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TARIFFS AND TRADE

RESTRICTED

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Special Distribution

Committee on Anti-Dumping Practices

MINUTES OF THE MEETING
HELD ON 26-27 AND 30 OCTOBER 1992

Chairman: Mr. Armando F. Ortega (Mexico)

1. The Committee on Anti-Dumping Practices ("the Committee") held a regular meeting on 26, 27 and 30 October 1992.

2. The Committee adopted the following agenda:

- A. Election of Officers
- B. Acceptance of the Agreement (Argentina) (ADP/M/37, Paragraph 8)
- C. Examination of Anti-Dumping Duty Laws and/or Regulations of Parties to the Agreement (ADP/1 and Addenda)
 - (i) Korea (ADP/1/Add.13/Rev.1/Suppl.1 and ADP/W/316; ADP/1/Add.13/Rev.1/Suppl.2)
 - (ii) Poland (ADP/1/Add.20/Rev.1 and Suppl.1 and ADP/W/307, 310, 318 and 319)
 - (iii) Australia (ADP/1/Add.18/Rev.1/Suppl.4 and ADP/W/323, 309; ADP/1/Add.18/Rev.1/Suppl.5 and ADP/68)
 - (iv) Laws and Regulations of Other Parties to the Agreement (ADP/M/37, Paragraphs 52-56) (Romania, Hungary, Brazil)
- D. Semi-Annual Reports of Parties to the Agreement on Anti-Dumping Actions taken by Parties to the Agreement During the period 1 January-30 June 1992 (ADP/81 and Addenda)
- E. Reports on All Preliminary and Final Anti-Dumping Duty Actions (ADP/W/320, 321, 322 and 324)
- F. United States - Imposition of Definitive Anti-Dumping Duties on Imports of Seamless Stainless Steel Hollow Products from Sweden - Report of the Panel (ADP/47 and ADP/M/37, Paragraphs 84-92)
- G. United States - Anti-Dumping Duties on Gray Portland Cement and Cement Clinker from Mexico - Report of the Panel (ADP/82)

- H. EEC - Anti-Dumping Proceedings on Imports of Audio Tapes in Cassettes from Japan - Request by Japan for the Establishment of a Panel under Article 15:5 of the Agreement (ADP/85 and Add.1)
- I. Mexico - Anti-Dumping Proceedings on Imports of Electric Power Transformers from Brazil and on Imports of Regenerated Cellulose Casing from Spain (ADP/M/37, Paragraphs 65-70)
- J. Canada - Anti-Dumping Proceedings on Imports of Certain Machine Tufted Carpeting from the United States (ADP/M/37, Paragraphs 75-79)
- K. EEC - Anti-Dumping Investigation of Imports of Cotton Yarn from Brazil (ADP/M/37, Paragraphs 81-83)
- L. United States - Anti-Dumping Investigations of Imports of Certain Circular Welded Steel Pipes and Tubes from Mexico and Brazil (ADP/M/37, Paragraphs 93-98)
- M. United States - Anti-Dumping Investigation of Imports of Steel Wire Rope from Mexico (ADP/M/37, Paragraphs 105-109)
- N. United States - Anti-Dumping Investigations of Imports of Steel Products from the European Community
- O. Other Business
 - (i) Australia - Anti-Dumping Investigation on Imports of Frozen Pork from Canada
 - (ii) EEC - Initiation of Anti-Dumping Investigation on Imports of 3.5" Magnetic Disks from Hong Kong
 - (iii) United States - Delays in Administrative Reviews and Revocations
- P. Annual Report to the Contracting Parties (L/7118)

A. Election of Officers

3. The Vice Chairman noted that Chairman Sajjanhar was no longer based in Geneva and had therefore resigned as Chairman. The Committee elected Mr. Armando F. Ortega (Mexico) as Chairman and Dr. David Walker (New Zealand) as Vice-Chairman.

B. Acceptance of the Agreement

4. The Chairman noted that Argentina in April 1991 signed the Agreement subject to ratification, and that in the regular meeting of October 1992 the observer from Argentina indicated that the process of ratification would be completed in the very near future (ADP/M/37, paragraph 8).

5. The observer from Argentina indicated that the ratification process had not yet been completed, but hoped that it would be in the very near future. Due to the enormous adjustment effort Argentina is undergoing and the number of laws that have to be reviewed and ratified, it has been difficult to complete all the procedures.

6. The Chairman thanked the observer from Argentina. He indicated that the anti-dumping administration in Argentina has been active and that a number of signatories would like to know when ratification will take place. Therefore, it is important that Argentina keep the Committee informed of developments. The Chairman stated that the Committee would revert to this item at its next meeting.

C. Examination of Anti-Dumping Duty Laws and/or Regulations of Parties to the Agreement (ADP/1 and Addenda)

(i) Korea (ADP/1/Add.13/Rev.1/Suppl.1 and ADP/W/316)

7. The Chairman recalled that this legislation was first discussed by the Committee in 1989 and that amendments to the Presidential decree on Implementation of the Relevant Provisions of the Korean Customs Act had been discussed at a number of Committee meetings, particularly a meeting in April 1992. At that meeting, the representative of the EEC indicated that it needed more time to study responses provided by Korea to questions raised by the EEC.

8. The representative of the EEC stated that it had recently received the answers to its questions. With respect to sales below cost, the delegation of Korea had made clear in its answers that the relevant provisions had not yet been used, and this response had to be accepted for the time being.

9. The Chairman considered that the Committee had completed its consideration of these amendments, it being understood that the Committee could return to them at a future meeting.

Amendments to the Korean Customs Act and Presidential Decree (ADP/1/Add.13/Rev.1/Suppl. 2)

10. The Chairman noted that in a communication of 17 August 1992 Korea informed the Committee of further amendments to the Korean Customs Act. He requested that the delegation of Korea explain the amendments or changes contained in this new notification.

11. The representative of Korea stated that the purpose of this amendment was to make Korea's relevant laws more rational and practical as well as to supplement technical provisions of the Presidential Decree. Paragraph 11 of Article 10 of the Act was revised to rectify the statement enumerating the exceptional cases which allow retroactive imposition of anti-dumping duties. In the Presidential decree, the legal basis for preliminary determinations was more firmly established so as to clarify the investigation procedures. Qualified experts may be included in the

investigation team, if deemed necessary, to reinforce the investigating capability. The obligation to maintain confidentiality of interested parties will be secured by the authority concerned before the experts join the team. The authority to extend the investigation period due to the complexity of the investigation is entrusted to the Chairman of the Customs and Tariff Deliberation Committee in order to simplify investigation procedures. A stricter discipline on the violation of undertakings and the refusal of requests to verify important data was introduced. If the exporter does not enforce the accepted undertaking, does not submit necessary data, or does not permit the requested verification of relevant data, the Ministry of Finance shall take the provisional measures on the basis of the facts available and resume the investigation on the product concerned. The full texts of the Korean Customs Act and of the Presidential Decree on Anti-Dumping/Countervailing Duties were submitted to this Committee.

12. The Chairman suggested that the Committee revert to the Korean legislation in its next regular meeting, and requested that delegations that wish to raise further questions do so in time for Korea to provide written answers before that meeting.

(ii) Poland (ADP/1/Add.20/Rev.1 and Suppl.1 and ADP/W/307, 310, 318 and 319)

13. The Chairman noted that the Committee began its discussion of these provisions in October of 1991 and continued its discussion in its regular meeting in April 1992. At that time the Committee also had before it responses provided by the delegation of Poland to questions raised by the delegations of the EEC and Canada.

14. The representative of the EEC indicated that in general the EEC was satisfied with Poland's replies. He recognized that Poland is just beginning to use the trade instruments and that they have difficulties in finding all answers to complicated situations which may occur, so it will be necessary to wait until the Polish authorities apply the law to determine the manner in which it is done. He acknowledged that Poland is in a transition period from a state-run to a privately-run economy, which may play a rôle in injury findings.

15. With respect to Poland's answer to question 3(i), the EEC representative read Poland's answer to indicate that interested parties will not be informed before a final decision is made, but will have a chance to read the publication. This would put the exporter in a difficult position, because the legislation allows the exporter only fourteen days from the time he reads the publication until he must make an appeal to a court, which appears to be a short deadline. Poland should consider a disclosure such as the EEC conducts, under which in advance of the publication the parties directly concerned against whom there will be a measure imposed hear about the facts on which a definitive decision will be based.

16. The representative of Canada noted that Poland is considering a public interest provision in future legislative changes, and hoped Poland will act on that. He requested more detail on how Poland intends to treat such issues as duration of anti-dumping measures (both duties and undertakings) its criteria for the acceptance of undertakings, and its handling of administrative and judicial reviews. He assumed these issues would be addressed in administrative regulations or guidelines and requested that if Poland has such regulations or guidelines they be made available. He hoped that if such guidelines do not now exist they will be developed as Poland gains more experience in the use of its legislation. He understood that Poland intends to conduct a review of its regulations, and would like to know when such a review will take place and what type of amendments might result. While no anti-dumping investigations have been introduced pursuant to this recent legislation, he requested notices of the initiation and termination of previous investigations.

17. The representative of Poland noted that Poland made available detailed replies to questions before the previous meeting. Poland is in a stage of economic transformation and is just beginning to use anti-dumping measures. Poland began two anti-dumping investigations in the beginning of 1991, as reported to the Committee. The Chairman of the Central Office of Customs in Poland completed the two procedures in May 1991. Following the request made by the EC, Poland sent a copy of the decisions taken by the Chairman on interim measures in February 1991 and definitive measures taken on 31 May 1991. Since that time, no further investigation has commenced. With respect to appeals, 14 days is the general period for appeal of administrative decisions in Poland. There is no discrimination, but Poland may reconsider its administrative regulations. Due to its lack of practical experience with anti-dumping it is difficult to give precise answers to detailed questions. Poland is ready to reply to any additional questions that any delegation may wish to raise.

18. The representative of Canada stated that he understood Poland's difficulty in responding to questions when it has not had practical experience in the conduct of anti-dumping investigations, but believed it would be helpful if some of these important matters were spelled out in written regulations.

19. The Committee removed the topic of Polish anti-dumping legislation from the agenda, with the understanding that any delegation could raise the matter again at a later meeting if it desired.

(iii) Australia

Trade Practices (Misuse of Trans-Tasman Market Power) Act 1990
(ADP/1/Add.18/Rev.1/Suppl.4 and ADP/W/323, 309)

20. The Chairman noted that the representatives of Canada and the EEC had asked questions with respect to this legislation and the Committee had received responses. He asked Canada and the EEC whether they had any new questions.

20. The representatives of the EEC and Canada stated that they had no further questions.

21. The representative of Australia noted that in paragraph 27 of ADP/M/32 the EEC asked whether Australia and New Zealand would apply identical competition laws to their mutual trade or whether trade between Australia and New Zealand would be subject to an integrated body of competition rules. He stated that the two countries remain autonomous in this area. The respective competition laws of New Zealand and Australia remain separate. They are similar but are not identical and are not applied by a single body.

22. The Committee took of the statements made, and concluded its consideration of this legislation.

Australian Customs Regulations of 1901 (ADP/1/Add.18/Rev.1/Suppl.5 and ADP/68)

23. The Chairman recalled that these modifications were considered in meetings of October 1991 and April 1992. The Committee received a communication from the EEC regarding the meaning of the term "national production." In the meeting of April 1992, the representative of Australia referred to a document circulated in the Committee on Subsidies and Countervailing Measures (SCM/W/259).

