

GENERAL AGREEMENT ON

RESTRICTED

ADP/M/29

19 October 1990

TARIFFS AND TRADE

Special Distribution

Committee on Anti-Dumping Practices

MINUTES OF THE MEETING
HELD ON 25 SEPTEMBER 1990

Chairman: Mr. Maamoun Abdel-Fattah (Egypt)

1. The Committee held a special meeting on 25 September 1990.
2. The Committee discussed the following items:
 - (1) Report of the Panel: United States - Imposition of anti-dumping duties on imports of seamless stainless steel hollow products from Sweden. (ADP/47)
 - (2) Request by Finland for the establishment of a Panel under Article 15:5 of the Agreement. (ADP/49)

Report of the Panel: United States - Imposition of anti-dumping duties on imports of seamless stainless steel hollow products from Sweden (ADP/47)

3. The Committee had before it in document ADP/47 the Report of the Panel regarding the imposition by the United States of anti-dumping duties on imports of seamless stainless steel hollow products from Sweden. The Chairman recalled that the proceedings under Article 15 of the Agreement with respect to this matter started in July 1988 when the delegation of Sweden requested bilateral consultations under Article 15:2 with the United States. Following the failure to reach a mutually satisfactory solution during these consultations, the Swedish delegation then requested a conciliation meeting under Article 15:3 of the Agreement (document ADP/M/23) which took place in October 1988. Subsequent to a request made by the delegation of Sweden in December 1988, the Committee held a special meeting in January 1989 at which it decided to establish a Panel in this dispute (document ADP/M/25). The terms of reference and composition of this Panel were communicated to the Parties of the Agreement in April 1989 (document ADP/43).
4. Mr Crawford Falconer (New Zealand) introduced the Panel Report to the Committee on behalf of the Chairman of the Panel, Mr. Jacques Bourgeois. The Panel had met with the two parties to the dispute on 25-26 May and on 20-21 July 1989, and had heard the delegation of Canada on 25 May 1989. Written submissions as well as factual information provided by the parties in response to specific questions by the Panel had formed the basis for its

examination of the disputed issues. The Panel had submitted its findings and conclusions to the two parties on 25 July 1990, and had also informed them that the full Report would be circulated to the members of the Committee if no mutually satisfactory solution was reached by 17 August 1990. The Panel decided to release the Report to the Committee when on that date it learnt that no progress had been made in resolving the issue. As to the findings of the Panel Report, he quoted paragraph 5.23 of the Report:

"The Panel concluded that the initiation, announced on 17 November 1986, by the United States of an anti-dumping investigation of imports of stainless steel hollow products from Sweden was inconsistent with the obligations of the United States under the first sentence of the Agreement. As a consequence, the imposition of anti-dumping duties by the United States on imports of seamless stainless steel hollow products from Sweden was not in conformity with Article 1 of the Agreement and had resulted in prima facie nullification of impairment of benefits accruing to Sweden under the Agreement."

As to the Panel's recommendations, he quoted paragraph 5.24 of the Report:

"The Panel suggests that the Committee on Anti-Dumping Practices request that the United States revoke the anti-dumping duties imposed on seamless stainless steel hollow products from Sweden and reimburse the anti-dumping duties paid."

During the proceedings a range of issues had been raised including the interpretation of the terms of reference of the Panel, the standard of review to be applied by the Panel, the initiation of the investigation and the determinations of dumping and injury that had been made by the relevant authorities of the United States. The number and the complexity of the points raised, he explained, had delayed the completion of the Panel's work. While the Panel had considered all these issues, it had decided to make findings only on the question of the initiation of the investigation, as explained in paragraphs 5.20 to 5.22 of the Report. Article 1 of the Agreement provided that inter alia an anti-dumping action could be taken "only under the circumstances provided for in Article VI of the General Agreement and pursuant to investigations initiated and conducted in accordance with the provisions of this Code". In the view of the Panel, the initiation of this investigation had been inconsistent with Article 5:1 of the Agreement and thus represented a violation of an essential procedural requirement which could not be fulfilled at a later stage. Consequently, the anti-dumping duties imposed as a result of this investigation represented an infringement of Article 1 of the Agreement. In light of this conclusion, the Panel had not found it necessary to make rulings on the complaints voiced by Sweden regarding the determinations of dumping and injury made by the relevant United States' authorities.

