the expiration of the provisional duty.

67. The representative of Sweden said he regretted that his country had not notified the Committee that the provisional duty had expired on 1 February 1986.

68. The representative of Finland, speaking on behalf of the Nordic countries, said that this case raised the interesting question whether Parties were under any obligation to notify the expiry of anti-dumping measures. He noted that in general Parties did not notify the expiry of anti-dumping measures and said that in view of the comments made by other delegations on this particular case it would be useful to clarify in the Committee what were the obligations of Parties in this respect.

69. The Chairman said he was not aware of any obligation in the Agreement to notify the expiry of anti-dumping measures.

70. The representative of the United States said that, although she did not disagree with the view expressed by the Chairman, in this particular case involving an investigation which should have come to completion not later than in August 1986, it would have been helpful for the Committee to know that the provisional duty was no longer in force.

71. The Committee took note of the statements.

United States (ADP/26/Add.6)

72. The representative of Yugoslavia said the report of the United States was very long which could give rise to the impression that the United States was using its anti-dumping procedures for protectionist reasons. She referred to a number of cases in which anti-dumping duties had been in force for more than two or three decades and asked what were the procedures for review and revocation of such cases. Furthermore, she requested an explanation of the fact that in a number of cases, many of which involved imports from developing countries, no preliminary or final measures were reported even though a considerable period of time had elapsed since the opening of the investigation. She wondered why such investigations, which apparently did not reveal sufficient evidence to justify the application of preliminary or final measures, were not terminated. In addition she pointed out that cases reported in ADP/26/Add.6 in which a final determination of "no injury" had been made involved only imports from developed countries. She urged the United States to take into account the special interests of developing countries when conducting an anti-dumping investigation.

73. In response to the comments made by the representative of Yugoslavia the representative of the United States said that the report submitted by her country was long because many exporters were dumping in the United States which she explained, inter alia, by the size of the US market and exchange rate fluctuations. In filing anti-dumping duty petitions the United States domestic industries were simply using the law which was in accordance with the Agreement. As regards the duration of anti-dumping measures she said that the United States anti-dumping law contained strict provisions for the conduct of annual administrative reviews upon request and for the revocation of anti-dumping measures. If the report submitted by her country contained cases in which no definitive duties were indicated this had to be explained by the fact that the investigations in question had been initiated towards the end of the reporting period and that, consequently, final determinations had not yet been made. The final outcome of such investigations would then be reported in the report for the next period. Finally, she denied that only in cases concerning imports from developed countries final findings of no injury had been made; in this connection she referred in particular to a case in which such a finding had been made with respect to allegedly dumped imports from Yugoslavia.

74. The representative of Sweden said it was not true that the United States authorities always carried out an annual administrative review if requested to do so.

75. The representative of the United States requested the representative of Sweden to explain this comment; she could not think of any case in which her authorities had not carried out a review after receipt of a request for such a review.

76. The representative of Sweden said he would discuss this issue with the United States on a bilateral basis.

77. The Committee took note of the statements.

D. Semi-annual reports of anti-dumping actions taken within the period 1 July 1986-30 June 1986 (ADP/30 and addenda)

78. The Chairman said that an invitation to submit semi-annual reports under Article 14:4 of the Agreement for the period 1 January 1986-30 June 1986 had been circulated in ADP/30. Responses to this request had been circulated in addenda to ADP/30. The following Parties had notified the Committee that they had not taken any anti-dumping action during the first six months of 1986: Austria, Brazil, Czechoslovakia, Egypt, Finland, Hong Kong, Hungary, India, Japan, Norway, Pakistan, Romania, Singapore, Sweden, Switzerland and Yugoslavia (ADP/30/Add.1/Rev.1). Anti-dumping actions had been notified by Australia, Canada, the EEC, Korea and the United States (ADP/30/Add.2-6). No report had been received from Spain.

79. The Committee examined the reports in the order in which they had been circulated:

Canada (ADP/30/Add.2)

80. The representative of the EEC said he would appreciate it if future reports submitted by Canada would indicate the rates of the definitive duties imposed.

81. The representative of Canada replied that his delegation would provide the rates of definitive duties in future reports.

Korea (ADP/30/Add.3)

82. No comments were made on this report.

Australia (ADP/30/Add.4)

83. No comments were made on this report.

United States (ADP/30/Add.5)

84. The representative of the EEC said that in a number of cases the market share of dumped imports had not been indicated; he would appreciate it if in future the Committee could be provided with sufficient information in this regard.

85. The representative of the United States said that her authorities were doing their best to provide as complete a report as possible; the only cases in which market shares were not indicated were cases in which such information was confidential. There was therefore not much more that the United States could do in this regard.