24. As there were no further comments or questions, the Committee concluded its consideration of this document.

Recent Modifications of Australian Anti-Dumping Law (ADP/W/326)

25. The Chairman noted that the Committee received last week a communication from Australia on the recent changes to the anti-dumping law, which would soon soon be circulated to members of the Committee. He asked whether the representative of Australia wished to address these changes.

26. The representative of Australia said that on 5 December 1992 the Minister for Industry, Technology and Commerce made a detailed statement outlining the Australian government's philosophy in relation to anti-dumping and countervailing, and indicated a number of changes that would be made to the procedures and laws within Australia. The changes resulted from a review done by a standing committee of the Australian Parliament on Industry, Science and Technology and from an internal review conducted by the Department of Industry, Technology and Commerce. All the documents relating to that review and some of the legislation that flowed from it which was introduced into Parliament and proclaimed on 10 July 1992 were provided to the secretariat.

27. The changes fall into five general areas. Regarding initiation and time frames for initiation of an enquiry, the period that Customs has to consider an application has been reduced from thirty-five to twenty-five

days. To ensure that this reduction does not hinder the proper consideration of an application, Customs has been given the power to use information outside of the application during the prima facie stage to ensure a fair and thorough assessment of the claims of the applicant. The inability to go beyond the confines of the application in determining the prima facie case arose from court decisions in Australia which interpreted the legislation to require that only the information contained in the application could be considered. The power to consider a broader range of information enables Customs to reject applications which are not properly documented or do not establish a sound prima facie case. This is consistent with Article 5 of the Anti-Dumping Code. There has been pressure to further reduce the timetable for an enquiry but the government has recognized that any further reduction could only hinder the efforts to verify data and thus ensure a thorough examination of cases.

28. The representative of Australia said that the second change relates to price undertakings. The previous legislation provided that where an undertaking was accepted by the Minister, the application for anti-dumping measures was suspended indefinitely. Thus, there was no conclusion to an enquiry and no opportunity to revisit a case if undertakings were breached or were to be revoked or extended. The amended legislation removes the indefinite aspect of the price undertaking, so that where there is a breach, or a variation to the undertaking is appropriate, that can be achieved. It also means that there is in effect a sunset on the action. After the appropriate time of the undertaking all anti-dumping action ceases and the reintroduction or continuance of measures would require a new enquiry and a new positive finding based on all of the relevant criteria.

29. The representative of Australia said that the third change is that the legislation is amended to adequately enable the consideration of those cases where both subsidies and dumping are alleged in one application. The legislation as it existed had separate provisions in relation to applying measures against dumping and subsidization. Under these circumstances a situation could and did arise where the Minister might be fully satisfied in a given case that dumping and subsidization were jointly causing material injury, or where it was difficult to identify whether or not the dumping component also included an element of an export subsidy, but he could not apply anti-dumping or countervailing duties because the legislation allowed anti-dumping action only where the dumping of itself was causing material injury, and similarly countervailing action only where the subsidization of itself was causing injury. The amended legislation permits the application of anti-dumping and countervailing duty measures, or both, without the need to quantify separately the basis of the injury to the separate elements. Article VI of the GATT has not been breached in this and this would not involve any double counting of a subsidy and dumping in imposing measures.

30. The representative of Australia stated that the legislation in relation to the definition of "close processed agricultural products" had also been amended in a minor way. The original legislation in this area as

introduced in 1991 vested the powers in this area in the Controller of Customs. That has been changed so that they are now vested in the Minister. This technical change was necessary to the effective administration of that provision, and makes no difference in substance.

31. The representative of Australia stated that the final change, introduced on 10 July 1992, is that the life of measures once in place has been increased from a maximum of three years to a period of five years. Before the five-year period expires, the anti-dumping authority is required to contact Australian industry in sufficient time for a review to be made as to whether measures should continue for a further period of up to five years. The review process allows all interested parties an opportunity to present their views. This approach closely follows the proposals outlined in the Uruguay Round and is consistent with current requirements.

32. The representative of Australia referred to legislation which is being introduced during this current session which will involve a change in the method by which dumping duties are imposed. Under current arrangements the duty payable is the difference between a threshold price based on normal value or a lower non-injurious price and the invoiced export price of the goods. Thus if an importer increases his invoice price to the threshold price, no duty is paid. The changed arrangements will mean that all importers of goods subject to dumping duties will pay a duty at the margin of dumping or the margin of injury established by the enquiry. Consistent with international obligations, there will be provision for refunds of any excess duties that are paid over a period of time and there will be a requirement that the rate of duty be reviewed every twelve months. The Australian delegation will provide further details once the legislation has been effected later this year.

33. The representative of Finland, speaking on behalf of the Nordic countries, expressed concern that the anti-dumping practice and philosophy in Australia may be going in a more restrictive direction. For example, he understood that Australia will explicitly provide for cumulation across the Codes. Both the Anti-Dumping and the Subsidies Codes provide that dumping and subsidization respectively shall be the cause of the injury, and other causes of injury shall not be attributed to dumped or subsidized imports. This Committee has discussed on a number of occasions the question of upstream agricultural industries. Also, the three-year sunset period that previously implied an unconditional end to anti-dumping measures now has been prolonged to five years, with a possibility and even explicit provisions for review. The system applied previously for establishing normal value and the rate of the anti-dumping duty, the threshold value system, also has been revised in a way that could be less favourable for exporters. The Nordic countries believe that all amendments to anti-dumping provisions that go away from the concept of free trade and the character of anti-dumping measures as a measure against genuinely unfair trade practices should be restricted.

34. The representative of the United States asked whether, with respect to the ability to consider information from outside the petition, there are any guidelines or parameters for the kind of information that could be considered and, in particular, whether this might encompass information from the foreign government or exporters that might be subject to investigation?

35. The representative of Hong Kong expressed his support for the Nordics's intervention, particularly with respect to cumulation and the extension of sunset. He expressed his concern about the direction in which Australia is going and noted that Australia is one of the most frequent users of anti-dumping actions. He hoped that the legislation will not result in the further expansion of unnecessary anti-dumping actions, and that the Australian authorities will exercise due restraint in using this legislation.

36. The representative of Australia stated that he does not accept that Australia is moving from a concept of free trade and towards a more restrictive concept of anti-dumping legislation. He invited concerned delegations to read the Minister's speech, which should be circulated before the next meeting of the Committee. As that speech indicates, the Australian government continues to move towards an increasingly open trade policy, as evidenced by significant reductions in tariffs, etc. The measures taken in relation to anti-dumping make them more effective and streamlined, but do not indicate any move away from a more open and competitive Australian market for all external suppliers.

37. The representative of Australia noted that the change in information considered prior to initiation was largely a result of court decisions which in effect said that the only information that could be considered at the time of initiation was the information contained in the application. In some cases that meant Australia was required to initiate even though information indicated that the application was based on false or misleading information and that the enquiry should not proceed. This change in the legislation ensures that applications do not proceed unless they are complete. Information that is reasonably available to the Australian Customs Service can be taken into account, bearing in mind that the period of twenty-five days is particularly tight given the procedural requirements that have to be satisfied during that period. The Australian Customs Service could consider information provided by interested parties, including exporters and foreign governments, if that information is provided in sufficient time for it to be considered and a decision still taken in twenty-five days. In effect, that means that the time available for presentation of information would stop as much as ten days prior to initiation.

38. The representative of Australia noted that under Australian law where an application is accepted, the acceptance is notified in the "Gazette", the official journal of the Australian Government, and in a nationally circulated newspaper. Where an application is rejected, the applicant is

advised in writing of that rejection and no public notification is made of the fact that the application had been made. The process of initiation is not conducted in the public arena as that by itself could have a trade-chilling effect on the interests of exporters and importers into Australia, particularly where the decision was not to proceed. Thus, the Australian Customs Service will not provide details of any application that has been lodged until it indicates by formal notice that it is initiating an investigation. Therefore, while it is possible for an interested party to provide information, and it would be taken into account, no invitation for them to do so is issued, and it is quite possible that the procedure could continue without them being aware of an application.

39. With respect to the question raised by Hong Kong, the representative of Australia noted that in many cases the symptoms of dumping and of a subsidy (particularly an export subsidy) are identical. It is within the GATT rights of Australia to decide in those situations whether or not, and the extent to which, countervailing measures are applied against the subsidy and anti-dumping measures are applied against the dumping. The problem is specifically addressed in GATT Article VI:5, which provides that "no product of the territory of any contracting party imported into the territory into another contracting party shall be subject to anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization". The Australian legislation was deficient in that it was technically possible to double count and it was technically difficult to separate the injury by dumping from the injury caused by subsidization. The legislation eliminates this anomaly.

40. The Committee took note of the answers given by the representative of Australia.

(iv) Laws and Regulations of Other Parties to the Agreement

41. The Chairman stated that the Committee had received a notification from the delegation of Brazil in ADP/1/Add.26/Suppl.3 regarding recent amendments to the Brazilian anti-dumping legislation, and that the Committee will discuss these amendments at its next regular meeting.

42. The representative of Brazil noted that the new legislation and regulations refer mainly to the application of measures to products of agricultural origin. Their primary objective is to countervail agricultural subsidies which cause unfair competition to Brazilian agricultural production. Provisions for anti-dumping duties result mainly from the need to adapt existing provisions.

43. The Chairman noted that in the regular meeting of October 1991 the delegation of the EEC made a statement on an anti-dumping decree enacted by Hungary. He asked the representative of Hungary to explain the status of this decree and the plans of his delegation in terms of notification of this decree to the Committee.

44. The representative of Hungary stated that the decree in question is dealt with in document ADP/M/37. A full internal review of the text is being carried out by the competent authorities to amend it or if necessary replace it. This instrument has never given rise to any anti-dumping action. The review will be completed soon so that new regulations can be introduced in the beginning of 1993. Hungary will notify the Committee of the regulations rising out of this review as soon as possible.

45. The Committee took note of the statement by Hungary, and agreed to revert to this item at its next regular meeting.

46. The representative of Romania notified the Committee pursuant to Article 16:6(b) of the Code that Romania adopted a new anti-dumping regulation in decision 228 of 7 May 1992. The preparation of this regulation was part of the process of implementation of a new trade policy in the context of Romania's transition to a market economy. On the basis of this decision, the Ministries of Trade, Economy, Tourism and Finance have adopted in joint order 128 rules of procedures applying to the Anti-Dumping Commission which will draft the new regulations. The relevant provisions of Article VI of the General Agreement and of the Anti-Dumping Code have been taken into consideration. Romania will very soon notify the text of this new regulation.

47. The Chairman noted the large number of countries which are adopting anti-dumping legislation, and asked the secretariat to prepare a list of the countries, including countries not Parties to the Code, which have adopted anti-dumping legislation.