5. The representative of Sweden expressed his Government's appreciation to the Panel for its Report. The Report contained well-reasoned and correct conclusions. The Panel had clarified the interpretation of the provisions of Article 5 of the Agreement which related to the initiation of anti-dumping investigations. These provisions were extremely important as they provided a form of protection to exporters against the use of unfounded petitions for anti-dumping measures. His delegation had also hoped for a ruling regarding the United States' determinations of dumping and injury, as described in section 3 of the Report, so that greater clarity could be achieved with respect to the interpretation of Agreement rules on dumping and injury. The Panel had concluded that the imposition of anti-dumping duties by the United States constituted prima facie a nullification or impairment of benefits accruing to Sweden under the Agreement, and it had recommended that the Committee request the United States to revoke the anti-dumping duty and reimburse the duties which had already been paid by the company. He stressed the urgent need for this action as Sandvik Steel AB had experienced declines in its export of stainless steel pipes and tubes to the United States. It had paid some US\$8 million in anti-dumping duties and had also spent a large sum of money on legal processes in the United States. Due to the unjustifiable impediment to international trade which this anti-dumping measure constituted and the adverse repercussions it had had on the exporter, the representative of Sweden strongly urged the swift adoption and implementation of the Panel Report.

6. The representative of the United States expressed his Government's appreciation for the work accomplished by the Panel. He stated that his authorities had not completed their review of the Report and would make their comments regarding the Report at the next Committee meeting which was scheduled for 23-24 October 1990.

7. The representative of Canada indicated his Government's support for the adoption and the implementation of the Panel Report, and regretted that the United States was not in a position to adopt the Report at the present meeting. The issues that were raised during the dispute settlement process were important to his government as reflected by the fact that his authorities had made a third party submission to the Panel during the proceedings.

8. The representative of Finland read a statement that was made by him at the regular meeting of the Committee on 30 May-1 June 1988 (document ADP/M/22). He said that the provisions of Article 5:1 of the Agreement were intended to ensure that anti-dumping investigations would be initiated only if supported by a domestic industry as a whole or by a major proportion of it. He pointed out that in any situation of representation, it was the responsibility of the representative to prove that he had the authority to represent, and the responsibility of the authorities to verify this authorization. Consequently his delegation found that the United States' practice of not requiring proof of proper representation at the initial stage of an investigation undermined Article 5:1 of the Agreement. In view of the harm caused to the exporter during the course

of such an investigation, his authorities were of the opinion that the Panel ruling was of primary importance for re-establishing a fundamental principle of the Agreement and supported the prompt adoption and implementation of the Panel Report. In this context, the representative of Finland referred to the decision taken by the contracting parties in April 1989 regarding improvements of the dispute settlement process (document L/6489), in which it was mentioned inter alia that the dispute settlement system served not only to reserve the rights and obligations of contracting parties and clarify existing provisions, but also to provide security and predictability to the multilateral trading system. In addition, prompt compliance with rulings was essential in order to ensure effective resolution of disputes to the benefit of all contracting parties.

9. The representative of Hong Kong expressed her Government's appreciation to the Panel for its Report. Her delegation felt that the Panel had reached well-reasoned findings with respect to the standards required for the initiation of an investigation. Her authorities agreed in particular with the Panel's conclusion (document ADP/47, paragraph 5.17) that the fact that domestic producers did not raise objections to an investigation did not signify that a petitioner had filed a request for the initiation of an investigation on behalf of these producers. She indicated her delegation's support for the prompt adoption of the Report and its expeditious implementation.

10. The representative of Austria welcomed the findings of the Panel and pointed out that the procedural requirements contained in Article 5 of the Agreement constituted a form of protection against the misuse of anti-dumping measures. His delegation supported the immediate adoption of the Report and the rapid implementation of its recommendations. He hoped that the United States would be in a position to adopt the Report at the next meeting.