EEC (ADP/30/Add.6)

86. The representative of Finland, speaking on behalf of the Nordic countries, referred to page 5 of the report submitted by the EEC which contained a list of anti-dumping measures in force on 1 September 1986; he said it would be useful if this list contained additional information as regards the type of measure applied (provisional duty, definitive duty or price undertaking) and the date of entry into force of the measures.

87. The representative of Japan said that the Commission of the European Communities had recently published guidelines concerning the reimbursement of anti-dumping duties. His authorities were very interested in these guidelines and he therefore requested the EEC to notify the guidelines to the Committee.

88. The representative of the EEC said that in fact the information requested by the representative of Finland on behalf of the Nordic countries was already contained in previous reports submitted by the EEC. However, his delegation would try to meet the request of the representative of Finland in its next semi-annual report. In response to the request by the representative of Japan he said that the EEC would submit the guidelines on reimbursement of anti-dumping duties to the Committee (see document ADP/1/Add.1/Suppl.4).

89. The representative of Spain said that anti-dumping measures on imports into Spain had to be decided at the Community level; consequently he considered that the notification submitted by the EEC also covered Spain. As Spain was no longer competent to decide on the application of anti-dumping measures his country would not submit semi-annual reports on such measures. With respect to the fact that Spain was still a Party to the Agreement he said that the Agreement had been ratified by the Spanish Parliament and that the procedures required by the Spanish domestic law for the withdrawal from the Agreement would take some time.

90. The Committee took note of the statements.

91. The Chairman drew the attention of the Parties to document ADP/W/129 which contained a proposal for a revised standard form for the semi-annual report. This revised form was intended to achieve more consistency and uniformity among the reports submitted by the Parties. He referred in particular to the following issues. Firstly, in column 3 of the report a distinction should be made between the opening of a new investigation on a product which is not subject to an existing anti-dumping measure, and the opening of an investigation in the context of a review procedure. Secondly, column 5 should contain the dates on which definitive duties had entered into force rather than the dates on which final affirmative findings of dumping had been made. Thirdly, the list of outstanding measures should not include provisional duties. Finally, the list of outstanding measures should contain measures in force at the end of the reporting period rather than measures in force at the time of the submission of the report to the Committee.

92. The Chairman proposed that the Committee adopt the proposal contained in ADP/W/129; it was so agreed (see document ADP/31).

E. Reports on all preliminary or final anti-dumping actions (ADP/W/114, 116, 123, 125, 125/Corr.1, 127, 127/Add.1 and 132)

93. The Chairman said that reports on all preliminary or final anti-dumping actions had been received from Australia, Canada, the EEC and the United States.

94. No comments were made on this item.

F. Report of the Ad-Hoc Group on the Implementation of the Anti-Dumping Code (ADP/W/83/Rev.2)

95. The Chairman recalled that at its meetings held in October 1985 and April 1986 the Committee had before it a draft recommendation on input dumping which had been submitted to the Committee by the Ad-Hoc Group (ADP/W/83/Rev.2). In view of the fact that some delegations, in particular those of the United States and Hong Kong, had indicated that they were not in a position to agree to the adoption by the Committee of this draft recommendation, the Committee had decided to revert to this issue at its next meeting.

96. The representative of the United States stated that, although the United States authorities in practice did not take anti-dumping measures against input dumping practices, there were various reasons, including political reasons, why the United States could not agree to the adoption of the draft recommendation on input dumping.

97. The representatives of Hong Kong and of Singapore stated that they were not in a position to adopt the draft recommendation on input dumping.

98. The Chairman concluded that the Committee would revert to this issue at its next meeting.

99. The Chairman informed the Committee that the Ad-Hoc Group had met on 24 April and 29 October 1986. The Group had examined in detail papers that had been submitted by delegations on the following issues: the use of price undertakings in anti-dumping procedures involving imports from developing countries; revision and termination of an undertaking; constructed value. He said that the Group had made some progress on some of these issues and that he hoped that at the meeting of the Committee in spring 1987 he could submit draft recommendations to the Committee. The Chairman further said that at its meeting of 24 April 1986 the Ad-Hoc Group had requested him to undertake informal consultations with interested delegations in order to explore the possibilities to find a common approach to the question of cumulative injury assessment. In those consultations some delegations had reiterated their view that the Agreement did not prohibit a cumulative assessment of injury while other delegations had taken the view that the absence of any express provision on this issue in the Agreement could not be interpreted to mean that a cumulative injury assessment was permitted. He considered that the Group should continue to work on this issue but that it also needed to be examined in a wider framework.

100. No further comments were made on this item.

H. Annual review and report to the CONTRACTING PARTIES

101. The Committee adopted its report to the CONTRACTING PARTIES (document L/6081).

Date of next meeting

102. The Chairman said that, in accordance with the decision taken by the Committee at its meeting in April 1981 (ADP/M/5, paragraph 51), the next regular session of the Committee would take place in the week of 4 May 1987.