D. Semi-Annual Reports of Parties to the Agreement on Anti-Dumping Actions Taken By Parties to the Agreement During the Period 1 January-30 June 1992 (ADP/81 and Addenda)

48. The Chairman noted that Austria, the Czech and Slovak Federal Republic, Egypt, Hong Kong, Norway, Pakistan, Poland, Romania, Singapore, Sweden, Switzerland and Yugoslavia had notified the Committee that they had not taken any anti-dumping actions during the relevant period. Australia, Brazil, Colombia, Canada, Finland, the EEC, Mexico, New Zealand and the United States had notified the Committee that they had taken anti-dumping actions. No reports had been received from India, Japan and Korea. As the report of Australia was submitted last week, it will be discussed at the next regular meeting of the Committee. The reports would be considered in the order received.

Mexico (ADP/81/Add.2)

49. The representative of Brazil referred to the action by Mexico relating to imports of fabrics of cotton and cotton blends from Hong Kong, Argentina, Brazil and other countries, cited on page 3 of its notification (ADP/81/Add.2). He drew the Committee's attention to a communication from Brazil on this topic (ADP/86). According to the most recent information

available to the Brazilian mission in Geneva, Mexico has not yet been able to find a date to discuss the matter referred to in document ADP/86, in spite of reiterated requests by the Brazilian embassy in Mexico City. This is of concern because of clear indications that questionable criteria were being applied in the investigation.

50. The representative of Pakistan noted that Mexico had initiated or completed thirteen investigations in the relevant period, a high number compared to previous years. He noted that the notification regarding imports of fabrics of cotton and cotton blends with man-made fibres showed that Pakistan had a trade volume of 0.2 tons, yet the next column indicated that dumped imports from Pakistan represented 0.26 per cent of Mexican domestic consumption. He asked whether the investigation was based in fact on a trade volume of 0.2 tons. He further asked whether the data regarding trade volumes and shares of the market were related. He pointed out that in a number of cases the notification indicated that the trade volume of imports from certain countries was zero, yet imports from those countries were indicated to represent positive shares of the Mexican market. He queried whether the trade volumes in the notification justified initiation of an investigation.

51. The representative of Pakistan indicated that in the case of action against imports of fabrics of cotton and cotton blends with man-made fibres and the like, Mexico used for every country the third country price as the basis for the investigation, and asked why Mexico ignored domestic prices altogether. In the case of Pakistan, he doubted that home market prices were unavailable, given that the product is freely sold in the Pakistani market. Home market prices should be as easy to ascertain as third country market prices.

52. The representative of Pakistan further noted that the category of products covered by the cotton fabrics investigation was a very wide one. The prices on which initiation was based ranged from US\$17.29 for Brazil to US\$2.3 for Pakistan. Can these prices really relate to the same product?

53. The representative of Hong Kong expressed his support for Brazil's request for consultations regarding the Mexican investigation. He indicated that Hong Kong, whose exports also are subject to investigation, is not satisfied with the manner in which the Mexican authorities are conducting the investigation. Hong Kong sent a letter to the Mexican Ministry of Commerce on 24 July 1992 indicating its concern regarding product coverage and seeking further information on price and trade data. A follow-up letter was issued on 3 September, but no reply has been received. Hong Kong is also frustrated regarding the lack of response to its requests for information in other Mexican investigations regarding imports from Hong Kong. This has hindered Hong Kong's ability to argue its case under the proper proceedings. Hong Kong is further concerned regarding the lack of and delay in notifying Hong Kong regarding investigations. Transparency is important, especially considering the short time allowed to respond to questionnaires. Hong Kong's policy is to

encourage its companies to co-operate fully in anti-dumping investigations. In return, it would appreciate early notification by the Mexican authorities.

54. The Chairman requested that Pakistan put its concerns on these matters in writing, and that Mexico respond in kind. He further requested that the representative of Hong Kong provide detail regarding Mexico's lack of response to requests for information.

55. The representative of Hong Kong stated that the letter of 24 July sought statistical information regarding, inter alia, the quantity and value of imports from Hong Kong and the world during the period of investigation, Mexico's domestic production and sales at home and abroad, and Mexico's national consumption and inventories. The letter was sent more than three months ago. A letter was also sent on 23 April 1992 concerning the Mexican investigation of denim, with a chaser letter on 12 June. Further, Hong Kong sent a letter on 28 July 1992 seeking clarification on product coverage in the Mexican investigation of 100 per cent rayon twine, lap, broadcloth and fabric, and a chaser letter was issued on 1 September. In both cases, Hong Kong awaits a reply.

56. The representative of Mexico stated that, with respect to the cotton fabrics case, Brazil should wait for consultations until the provisional decision is published. Immediately thereafter, Mexico is willing to hold consultations with Brazil.

57. The representative of Mexico stated that low market penetration does not mean there is no injury, particularly with respect to countries with an important exporting capacity. Cumulation is relevant in this regard. The speed and depth of Mexico's commercial opening requires the intense use of an anti-dumping system, and it is not surprising that a system only six years old is getting more effective. Concerning the use of third country prices, Mexico has acted in strict conformity with its national legislation and the Anti-Dumping Code. While the cotton fabric investigation covers seventy tariff lines and eight countries, this is not the first time a country has initiated an investigation of this type. While Mexico has had close contacts with the Pakistani Ambassador and has granted extensions for the furnishing of information, Mexico will be happy to consult so long as the request comes at a proper time during the investigation.

58. The representative of Mexico stated that Hong Kong has made numerous requests for information including confidential information which Mexico cannot give to a government that is not a party to an investigation. However, Mexico answered all Hong Kong's letters at an appropriate time, and will provide copies of all its responses. Further, all correspondence and questionnaires with Hong Kong have been in English, although this is not required. Further, Mexico sends out its questionnaires the day after publication of the initiation decision, sometimes even by fax. Yet the Hong Kong industry has in some cases refused to answer questionnaires, leading to constant requests for extensions of time, which Mexico practically always has granted. He called on Hong Kong to encourage its companies to answer their questionnaires.

59. The Chairman stated that the only Code requirement regarding requests for consultations is that they should be in writing, and asked the representative of Mexico whether this was the case with respect to Brazil and Hong Kong.

60. The representative of Mexico stated that the request of Brazil was in writing. However, nothing in the Code states when consultations must be held, and Mexico felt that there was no point in meeting with Brazil at that time. Hong Kong never requested consultations, but merely made a written request for additional information.

61. The representative of Brazil repeated that Mexico has not yet been able to find a date to consult with Brazil. In fact, Mexico denied Brazil's request for consultations. Article 15:1 of the Code obliges Mexico to consult with any government that shows interest in doing so.

62. The representative of Hong Kong said it would be appreciated if he could receive copies of the replies by Mexico to all of its letters soon. Moreover, he appreciated Mexico's efforts in translating questionnaires and answers into English. If, however, problems of translation hinder Mexico's early reply to Hong Kong's letters, Hong Kong would welcome an initial reply in Spanish with a follow-up translation in English. If no responses have been provided because the information sought is confidential, Hong Kong would appreciate an written response to that effect. As for cumulation, Hong Kong rejects this practice as illogical and unreasonable.

63. The representative of Pakistan rejected the application of cumulation. It does not make sense to determine dumping on the basis of a trade volume which may be as low as indicated in the Mexican notification. He also rejected consideration of the potential of a country to export. Finally, no company would be willing to expend the money and effort to defend itself where the volume of trade is as small as indicated here.

64. The representative of Mexico said that Mexico has never refused consultations. But Code Article 15:1 requires only that consultations be held "promptly," and Mexico defines promptly to mean after the preliminary determination is published. Nearly half of the semi-annual reports submitted did not report all the information that was requested, putting Mexico, which responds in full, at a disadvantage.

65. The representative of Canada asked whether it was Mexico's view that it has an obligation to consult at the point of initiation of a case if so requested?

66. The representative of Egypt shared Pakistan's reservations regarding cumulation. But even with cumulation, he was surprised that there could be injury caused by 0.2 tons, or 200 kilos. While Mexico, like Egypt, is a newcomer in the use of anti-dumping, newcomers should not take steps that call their practices into question.

67. The representative of Hong Kong clarified that his delegation has not requested consultations, but has merely supported the Brazilian request. However, Hong Kong reserves its right to request such consultations in the future.

68. In response to Canada's question regarding consultations during the initiation phase, the representative of Mexico stated that hypothetical cases are not to be dealt with in anti-dumping matters and he therefore preferred not to answer the question.

69. The representative of Brazil stated that although the Canadian question was hypothetical, the case the Committee has before it is a concrete case of a Mexican decision not to consult with Brazil at this time.

70. The Chairman called on Mexico to respect the provisions of Article 15, asked that Mexico afford sympathetic consideration to Brazil's written request for consultations, and requested that the secretariat put the Mexican investigation of imports of cotton fibres on the agenda for the next meeting.

New Zealand (ADP/81/Add.3)

71. No comments were made on this report.

Canada (ADP/81/Add.5)

72. The representative of Brazil commented regarding Canada's action on carbon steel welded pipes from Brazil that Canada based its findings mainly on actual costs based on records furnished by Brazilian exporters. Nevertheless, inventory opportunity costs were not taken into account in the comparisons based on actual domestic sales. In other cases, Canada decided that there were not sufficient domestic sales to be used for normal value purposes, while the exporters claimed there were. Contacts between Brazilian exporters and the Canadian authorities to seek a satisfactory solution therefore have been renewed, and Brazil is examining the possibility for more formal action under Code Article 15:2.

73. The representative of Brazil further noted that while Brazilian exporters offered full co-operation, this required a considerable number of people, a lot of time, and various expenses, including legal costs. Yet even when proceedings are conducted fairly, as apparently was the case in this investigation, the information is given a draconian interpretation. Special regard must be given by developed countries to the special situation of developing countries when considering the application of anti-dumping measures under the Code.

74. The representative of Canada stated that he would raise the issue of inventory opportunity costs with his authorities. Regarding special and differential treatment for developing countries, Canadian legislation

allows Canada to enter into undertakings with exporters, and this is Canada's primary method for giving recognition to the concept that perhaps there should be some special regard given to the situation of developing countries. Canada's investigators also take into account the difficulties developing countries face in putting together full and complete submissions.

75. The Committee took note of the statements made and agreed to revert to this item at the next meeting of the Committee.

Finland (ADP/81/Add.6)

76. No comments were made on this report.

EEC (ADP/81/Add.7)

77. No comments were made on this report.

Brazil (ADP/81/Add.8)

78. No comments were made on this report.

United States (ADP/81/Add.9)

79. The representative of Korea stated that last June US manufacturers of carbon steel products filed anti-dumping and countervailing duty petitions against hot-rolled products, cold-rolled products, corrosion-resistant products, and plate from various countries, including Korea. The US International Trade Commission ("ITC") made a preliminary determination of injury from imported hot-rolled coils despite the fact that more than 95 per cent of Korea's shipments were to be used to produce final product at the US company UPI, which is a joint venture of USX and the Korean company POSCO, and despite substantial evidence that most US producers could not even produce or sell the product supplied by POSCO. There is no causal link between the specific imports in the investigation and any injury found. The US judgement might be a violation of its obligations under Article VI:1(a) of the General Agreement and Article 3:4 of the Code.

80. The Chairman noted there would be further opportunity to discuss these investigations later in the meeting.

Australia (ADP/81/Add.10)

81. No comments were made on this report.

Austria (ADP/81/Add.11)

82. The Chairman noted that the report of Austria had been filed late, and thus would be discussed at the next meeting. He asked Austria to report orally whether it has adopted any anti-dumping measures.