11. The representative of Norway indicated his authorities' approval of the approach adopted by the Panel during the course of its investigation. The Panel had limited itself to examining certain arguments and legal issues which were related to specific matters rather than attempting to formulate general standards of review. According to the Panel, the United States' initiation of the investigation and its imposition of anti-dumping duties had been inconsistent with Articles 5 and 1 of the Agreement, respectively. He stated that his Government held the same point of view and urged that the Panel Report be adopted without any delay.

12. The representative of the EEC expressed the Community's appreciation for the work accomplished by the Panel. However, his authorities had not yet completed their review of the Report and would reserve their comments for the next meeting of the Committee.

13. The representative of Singapore stated that the Panel's findings were in accordance with the views of her Government. To prevent the misuse of anti-dumping measures, it was of vital importance that the provisions of

the Agreement on the requirements for the initiation of anti-dumping investigations be strictly adhered to by the investigating authorities. She expressed her delegation's support for the prompt adoption of the Panel Report and the early implementation by the United States of the Panel's recommendations.

14. The representatives of India and Japan expressed their Governments' appreciation to the Panel for its Report and welcomed the conclusions reached by the Panel. They urged the quick adoption of the Report and its swift implementation.

15. The Committee took note of the statements made and agreed to revert to this matter at the regular meeting scheduled to take place in the week of 22 October 1990.

Request by Finland for the establishment of a Panel under Article 15.5 of the Agreement (ADP/49)

16. The Committee had before it in document ADP/49 a communication in which the delegation of Finland requested the establishment of a Panel under Article 15:5 of the Agreement in a dispute between Finland and Australia concerning anti-dumping duties applied by Australia on power transformers imported from Finland. The Chairman recalled that this matter had already been discussed by the Committee at its regular meetings held in May 1988 and October 1988, and that the Committee had also considered a request by Finland for conciliation under Article 15:3 at the meeting held in April 1989 (document ADP/M/26).

17. The representative of Finland gave the Committee a summary of the dispute. Since 1979 the Finnish Company Stromberg Ltd., presently part of the Asea Brown Boveri group, had exported a total of thirteen power transformers to Australia. The Australian Customs Service (ACS) had carried out anti-dumping examinations on the first ten transformers by using the constructed value method provided for in Article 2:4 of the Agreement. However, for the last three transformers the ACS had proceeded in its investigation by comparing these transformers with transformers sold on the Finnish market, a method set out in Article 2:1 of the Agreement. While in the former case no evidence of dumping was found, in the latter one dumping was found to have occurred. The essential point of this dispute was whether custom built-power transformers were "like products" in the sense of Article 2:2 of the Agreement. Several consultations had taken place between the Finnish and the Australian authorities to answer this question. During the consultations of 18 July 1989 it was agreed that a technical comparison between the last three transformers exported to Australia and those sold in Finland would be needed to determine whether these items were "like products". Finland had sent a technical analysis to the ACS in January 1990 and receipt of the letter was confirmed in March 1990. However, since then no reply had been forthcoming from the Australian authorities and the Finnish government had decided to request the establishment of a Panel to examine the Finnish complaint.

18. The representative of Australia acknowledged the Finnish request for the establishment of a Panel, and noted that as the procedural requirements set out in Article 15 of the Agreement had been fulfilled, her delegation raised no objection to this request.

19. The representative of Canada supported Finland's request for the establishment of a Panel and reserved his Government's right to make a submission to the Panel.

20. The representative of the EEC supported Finland's request for the establishment of a Panel and reserved the Community's right to intervene at a later stage of the proceedings.

21. The representatives of Norway and Sweden expressed their Governments' support for Finland's request for the establishment of a Panel and at the same time indicated their delegations' appreciation for Australia's quick acceptance of the Finnish request.

22. The representatives of Austria, Hong Kong, India, Singapore and the United States supported the request made by Finland for the establishment of a Panel.

23. The Committee took note of the statements made and the Chairman proposed that the Committee establish a Panel in the dispute referred to it by Finland in document ADP/49. He also suggested that the Committee authorize him to decide, in consultation with the two parties to the dispute, on the terms of reference of the Panel and that it authorize him to decide on the composition of the Panel after obtaining the agreement of the parties to the dispute. It was so agreed.