83. The representative of Austria stated that Austria initiated a procedure against certain imports of agricultural machinery from Czechoslovakia, but that the proceeding has not yet led to any finding. He stated that Austria's late reply is due to its scarce experience with anti-dumping measures.

84. The Committee took note of Austria's statement.

85. The Chairman asked India, Japan and Korea whether they had taken any anti-dumping actions during the relevant period.

86. The representative of India indicated that he would check with his authorities.

87. The representative of Japan indicated that Japan was now investigating ferro-silicon from various countries. Because Japan had not yet reached a preliminary or final determination, it had not yet reported to the Committee.

88. The representative of the United States asked whether the reporting requirement did not come into play until a preliminary determination was made.

89. The Chairman stated that the obligation to report did not depend on a preliminary determination. He urged delegations that had responded in a delayed or incomplete manner, or had not reported at all, to reconsider their position. The obligation to report anti-dumping actions is one of the most important requirements for insuring transparency, and incomplete reports are not satisfactory. He would conduct informal consultations regarding the precise format of the reports. He asked the secretariat to analyse the reports in order to determine how and to what extent they are being completed.

E. Reports on All Preliminary and Final Anti-Dumping Duty Actions
(ADP/W/320, 321, 322 and 324)

90. The Chairman clarified that ADP/W/324 should not have been included on the agenda, as Chile is not a party to the Agreement.

91. No comments were made on these reports.

F. United States - Imposition of Definitive Anti-Dumping Duties on Imports of Seamless Stainless Steel Hollow Products from Sweden - Report of the Panel (ADP/47 and ADP/M/37, Paragraphs 84-92)

92. The Chairman said that this was the seventh meeting at which this panel report, submitted to the Committee in August 1990, was before the Committee. He hoped that delegations would take into account the seriousness of the situation facing the Committee. In previous meetings, the debate focused in particular on the nature of the recommendations

suggested in paragraph 5.24. While some members of the Committee have strong views on this point, the Committee should not lose sight of the immediate commercial implications of the lack of a solution to this dispute.

93. The representative of the United States stated that due to the radical departure of this panel from the overwhelming weight of GATT precedent with respect to the nature of the remedy, as well as difficulties with the far-reaching nature of the panel's interpretation of the Code, the United States was unable to accept adoption of the report.

94. The representative of Sweden noted that, while the duty imposed by the United States has been lowered to 2.21 per cent as a result of an administrative review, the problem of the existence of the duty, and of the credibility of the GATT dispute resolution system continues. He urged the adoption of the panel report.

95. The representative of Finland reiterated the strong support of Finland and Norway for Sweden's position. This case is not compatible with a functional GATT dispute resolution system.

96. The representative of Austria stated that Austria consistently asks parties to a dispute to adopt panel reports, and appealed to the United States to do so. He requested that the Chairman take up the manner in informal contacts with the parties.

97. The representative of Canada asked the United States to support adoption of the report. He asked the United States delegation to explain the precise difficulties it had in dealing with the panel's recommendations regarding reimbursement or revocation of the duty. What authority does the United States have under its law to deal with such situations?

98. The representative of the United States stated that it is virtually without precedent for a panel to recommend a specific and retroactive remedy as the panel did in this case. In all instances except one, panels have issued remedies that are both general and prospective in nature, and this is the appropriate type of remedy to recommend. In addition, the United States has some difficulties with the reasoning of the panel.

99. The Chairman offered his good offices to hold informal consultations with the United States and Sweden to seek a mutually satisfactory solution.

G. United States - Anti-Dumping Duties on Gray Portland Cement and Cement Clinker from Mexico - Report of the Panel (ADP/82)

100. The Chairman requested that Vice-Chairman Mr. David Walker chair the meeting with respect to this matter.

101. The Vice-Chairman stated that the Committee established a panel in this dispute on 21 October 1991, and that the report of the panel was circulated to the members of the Committee on 7 September 1992 (ADP/82).

He asked Mr. Peter Williams, Chairman of the panel, to make a statement on the report.

102. The Chairman of the panel noted that the panel met with the parties on two occasions, and based its examination on written submissions of the parties to the dispute and factual information provided in response to specific panel questions. The panel also took into account statements by third parties. The issues before the panel were carefully considered, and the panel reached a consensus on its findings and conclusions. The report was submitted to the two parties on 9 July, and was circulated to the members of the Committee on 9 September. The panel concluded in paragraph 6.1 that the United States had initiated the investigation inconsistently with Article 5:1 of the Code, and in paragraph 6.2 recommended that the Committee request the United States to revoke the anti-dumping duty order and to reimburse any duties paid or deposited thereunder. The panel was of the opinion that it was not necessary to make findings on the other issues raised by Mexico. The panel considers that it has fulfilled its terms of reference.

103. The Vice-Chairman asked whether the Committee was in a position to adopt the report at this meeting.

104. The representative of Mexico requested adoption of the report as submitted by the panel.

105. The representative of the United States stated that the parties were seeking a mutually satisfactory resolution of the dispute and proposed that the Committee re-visit the report at a later meeting, perhaps in a month's time, to allow the parties to continue their efforts.

106. The representative of Mexico agreed to discuss the technical aspects of the report in a special meeting in about a month, depending on the results of the joint efforts now being undertaken by the two countries.

107. The Committee took note of the statements made and agreed to revert to this item at a future meeting.

H. EEC - Anti-Dumping Proceedings on Imports of Audio Tapes in Cassettes from Japan - Request by Japan for the Establishment of a Panel Under Article 15:5 of the Agreement

108. The Chairman noted that the Committee had before it a request by Japan for establishment of a panel in this matter under Article 15:5 of the Code (ADP/85 and Add.1). This matter was the subject of a special meeting held on 9 July 1992 under the conciliation procedures in Article 15:3 of the Code.

109. The representative of Japan stated that the EEC imposed definitive anti-dumping duties on audio cassettes of Japanese and Korean origin in May 1991. Consultations were held with the EEC on four separate occasions in

1991 and 1992 under Article 15:2 of the Code. These consultations failed to reach a satisfactory solution. The meeting of the Committee held on 9 July for the purpose of conciliation failed to resolve the issues. The members of the Committee have heard the details of the Japanese complaint on three separate occasions, in a paper presented for the conciliation meeting, in the representative of Japan's statement to that meeting, and again in a paper presented to this meeting. The paper requesting a panel contains no reference to the EEC's unjustified initiation and continuation of investigations into audio pancakes and jumbos, because the investigation was terminated, and because Japan wishes to concentrate on more important and serious issues. There is a serious dispute concerning the interpretation of the Code and its application in the case of major commercial importers. The procedures laid down in the Code for consultations and conciliation have been completed without a resolution of the matter. Therefore, Japan has no option but to request the Committee to establish a panel in accordance with Article 15:5 of the Code.

110. The representative of the EEC regretted that Japan did not show any real will to find a solution. The EEC made a number of suggestions at the conciliation meeting and asked Japan to consider taking measures to open its market for audio cassettes, but received no response. If Japan does not want to be subjected to anti-dumping measures, the solution is to treat the underlying causes of dumping.

111. The representative of the EEC stated that the first document regarding a request for establishment of a panel reached the EEC on 12 October. Japan limited itself to indicating that the EEC had failed to respect the Anti-Dumping Code. Realizing that this was insufficient, Japan made a detailed request which the EEC received at the beginning of last week, less than a week before the meeting of the Committee. This does not allow enough time for most delegations to study the document. It is essential that the Committee be able to assure in advance that the mission of the panel has been duly defined in the request made by the petitioner.

112. The representative of the EEC stated that the EEC does not query at all the right of Japan to obtain the establishment of a panel, but the request made by Japan does not sufficiently clearly define the mission incumbent on the panel. The EEC asks that the Committee defer examination of this question until Japan makes a more precise and revised request. Article 15:5 of the Code states that the request for establishment of a panel must be based on "a written statement of the Party making the request indicating how a benefit accruing to it, directly or indirectly, under this Agreement has been nullified or impaired, or that the achieving of the objectives of the Agreement is being impeded" The request must contain a brief resumé of the facts and of the legal grounds for the complaint, which must be sufficient to enunciate clearly the problem. It must not query the validity of the legislation nor bear on questions of principle or methodology in abstract terms. Further, it must refer to the legal character of a decision and not to its appositeness. It must have as its goal to obtain a decision by an authority, to set out clear facts, to

define what special provisions of the Code have been contravened or violated, and to explain how the facts constitute a violation of those provisions. This is particularly important where the establishment of the panel is founded on the standard terms of reference.

113. The representative of the EEC stated that the request by Japan is not in line with these criteria. The introduction indicates that Japan reserves the right to elaborate on the problems covered by the document. Thus, the request is not exclusive, as Japan reserves the right to add to it subsequently, not only with respect to the questions covered but with respect to the legal arguments which it may produce subsequently. This is not acceptable. The request for a panel must be precise, and indicate in a exclusive fashion the problems and arguments which the petitioner will invoke. Paragraph 9 et. seq. raise the matter of symmetry. This argument has no legal standing under the Code, which only requires a comparison at the same level of trade between adjustments for any other factor that may have an effect on the comparability. The Japanese request is underpinned by two imaginary requirements of the Code. Further, the request does not state clearly whether Japan queries the calculation of prices on its exports or of normal value. Under the logic of the Japanese request, one cannot query both simultaneously. Nor does the request explain why and how the calculation of export prices and normal value is in contravention of the Code. Thus the question is not raised sufficiently precisely. It is not enough to invoke provisions of the Code. One must demonstrate convincingly how the alleged violation is a real violation. Paragraph 14 relates to the problem of averages. Again, this is a question which has no legal value. Even if the EEC were to accept the Japanese argument, and were to re-calculate the margin, the resulting margin would remain far above the duty actually imposed, as the EEC imposed only a duty sufficient to do away with the injury. The duties applied are so far below the dumping margin that the change in method could in no way alter the level of the duty. Paragraph 17 does not state where and how alleged errors in constructed value represent violations of the Code. As for causality of injury, it is impossible to tell whether Japan is criticizing the principle of cumulation or its application in this case. With respect to the volume of imports and price suppression and depression, Japan mixes factual and legal questions, and the allegation of a violation is not understandable. Regarding price undercutting, this element was not a determining element in the EEC's decision. Thus, the question is purely theoretical and is not relevant in this case. Finally, the request regarding the determination of injury is also ambiguous.

114. The representative of the EEC concluded that, while it does not question the right of Japan to obtain a panel, the request in this case does not define sufficiently clearly the mission incumbent upon such a panel, and must be reviewed and clarified before the Committee decides on the request for a panel. The previous Chairman in the April meeting of the Committee asked the parties to make absolutely clear what is and is not covered by the terms of reference and to see to it that requests for panels define precisely the problems invoked. This is all the EEC requests in this case.

115. The representative of Japan noted the importance of speedy dispute settlement. The EEC appears to want to delay the dispute settlement process by asserting a lack of precision in Japan's request for a panel. Japan's paper is sufficiently precise for the Committee to decide to establish a panel. Japan's request is as detailed as others seeking the establishment of a panel. The EEC's request for further details is tantamount to requesting that Japan make a full submission to the panel soon to be established. The EEC could have asked Japan for clarification on the points it now raises during the four consultations it held with Japan on this matter. Article 15:5 states that "if no mutually agreed solution has been reached ... within three months, the Committee shall, at the request of any party to the dispute, establish a panel to examine the matter." As for the procedural issue raised by the EEC, Japan requested that this item be placed on the agenda by the end of September, a deadline indicated by the secretariat. Japan submitted a paper (ADP/85) requesting establishment of a panel to the secretariat on 9 October 1992, well in advance of the deadline. Japan submitted an additional paper (ADP/85/add.1) which explained this issue in further detail to the secretariat on 15 October 1992, and provided the paper to the EEC on the same day. The same issues were covered by a paper seeking conciliation (ADP/39) and the content of the two papers is almost the same. There is nothing new in the paper submitted to the Committee, except that it drops the issue of audio jumbos and pancakes. All the procedures have been completed, so there is no reason for the EEC to oppose the establishment of a panel.

116. The Chairman noted that the EEC did not oppose the establishment of a panel, but only expressed its concerns regarding its terms of reference. He suggested that the Committee allow him to consult with the EEC and Japan to seek a solution on terms of reference before the end of this meeting. There is consensus on the setting up of a panel, and the only pending question is the terms of reference.

117. The representative of Korea stated that a panel must be formed immediately. Conciliation has failed and Japan has a right to establishment of a panel.

118. The representative of Hong Kong stated that Hong Kong has no objection to consultations on terms of reference. However, the discussion has raised a general point regarding the automaticity of panel establishment under Article 15:5 of the Code. What happens if one party seeks a panel and another objects? Would the panel still be established?

119. The representative of the United States said it was important that the terms of reference in a request for a panel be precise. He was particularly concerned regarding paragraph 17 of the Japanese request, which appeared to be a catch-all provision.

120. The representative of Japan sought confirmation that a panel had been established and that consultations would relate to its terms of reference.

121. The Chairman confirmed that the panel would be established before the end of the meeting, and that consultations would relate to the panel's terms of reference.

122. The representative of the EEC stated that the Chairman may have misinterpreted the EEC's position. The EEC does not question the principle that a panel should be established in this dispute, but asks that the Committee defer a formal decision on establishment until the request has been clarified to set out precise terms of reference. With respect to the need for prompt resolution of disputes, the consultations in this case continued eighteen months as a result of the actions of Japan. The EEC is not asking Japan to submit detailed arguments, but only that certain portions of the request, such as paragraph 17, be reformulated to make Japan's legal argument more specific. Finally, while Japan says that the consultation process should have informed the EEC as to the subject of this request, Japan's target during the consultations changed continually. It is for this reason that the EEC seeks to have Japan's request clarified before the Committee takes a decision on the establishment of a panel.

123. The Chairman stated that Japan has a right to the establishment of a panel, and the goal of informal consultations is to address terms of reference. A decision regarding establishment will be made before the end of this meeting. Discussion on this issue is not closed.

124. The following day, after extensive informal consultations the Chairman noted that the two parties had not yet arrived at a mutually satisfactory solution. Both delegations had, however, requested the the Chairman continue his consultations, and he asked the Committee's authorization to do so. He proposed that the Committee conclude all other matters today, and that the same meeting resume on Friday.

125. The representative of Brazil asked to what extent the Chairman had made progress in his consultations.

126. The Chairman stated that it was not possible to talk of degrees or percentages. He is holding consultations, which are a delicate matter, and proposes that the Committee satisfy the request made by Japan on Friday. A decision on Japan's request would be made by the Chair and by the members of the Committee on Friday. Both delegations agreed to an extension of time for the Chairman to use his good offices to reach an understanding.

127. The representative of Japan stated that a number of delegations yesterday sought to express their views on this issue. However, the Chairman stated that a panel was established and that bilateral consultations would be held on the terms of reference. While Japan and the EEC are bilaterally discussing this issue, the issue is one for the Anti-Dumping Committee. The EEC's original position would set a bad precedent, so other delegations should be asked their view on this issue.

128. The Chairman stated that he intended to seek views of other delegations, but first desired to report on the consultations to date and explain his plans. If there were a consensus that this matter be taken up on Friday as a continuation or resumption of this Committee meeting, then on Friday a decision would be taken on this request. Meanwhile, the views of other delegations would help the Chairman in his consultations.

129. The representative of Singapore stated that the EEC and Japan have held four consultations, and that the Committee has held a special meeting for the purpose of conciliation in this matter. After three months of conciliation, Japan has observed the procedures laid down in Article 15 of the Code. This matter concerns a question of principle. Might a Code signatory after faithfully completing the procedures in Article 15 not be able to request that the Committee establish a panel should the other disputing party refuse? Singapore would like a consensus on this question in this meeting. The EEC and Japan should continue consultations on terms of reference. However, this should not be a prerequisite to establishment of a panel.

130. The representative of Hong Kong said that under Article 15 upon written request by any party in a dispute the Committee shall establish the panel. The preamble to the Anti-Dumping Code calls for the speedy, effective and equitable settlement of disputes. Article 15 states clearly that a signatory may request conciliation and, if that fails, a panel, where it considers that benefits accruing to it under the Code have been nullified or impaired as a result of measures taken by another party. Such a question is presented here, and this Committee must address this question. Any delay in taking a decision will increase the time that the complaining party will continue to suffer from such nullification and impairment. Article 15:5 is automatic. There are no conditions or qualifications for the establishment of a panel. The only qualification is the three-month time limit.

131. The representative of Switzerland expressed concern about the right of a party to obtain establishment of a party without unjustified delays. Japan has fulfilled the conditions to ask for a panel. While it may be that not all the information in Japan's request is relevant to the Code, this should not delay establishment of a panel.

132. The representative of the United States said that he strongly supported the continuation by the Chairman of his good offices. This issue represents the intersection of two important principles. First, the very important principle of a right to a panel in GATT disputes under the Montreal rules. Those rules may not apply juridically to the Committee, but it has been the practice of the Committee to act as if they did. On the other hand, effective dispute settlement requires precise, clear identification of the issues to be raised. This is important both to enable the defending party to anticipate what issues it ought to address, and to those non-parties who must decide whether to take a third party position. He hoped for agreement on terms of reference on Friday so that a

panel can be established without the need to go through a protracted balancing and a difficult discussion whether it is appropriate to go forward when the terms of reference are asserted to be insufficiently precise.

133. The representative of Pakistan believed that Japan's request for establishment of a panel was fully justified, as the steps laid out in Article 15 have been completed. The Committee therefore has no choice but to establish a panel. Following the usual procedure, the Chairman in consultation with the parties to the dispute should decide on the terms of reference and the composition of the panel.

134. The representative of Canada believed that the Code requirements for establishment of a panel are clear, and that there is a distinction between the conditions for establishment and the procedures for developing terms of reference. Canada supports Japan's request, and accepts the Chairman's proposal to continue consultations and address the issue on Friday.

135. The representative of Brazil considered it clear that Japan in the present case has the right to a panel. The issue of terms of reference would be a further step in the process.

136. The representative of Finland stated on behalf of the Nordic countries that the prerequisites for establishing a panel - consultations without a mutually satisfactory solution and a three-month moratorium - have been fulfilled. The task of the Committee is to establish a panel, whereas the precise arguments are relevant to the panel's terms of reference, which are to be established at a later stage by the Chairman in consultations with the parties.

137. The representative of Australia shared the concerns of other delegations that the establishment of a panel would have to be justified in some way on the merits of the arguments put forward in the bilateral consultations. It would be difficult for the Committee to take on that rôle. Australia supported the Chairman's proposal to continue consultations and to reconvene the meeting on Friday.

138. The representative of New Zealand agreed that the Code clearly provides the right to a panel once the two requisite stages of consultation and conciliation have been fulfilled, as they have in this case. The basis of a dispute should be clear, so New Zealand supports consultations to clarify the issues.

139. The representative of Austria shared the views of the previous speakers, and noted that the Committee seemed to be at a stage of consensus minus one.

140. The observer from Argentina believed this matter raised a general principle affecting the whole GATT system. Argentina is in the process of acceding to the Tokyo Round codes. It would be hard to explain to the Argentine Government or Parliament that it was joining a system in which

dispute settlement does not work. The requirements of Article 15:5 have been met in this case, and a panel should be immediately established. He understood the need to be clear on the nature of the dispute and the points on which to focus attention. The panel should be established; the terms of reference can be solved by the Committee, if necessary, or possibly by the panel itself. If this was not to be the case, he was unsure why he should ask his Parliament to join the system.

141. The Chairman stated that he would continue his efforts. The meeting of the Anti-Dumping Committee would continue and would conclude its work on Friday in the course of this same. A decision would be made on the request by Japan on Friday.

142. On Friday, the Chairman stated that he had continued informal consultations on this matter. The consultations were positive. As Japan has exhausted all possibilities under Article 15 - consultations, conciliation, and the conditions in Article 15:5 - and as he found no objection since last Monday, he would like to officially establish the panel, and requested that the Committee authorize him to continue informal consultations with both delegations. He hoped to agree as soon as possible on the panel's terms of reference.

143. The representative of the EEC stated that in spite of the Chairman's efforts the EEC continued to consider the reference paper presented by Japan to be insufficiently precise on a number of points, and specifically paragraphs 17, 19 and 25. The EEC thus reserved fully its position regarding the terms of reference of the panel, which would be the subject of consultations in order to arrive at prompt agreement between the parties on precise and unambiguous terms of reference as foreseen in the 1979 Understanding on Dispute Settlement.

144. The representative of Japan stated that the EEC's arguments could be considered by the panel, which he expected to be established under the standard terms of reference. Speedy, efficient and effective dispute settlement is important, and he hoped that the dispute settlement procedure agreed at the time of the April 1989 Mid-term review would be applied to this case. Although the agreement contained no reference to the Tokyo Round codes, its spirit and principles should be applied in order to avoid further delay.

145. The Chairman stated that the panel was established, and that he would continue working to reach agreement on terms of reference that would be satisfactory to both parties.

146. The representatives of Canada and the United States reserved their countries' rights to appear before the panel to make a third party submission.

I. Mexico - Anti-Dumping Proceedings on Imports of Electric Power Transformers from Brazil and on Imports of Regenerated Cellulose Casing from Spain (ADP/M/37, Paragraphs 65-70)

147. The Chairman noted that these items were raised in the Committee's regular meeting held on 27 April. He asked the delegation of Mexico whether it was prepared to provide further responses to questions raised by Brazil in the meeting of 27 April regarding the investigation of electric power transformers.

148. The representative of Mexico indicated that he was prepared to respond to Brazil's questions (ADP/M/37, paragraphs 65 and 66). In the case of international public tenders, while an entity may compete on the basis of price, financing, quality, etc., this does not mean that the entity should violate other legal rules. Thus, the point raised by Brazil is irrelevant. Regarding the calculation of constructed normal value for the provisional measure, it is based on the cost of production of the Brazilian exporters themselves. The cost of production for purposes of initiation was based on the complainants' costs because the goods in question were not sold in Brazil or in third countries; these goods are produced only on request and the technical specifications may vary significantly from one case to the next. While the Mexican secretariat did find during the investigation prices for like products in the Brazilian market, none of the parties presented sufficient evidence specifying the prices for the same type of transformers as an alternative normal value. The normal value was calculated starting from the cost of production of the exporting companies as presented by these two companies and verified by the secretariat in its mission in Brasilia. The secretariat changed its constructed value calculation on the basis of evidence furnished by the exporter obtained during its mission to Brazil regarding manpower, financial, sales and administration costs furnished by the exporter. The provisional and definitive dumping margins have been adjusted based on this information.

149. The representative of Mexico noted that Brazil asserted that no causal link between the imports and the injury was established. In fact, the definitive duty was applied only to 34 per cent of the total value of the tenders in question precisely because of the results of its causation analysis. It is applied only where domestic producers would have won the tender but for dumped imports from Brazil. Brazil stated it was not informed of the facts considered by Mexico during the investigation. At the time, Brazil had not made a written request for access to this information. Mexico has never refused this information to Brazil or to any other interested party, as long as the request is in writing. With respect to dates, no measure was applied at the time of initiation. Provisional measures were not applied until after a decision published 20 February 1992; Brazil is incorrect in its assertion that measures were applied as of 15 November 1991. With regard to the definition of like product, the Mexican secretariat based itself on Article 1, paragraph 7 of its regulation against unfair practices, which defines like products as products which correspond in all their characteristics to the products

under comparison, taking into account their nature, origin, function, quality and trade prestige. If all these characteristics are not the same, a like product may be found where identity on certain points only exists, in conformity with Article 2:2 of the Code. Mexico based its like product decision on the use of world experts. Mexico checked the information provided concerning raw materials used for the transformers, the components, the technology used by the firms investigated, and on the basis of general technical progress the world over, and in its definitive determination found no differences in terms of the functions of these transformers. Differences in quality are based only on different characteristics of particular inputs. Thus, the Brazilian transformers were like products vis-à-vis domestic production. The similarities are of a confidential nature, as they contain information on inputs, technology, methods of production, costs, and other aspects, so the secretariat in its published final resolution only revealed the determining parameters. Mexico is prepared to discuss these matters with Brazil in any level of detail that Brazil desires.

150. With respect to the proceeding relating to regenerated cellulose casing from Spain, the representative of Mexico noted that the resolution imposing a provisional measure complied with all the requisites established by Mexican law and by Article 8:5 of the Code. The resolution included all relevant questions of fact and law, as well as the reasons why the measure was imposed. Regarding ADP/17 of this Committee, while this recommendation is not binding on the parties, the secretariat nevertheless has offered a detailed explanation of the methodology used to calculate the dumping margin to anybody who might so request, as occurred in this very case with a number of firms from North America. The Spanish company in this case refused to submit to verification, so Mexico relied on best information available consistent with Article 8:6 of the Code. The company has not objected to the definitive resolution. While the margin of dumping was 67 per cent, the duty levied was only 28 per cent, the level that the secretariat deemed necessary to remedy the injury incurred.

151. The representative of Brazil said that on 7 September Mexico imposed definitive duties on the transformers in question. Brazil repeatedly sought in writing consultations, which were finally held on 15 October. Brazil in those consultations indicated that the criteria used in the cost determination were not based on the information available to the investigating authorities. Brazil also argued that there was no evidence of injury, and in any event Brazilian participation in the Mexican market would not justify a determination of causation. Consideration of factors such as the amount of idle capacity in the Brazilian industry on the cost of the product were patently inadequate. Brazil considered the consultations to be insufficient and inadequate. Brazil cannot accept arguments put forward by Mexico regarding acquired rights of the complainants arising out of the publication of the definitive duty. Brazil considers that the consultations have failed to achieve a mutually satisfactory solution. Brazil will, absent unforeseen progress, presently request conciliation under Article 15:3 of the Anti-Dumping Code.

152. The Chairman noted that Vice-Chairman Walker would be asked to handle this item in the future. He stated that if in fact the consultations were inadequate, the spirit of the Code required that each party make full efforts to make its points.

153. The representative of Mexico stated the two parties did not have a real consultation on substantive issues such as normal value and injury. Brazil merely made unsubstantiated assertions regarding the investigation. He denied that Mexico has acted in a manner inconsistent with the GATT.

154. The representative of Brazil stated that the Chairman was welcome to remain in the chair if this matter proceeded to dispute resolution. While Brazil is open to negotiations, Brazil has limited hopes regarding the outcome of further consultations.

155. Regarding imports of regenerated cellulose casing from Spain, the representative of the EEC stated that the EEC asked in the last meeting for an explanation of the manner in which normal value and export prices were determined. Article 8:5 provides that the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities should be laid down. Mexico's statement that its publication was consistent with Article 8:5 means that Mexico considers that the manner in which normal and export values are determined is not a material question. The EEC disagreed, and asked Mexico to address this issue in writing before the next meeting.

156. The Chairman requested that Mexico respond to the EEC request for clarification in writing.

J. Canada - Anti-Dumping Proceedings on Imports of Certain Machine Tufted Carpeting from the United States (ADP/M/37, Paragraphs 75-79)

157. The Chairman recalled that at the Committee's meeting in April, the representative of the United States raised a number of questions with respect to this investigation conducted by Canada.

158. The representative of Canada asked whether the United States alleged that Canada had in any way not conformed with its GATT or Code obligations. With respect to the United States's comment that the period of investigation did not immediately precede the date of the initiation, he noted that the Code provides no guidance with respect to the selection of a period of investigation, which is a discretionary decision on the part of the authorities. Canada begins its examination of customs documentation at the time it receives the first enquiry from the domestic industry. Canada takes this factor into account in selecting a period of investigation because it has by that point examined a large volume of documentation. With respect to Canada's decision to exclude unfinished carpeting from its preliminary determination while including it in the final determination, Canada made an early decision that unfinished carpeting would not be subject to investigation. However, during the course of the investigation

both US exporters and the Canadian industry expressed concern that this would provide a loophole in the product definition. Regarding Canada's use of best information available, the final determinations for all exporters were based on information provided by those exporters. Canada used best information available only where the information submitted by the exporters was incomplete. With respect to the issue of prime and non-prime carpeting, Canada became aware of a common practice whereby exporters would label as non-prime goods which were in fact prime, so that they could provide a discount. But Canada did not find sufficient evidence that non-prime goods were in fact non-prime.

159. The representative of the United States said that the United States does not at this time allege any inconsistency with Canada's obligations under the Anti-Dumping Code. He agreed that the Code does not provide any guidance with respect to the establishment of a period of investigation. His question on this point concerned merely how or whether Canada had determined that there were insufficient sales during the period which Canada normally considers in anti-dumping proceedings. He understood that Canada had some concerns regarding seasonality, which the United States may not share. Notwithstanding its continued doubts about certain aspects of this investigation, however, the United States would not insist that the matter remain on the agenda of the Committee.

160. The Committee took note of the statements made.

K. EEC - Anti-Dumping Investigation of Imports of Cotton Yarn from Brazil
(ADP/M/37, Paragraphs 81-83)

161. The Chairman recalled that this matter was raised by the delegation of Brazil at the regular meeting of the Committee in April.

162. The representative of Brazil said that the position of Brazilian cotton yarn in the EEC market remains severely affected by the EEC's action. The EEC authorities disregarded Brazil's arguments relating to exchange rates, equity, special treatment for developing countries under the Anti-Dumping Code, the commitment to refrain from taking additional trade measures under the Multi-Fibre Agreement, and other technical matters that will be presented in due time. While Brazil is still considering this matter under Articles 15:1 and 15:2 of the Code, Brazil expects that the revision process will provide opportunity for redress. With respect to the efforts of newcomers to be excluded from the EEC duties, he has recently been informed of additional difficulties encountered by newcomers affected by this measure, who not only have not exported to the EEC but have not exported at all. These newcomers, which are not related to any other enterprise in the spinning sector, cannot enter into serious sales negotiations with prospective EEC importers without a clear definition of their situation. Brazil hopes the EEC can respond expeditiously to their specific demands.

163. The representative of the EEC noted that there have been bilateral contacts between Brazil and the EEC on the issues raised by Brazil at the last meeting. At the last meeting, Brazil argued that emergency economic measures including the freezing of prices created an artificial dumping margin. The EEC has re-examined the case and performed a calculation excluding the three-month period during which these emergency measures were in effect. It found no significant changes in the dumping margins as a result. Brazil also expressed concern that high inflation could create an artificial dumping margin. However, the EEC establishes monthly dumping margins, as it did here. In this case the EEC also applied end-of-month exchange rates, which results in a lower dumping margin than if monthly average rates were used. As for Brazil's apparent argument that no anti-dumping measure should be taken in cases where a quantitative restriction - in this case, under the Multi-Fibre Agreement - is in place and has not been exceeded, anti-dumping cases relate to price discrimination. The injury determination might be affected by the fact that a quota is not exceeded, but injurious dumping can exist even where a quota has not even been fully exploited. Regarding newcomers, EEC policy is that if a newcomer can provide sufficient evidence that he has not shipped during the reference period, and that he is unrelated to one of the exporters that took part in the original investigation, he can have an expeditious review of his dumping margin. He was unaware of any further complications in this case, but if the representative of Brazil can provide further information it will be reported back to Brussels.

164. The representative of Brazil stated that the EEC is obliged to follow Article 9 of the Multi-Fibre Agreement. He does not have any further information regarding newcomers at this time, but will provide it to the EEC either in Geneva or Brussels.

L. United States - Anti-Dumping Investigations of Imports of Certain Circular Welded Steel Pipes and Tubes from Mexico and Brazil
(ADP/M/37, Paragraphs 93-98)

165. The Chairman recalled that the delegation of Mexico first raised this point in October 1991 and it was debated again in April 1992. At the latter meeting, the representative of Mexico requested that certain questions be answered in writing.

166. The representative of the United States stated that the secretariat had distributed written responses to Mexico's questions which the United States had recently provided to Mexico.

167. The representative of the United States recalled that Mexico asked how the United States justified the simultaneous application of quantitative restrictions and anti-dumping measures, especially in light of the relatively low level of utilization by Mexico of its quota under its VRA with the United States. How, Mexico asked, can unfair trade practices exist in cases where the authorities control the volume of imports? The representative of the United States responded that there is nothing in the

GATT or the Anti-Dumping Code which either prohibits or prescribes against the possible application of anti-dumping measures on imports of products which may otherwise be subject to quantitative restrictions. If such imports are being dumped and are causing injury to the domestic industry, the importing country authorities may impose offsetting measures. Moreover, the quantitative restraint levels contained in the US-Mexico steel trade understanding were negotiated figures; the understanding neither states or implies that these are presumed to be "non-injurious." To the extent that Mexican under-utilization of steel export restraint levels existed, efforts to increase the level of utilization may have placed a downward pressure on export prices to the United States, thereby setting the stage for dumping to occur. Fungible products tend to be price-sensitive, and even small import volumes of such goods can have an injurious impact.

168. The representative of the United States recalled that Mexico understood that the most important suppliers of this product (Canada and Japan), which had a market share much greater than that of many involved countries, were not under investigation, and asked the basis for their exclusion. The representative of the United States responded that the petition in this case provided information in support of the allegation that imports of the product from Brazil, Korea, Mexico, Romania, Taiwan and Venezuela were being dumped and causing injury to the industry producing the like product in the United States. The US authorities were not presented with any evidence indicating that investigations of imports from other countries were justified. Relative market shares, per se, provide no basis for the initiation of an investigation, as Article 5 of the Anti-Dumping Code clearly requires sufficient evidence of dumping, injury and causation. He cannot speculate as to why the domestic industry "excluded" such other countries from the petition, but the reasons - if any exist - would be irrelevant to whether there were sufficient grounds to initiate investigations of the countries which were named. To the extent that the question may relate to whether or not the ITC would consider other imports in its injury investigation, it would look, for example, at which imports were the price leaders and at the total volume of imports in order to make an injury assessment. To that extent, the totality of imports would be considered.

169. The representative of the United States recalled that Mexico inquired as to the business background of the US petitioners grouped together in the Committee on Pipe and Tube Imports." Mexico believed the Committee to be an ad hoc group formed for the purpose of the investigation, which is turning out to be a practice in the United States. The representative of the United States responded that the petition was filed by nine US pipe and tube producers acting as a trade or business association a majority of whose members manufacture, produce or wholesale the like product in the United States. Irrespective of whether or not the petitioners collectively represent an ad hoc group formed for the purpose of the investigation, he failed to see why this would be objectionable if it were the case.

170. The representative of the United States recalled that Mexico asked whether the Commerce Department verified standing. The representative of the United States responded that the Commerce Department accepted the affirmative representations of the petitioners that they filed the petition on behalf of the domestic industry producing the like product for purposes of the initiation, and publicly invited any domestic interested parties which objected to the petition to make such opposition known to the Department. No such objections were raised.

171. The representative of the United States recalled that Mexico had expressed the view that the recession in the US construction industry is one of the principal causes of the material injury, and asked how ITC can prove the causal link with the supposed dumping? How will the ITC evaluate the distinct rôle of the alleged dumping in the injury? The representative of the United States responded that the Mexican government was effectively soliciting speculation on the outcome of an investigation and analysis which had not yet been conducted. The United States would not speculate on this in light of the fact that the ITC has not yet reached a final determination in this case. Furthermore, he added, it is not the rôle of the ITC to prove either injury or causation, but rather to arrive at a determination on those issues on the basis of the facts on the record of the investigation and the arguments presented by the interested parties to the investigation. The Anti-Dumping Code requires that the dumped imports be found to be causing injury in order for an affirmative determination to be made; unlike the 1967 Code, the existing Code did not require that the dumped imports be a principal cause of injury. Concerning the evidence of causation which the ITC addressed in its affirmative preliminary determination, the information provided by the US delegation at the April 1992 meeting of the Committee is noted in paragraph 95 of ADP/M/37. The final injury determination is due next month; once it has been made the United States will provide whatever information it can.

172. The representative of the United States noted that in the April meeting of the Committee the Mexican delegation indicated that one of the exporters had been assigned a margin of 99.29 per cent because of an alleged failure to co-operate in the investigation. Mexico indicated that this company accounted for less than 1 per cent of Mexican exports of the product in question to the United States, and had requested the Department of Commerce to be excluded from the investigation. The representative of the United States noted that this firm initially sought to participate in the proceeding as a "voluntary respondent," and that the United States sent a questionnaire to that firm, indicating that if it did not respond it could be subject to the use of best information available to determine dumping margins. The firm did not submit a questionnaire response, and the Department assigned it a preliminary rate based on best information available. In the final determination, the Department assigned that firm the rate applicable to all other non-specifically-investigated exporters as a result of a refinement of the policy with respect to voluntary respondents. Department policy now recognizes that until a voluntary respondent formally submits a questionnaire response there is no basis for finding that respondent to be non-co-operative.

173. The representative of Mexico noted it received the United States' written response only yesterday. Some of these responses are not satisfactory as they side-step the main issues. Regarding the determination of injury in the final determination, Mexico will submit written questions relating to the way in which the US recession could have affected its industry and its relationship to the supposed injury coming from the anti-dumping practices. Mexico will also ask how an industry with average profits of 6-7 per cent is suffering injury from allegedly dumped imports. It will also reiterate the relationship between an increase in imports and the existence of VERS. These questions will be provided in writing.

174. The Chairman stated that he would await Mexico's written questions and noted Mexico's request that the responses also be in writing.

175. The representative of Brazil shared Mexico's concern regarding the US action on this steel product. Brazil reserved its right to examine and return to the responses to Mexico's questions in future meetings. He noted that many additional cases have been initiated on steel products, with calamitous effects on certain steel exporters including Brazil. Efforts to reach bilateral solutions regarding these cases have not to date generated any significant result. He reserved the right to return to the matter of additional actions initiated in the United States should the Committee debate it under another item of the agenda.

176. The Committee took note of the statements made.

M. United States - Anti-Dumping Investigation of Imports of Steel Wire Rope from Mexico (ADP/M/37, Paragraphs 105-109)

177. The representative of Mexico will submit additional questions to the US delegation. For example, certain deadlines were not extended in apparent contradiction with other situations where an extension was given. Further, in August 1991, eight months before this investigation was initiated, the ITC itself did not find any injury caused by imports, while in this case the ITC made a preliminary affirmative determination. Also, Mexico will ask why Canada and Japan, with greater US market shares, were not included in the investigation. While this is not an impediment to initiation, he was struck by the fact these two countries were not included.

178. The representative of the United States said he would await Mexico's questions in order to respond in detail.

179. The Chairman stated that the Committee would await Mexico's written questions.

N. United States - Anti-Dumping Investigations of Imports of Steel Products from the European Community

180. The representative of the EEC expressed serious concerns about a flow of US anti-dumping and countervailing duty investigations of steel. There have been eighty-four such investigations regarding twenty-one countries. Thirty-eight of these investigations concern EEC member States. A trade volume of two million tons is affected. In August and September the ITC and the Department of Commerce made preliminary determinations concerning certain hot-rolled lead and bismuth carbon steel products from France, Germany and the United Kingdom. While these are only preliminary determinations, the EEC fears that the mechanism of anti-dumping and countervailing measures is being abused by an industry to harass its foreign competitors and to protect itself from very normal and usual competition.

181. The representative of the EEC noted that for more than ten years, the United States has had quantitative agreements with most of the world's important steel exporters to limit exports to the United States. These agreements were in force until early this year. They were respected. Talks have failed to prolong these agreements. Sixteen days after the talks failed, there was a flow of petitions. Why suddenly is there dumping or subsidization and injury that wasn't there before? The volumes have gone down, and prices do not show consistent patterns of undercutting or underselling. For some products, EEC exporters actually price higher than their US competitors. Further, the market shares of some of the producers are as low as 0.1 per cent. Even with the application of the rule of cumulation there should be a notion of a reasonable quantity necessary to cause injury in a market like the United States, and 0.1 per cent could be regarded as negligible in this context.

182. While the representative of the EEC noted that the findings of dumping were preliminary, he noted two points. Dumping is a comparison of prices, usually compared net-net or as net as possible. The Department of Commerce has not excluded VAT from these prices, but has rather calculated the VAT on the domestic prices and added a fictitious VAT of the same percentage on the export price. Whenever there is a dumping margin, therefore, it is increased by this exercise. The EEC does not do this. There is no VAT on the export price, and this is an artificial increase made by the Department. There is normally no VAT even on the domestic price because VAT is refunded when the sale is not to the final consumer. These products never are sold to the final consumer. The result is that the dumping margin is substantially higher than it would be without inclusion of VAT.

183. The representative of the EEC addressed the use of best information available, or BIA. If there is no information, no co-operation or insufficient or misleading information, the authorities may use the best information they have available. The EEC does this too. But it appears from the preliminary determination that the use of BIA by the United States is indiscriminate and unfair. Particularly in relation to warranty,

technical service expenses and freight, it appears that the United States uses not the best but the worst information available from the viewpoint of the exporters concerned. For example, one steel exporter ships its products to the United States through a related shipping company. The Department of Commerce found because of this relationship that the prices reported to it were unreliable, and used BIA. But it used BIA whenever the prices reported were lower than the BIA information in the complaint. When they were higher, it used the reported prices. If the Department of Commerce has found once that the prices are unreliable, why are they more reliable when they are high? It appears that the investigating authority is fishing for dumping margins.

184. The representative of the EEC asked the US investigating authorities to reconsider these issues in their final determinations, and not be blind to the attempts of an industry through concerted action to counteract very normal, usual and historically existing competition in its market.

185. The representative of Japan said that in June 1992 the US steel industry filed a massive complaint regarding imports of steel products from twenty-one countries, including Japan, by claiming that they were imported at dumped prices and heavily benefit from subsidies. In mid-August, the ITC preliminarily determined that cold-rolled flat products, corrosion-resistant flat products, and hot-rolled flat products from Japan had caused injury to the US industry. The Japanese government rigidly controlled steel exports, including these three products, until this March, and this control lead to the continuous decline of those exports to the US market. Therefore, the determination by the ITC, albeit preliminary, was not correct. Japan is very much concerned about the turmoil to world steel trade which will be caused if the Department of Commerce makes an affirmative determination on dumping or the existence of subsidies. In addition, this massive investigation and affirmative preliminary ITC determination have discouraged the countries from participating in the MSA negotiations. In these circumstances, it would be very difficult to resume these negotiations. Japan hopes the US administration will make appropriate determinations on dumping and injury that are fully compatible with the Anti-Dumping Code.

186. The representative of Austria stated that Austria is seriously concerned by the massive recourse US steel companies have had to anti-dumping and countervailing duty procedures, at a time when the delicate state of the world economy and of the Uruguay Round negotiations require a more constructive attitude in international trade relations. He shared the views expressed by other speakers as to the appropriateness of such obviously concerted actions by the US steel industry.

187. The representative of Austria acknowledged that in most of the cases filed by the US steel industry no provisional or final measures have yet been taken by the US Government. However, the mere initiation of procedures as rigorous, cumbersome and costly as the US anti-dumping procedures may in certain cases constitute an unjustifiable impediment to

international trade. The shock-like initiation of so many cases against imported steel on such an unprecedented scale in itself discourages steel exports to the US market.

188. The representative of Austria noted that Austrian exports of cold-rolled carbon steel sheets, against which both anti-dumping and countervailing duty proceedings have been initiated, ranged from twenty-seven to forty-nine thousand tons, with a value of between \$ 183 and \$ 416 million (about US\$20 to 40 million) in the period 1989 through 1991. Austrian exports of this product fell to a mere 735 tons (with a value of US\$400,000) in the first six months of 1992.

189. To defend these comparatively small Austrian exports in the huge American market against allegations of dumping and subsidization, the representative of Austria noted, a team of highly qualified - and very well paid - specialists (government officials, staff in the enterprise concerned and US lawyers) had to work 2,470 man-hours under extremely stringent deadlines. About 1,000 man-hours were spent by US lawyers. Lawyers' work is expensive everywhere, and in particular in the United States. There is no reasonable relationship between the value of steel sheet exports and the cost of legal procedures.

190. The representative of Austria said that Article 5:2 of the Anti-Dumping Code stipulates that "evidence of both dumping and injury shall be considered simultaneously (a) in the decision whether or not to initiate an investigation, and (b) thereafter, during the course of the investigation" In other words, the de minimis rules of the US anti-dumping and countervailing duty legislation have to be applied when determining whether initiation of proceedings can take place.

191. The representative of Austria stated that the US procedures conflict with the generally recognized legal principles of proportionality and of parity between petitioners and exporting enterprises and countries. First, the questionnaires are unnecessarily lengthy and complicated. Some questions have nothing to do with the subject of the proceedings (e.g., the request for a comprehensive history of Austria's entire nationalized industries - not just the steel industry!) Second, the requirement to repeat the questions in the written answers to the questionnaires is hardly conducive to paperwork reduction. The same is true for the requirement to provide thirteen copies of all answers including voluminous attachments. Third, the deadlines for answering the voluminous and very detailed questionnaires are far too short.

192. In the view of the representative of Austria, the principle of parity of the parties is seriously impaired by the following facts. First, the petitioners have months to prepare their accusations, while their exporting counterparts have only a few weeks to refute these allegations. Second, while most non-English speaking countries or enterprises accept the necessity to use English in their international commercial relations and of course in US legal procedures, it is a very severe requirement to translate

all - often very voluminous - attachments, some of which have no relation at all to the main subject. The costs of translation are considerable and are in no reasonable relation to the alleged dumping margins or to the export volumes involved. Third, the same is true for the costs incurred by the requirement to adopt all documentation relating to cost accounting to the US accounting system.

193. The representative of Austria explained that his unusually lengthy and detailed remarks reflect the very concrete and serious procedural difficulties the Austrian steel exporters and the Austrian authorities are encountering in their endeavours to defend their rights. More generally, the concerted action taken by the US steel industry is not conducive to more competition and growth worldwide. Nor can the problems of the global steel industry be solved by such actions. The Austrian government is ready to resume the plurilateral negotiations on a multilateral steel agreement in order to end a decades-old history of state interventions, grey zone measures and trade harassment.

194. The representative of Finland, speaking on behalf of the Nordic countries, noted that Swedish and Finnish companies also have been affected by the US investigations. The companies concerned state that there is a great risk the investigations could lead to a halt in exports to the United States. The Nordic countries share the view that a flood of petitions as in this case cannot be regarded as normal utilization of trade laws, but can easily be seen as harassment by the industry towards its foreign competitors. Nor does it promote a solution to problems in international steel trade.

195. The representative of Brazil noted that Brazil shared the concerns of previous speakers regarding the sudden plethora of anti-dumping actions on steel products, which have disastrous effects on certain sectors in exporting countries such as Brazil. All possible efforts have been employed by governments to reach mutually satisfactory solutions, and plurilateral negotiations have taken place without any result.

196. The representative of Mexico noted that several Mexican companies have been accused of both dumping and subsidization in these investigations. Most of the subsidies being investigated existed some ten years ago, and do not exist anymore. How the ITC will establish a causal relationship between injury in the present situation and that which existed ten years ago? Further, Mexico has a minimal participation of less than 1 per cent in US trade. This trade harassment being used by the US steel industry not only does not solve the problem but aggravates it further. Various countries around the world are initiating cases against US companies, causing a drop in the overall economic well-being of the world. Everyone is a loser, and the consumers are the major losers.

197. The representative of the United States stated that his authorities understand the significance and the potential problems which investigations of this magnitude can lead to with respect to all the United States'

trading partners. The United States will take the points of view expressed very seriously, both in the context of these investigations and in bilateral and plurilateral relationships. The United States will in the conduct of these investigations be as objective, impartial and thorough as it can be, affording equal opportunity for all parties to make their case, so that the final determinations provide an accurate result.

198. The representative of the United States recognized that the steel industry throughout the world has in the past decade suffered from a number of problems, including the prevalence of unfair trade practices. It is not the practice nor the law of the United States to impose a "quota" on the ability of any particular industry to file unfair trade complaints when it has provided information alleging unfair trade, injury and causation. While he recognized that others have concerns with respect to the steel industry's motivations, it would serve no purpose to compound those concerns by casting doubt on the integrity or objectivity of the investigatory process in disregarding well-substantiated allegations.

199. The representative of the United States said that these complex and difficult investigations result in logistical and substantive problems for all the parties concerned, not least of which the investigating authorities. He urged other governments to encourage exporters to participate as fully as possible in the investigation, to ensure that their information and viewpoints are fully considered. The Department of Commerce has done all it can to look favourably on requests for extensions of time to provide requested information, in some instances deviating from normal practices to accept late responses, and making special arrangements for on-the-spot investigations in a manner convenient to the respondent parties. In investigations this complex, there will be instances where the concerns or logistical problems of all the parties will not be fully accommodated. But reasonable requests for extension within statutory time limits, which are there to serve the interests of all of the parties, will be fully respected and considered.

200. The representative of the United States noted that the complexity and so-called burdensomeness of US investigations arises from the desire to be as open and transparent as possible, and to provide full opportunities for all parties to make their case. The amount of information sought ensures due process both for respondents and domestic parties. As for the use of best information available, the Department of Commerce's statutory mandate is to determine dumping on the basis of information provided by the respondents, and it makes every effort to use that information. Finally, regarding the presence of quantitative restrictions and its impact on injury, in the case of fungible products where there is a great degree of price sensitivity, the negotiated levels of a steel VRA may have no relationship to whether injury has been caused by unfairly traded imports.

201. The Chairman thanked the delegations for their comments and noted that the Committee would revert to this item at a later date.

O. Other Business

(i) Australia - Anti-Dumping Investigation on Imports of Frozen Pork from Canada

202. The representative of Canada said that on 19 August the Australian Customs Service initiated countervailing and anti-dumping duty investigations on frozen pork exports from Canada. The Canadian government wants to raise a non-exhaustive list of concerns. First, the application does not meet the requirements of Article 5:1 of the Anti-Dumping Code, as it does not contain sufficient evidence of dumping, material injury or causal link to justify initiation. Nor did it supply sufficient evidence that the applicant represents the domestic industry producing the like goods or a major proportion thereof as required in Article 4:1. Second, the application includes live pig growers as part of the Australian domestic industry producing frozen pork. This compromises the definition of like product as defined in Article 3:2. Third, Canadian exports of frozen pork constituted less than 2 per cent of the Australian market, and therefore are unlikely to cause or threaten to cause material injury. Moreover, in the past year pigmeat production in Australia increased by 16,000 tons, which in itself is more than three times the volume of imports from Canada. Consultations were held in Geneva on 21 September pursuant to Article 15:2 of the Anti-Dumping Code, as well as Article 3:2 of the Subsidies Code. The Australian authorities have not demonstrated to Canada's satisfaction that the investigation is consistent with Australia's obligations under the Code. This investigation is one of what appear to be a series of protectionist actions taken to exclude Canadian pork exports to Australia. While Australian authorities finally granted health and sanitary approval to Canadian pork two years ago, Canada still faces unjustified standards restrictions. Canada does not believe the investigation should have been initiated nor does it believe that it meets the necessary criteria to justify further action. Therefore, Canada requests that Australia terminate the investigation.

203. The representative of Australia stated that the delegate that made the decision to initiate the case was satisfied there was a basis to establish that the goods were subsidized and dumped, and that there was material injury caused to the Australian industry, at least to the standard necessary to initiate an enquiry. The application was supported both by live pig growers, by processors of pork, and by vertically integrated producers. Thus, the application had the support of a major proportion of the industry producing frozen pork. Regarding close processed agricultural goods, legislative changes made by Australia in 1991 provide a procedure whereby the Australian industry producing the like product includes those producers of agricultural goods where a very tight test of vertical integration is established. The delegate was satisfied, in the initial stage at least, that frozen pork complied with that requirement. The definition of close processed agricultural industry does not affect the definition of like product, but only of the industry producing the like product. Regarding Canada's assertion that Canadian pork imports represent

less than 2 per cent of the Australian market, the presence of even a small proportion of goods at a substantially lower price can have price effects. Australia has complied with Canada's requests for consultations and has provided answers to written questions on very short notice. The representative of Australia noted that measures against pork had been eased over the past few years, but the basis for its quarantine policies were fully justified because two viruses affecting the Canadian pig population do not exist in Australia, and further noted that the Australian Government did not determine what applications for anti-dumping and countervailing measures were lodged. The characterization of Australia's actions in initiating this enquiry as a continuation of "protectionist" trade policy is not appropriate.

204. The Chairman noted that this item would remain on the agenda for the next meeting.

(ii) EEC - Initiation of Anti-Dumping Investigation on Imports of 3.5" Magnetic Disks from Hong Kong

205. The representative of Hong Kong expressed doubts about a number of claims raised in the complaint in this investigation. His concerns relate to standing, the calculation of normal value through constructed value, and the weakness of allegations regarding injury and causation. While pursuing the matter with the EEC, Hong Kong reserved its rights under the GATT and the Anti-Dumping Code.

206. The representative of Japan stated that available information suggests that the Japanese product has not caused injury to the EEC industry. EEC production increased enormously during the investigation period, and EEC market share increased significantly, while Japan's share declined significantly.

207. The representative of the EEC stated that the investigation has just opened. Thus, the only point that could now be made was that the opening of the investigation was not justified. In that regard, standing was verified and existed under GATT rules and perhaps even under panel decisions on this issue. He declined to comment on other issues in a pending investigation.

208. The representative of Brazil that under Article 14 a signatory is entitled to bring concerns to the Committee's attention, at whatever stage in an investigation.

209. The representative of Hong Kong stated that Article 5:1 requires that the investigating authority have sufficient evidence to initiate an investigation. It is this on point that Hong Kong has concerns.

210. The Chairman stated that any delegation is entitled to bring before the Committee any matter, as Article 14:1 provides.

211. The representative of the EEC stated that the EEC does not deny the right of any delegation to bring any point to this Committee. The EEC in this case is in full accordance with its Code obligations.

212. The Committee took note of the statements made.

(iii) United States - Delays in Administrative Reviews and Revocations

213. The representative of Japan stated that US regulations require the completion of administrative reviews within one year. The United States often fails to do so. These delays cost significant amounts of money for the companies involved. Nor does the United States have real sunset provisions, and many orders have been in effect more than ten years. He requested that the United States introduce new policies or provisions to correct these two weaknesses in present rules.

214. The representative of the United States acknowledged that administrative reviews occasionally are delayed. The Department of Commerce identified the elimination of lengthy delays as a priority, and is redoubling its efforts to reduce and eventually eliminate the backlog of outstanding reviews. Regarding the absence of a sunset clause, such a clause is not a Code requirement. There are a variety of ways in which an order can be eliminated, based largely on the elimination of the practices that lead to the order. Introduction of an arbitrary sunset clause is not the way to deal with the problem of unfair trade.

215. The representative of Canada asked the United States to give due regard to its trading partners' concerns regarding administrative reviews and to reconsider its position on sunset.

216. The Committee took note of the statements made.

P. Annual Review and the Report to the Contracting Parties

217. The Committee adopted its Report (1992) to the CONTRACTING PARTIES (L/7118).

Semi-Annual Reports and List of Countries with Anti-Dumping Legislation

218. The Chairman stated that he had asked the secretariat to develop a list of countries, whether or not Parties to the Agreement, that have an anti-dumping legislation. He requested that delegations with information regarding non-Parties with anti-dumping legislation provide it to the secretariat. He further stated that he would like to conduct informal consultations regarding the format of semi-annual reports. To facilitate this consultation, the secretariat will prepare a factual report regarding the extent to which these reports are fully made, which items tend not to be completed, etc. This report will be made available at the next meeting.

Date of the next regular meeting

According to the decision taken by the Committee at its April 1981 meeting (SCM/M/6, paragraph 36), the next regular meeting of the Committee will take place in the week of 26 April 1993.