

# GENERAL AGREEMENT ON

RESTRICTED

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## TARIFFS AND TRADE

Special Distribution

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Committee on Anti-Dumping Practices

### MINUTES OF THE MEETING HELD ON 19 JULY 1991

Chairman: Mr. Didier Chambovey (Switzerland)

1. The Committee on Anti-Dumping Practices ("the Committee") held a special meeting on 19 July 1991 to discuss the following matters:

- (i) United States - Imposition of anti-dumping duties on gray Portland cement and cement clinker from Mexico (ADP/59) - Request by Mexico for conciliation under Article 15:3 of the Agreement<sup>1</sup>
- (ii) United States - Imposition of anti-dumping duties on fresh and chilled Atlantic salmon from Norway (ADP/61) - Request by Norway for conciliation under Article 15:3 of the Agreement
- (iii) United States - Imposition of anti-dumping duties on man-made fibre sweaters from Hong Kong (ADP/60) - Request by Hong Kong for conciliation under Article 15:3 of the Agreement.
- (iv) Request by Egypt for technical assistance

(i) United States - Imposition of anti-dumping duties on gray Portland cement and cement clinker from Mexico - Request by Mexico for conciliation under Article 15:3 of the Agreement (ADP/59)

2. The Committee had before it in document ADP/59 a communication from the delegation of Mexico requesting conciliation by the Committee under Article 15:3 of the Agreement with regard to the imposition by the United States of definitive anti-dumping duties on cement and cement

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<sup>1</sup>The term "Agreement" hereinafter means Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade.

clinker from Mexico. The Chairman recalled that in October 1990 the Delegation of Mexico had requested bilateral consultations with the United States on this matter under Article 15:2 of the Agreement (document ADP/51).

3. The representative of Mexico drew the Committee's attention to a number of corrections to the Spanish version of his delegation's request for conciliation.\* He introduced this request by pointing out that in August 1990 exports to the United States of Mexican cement, a product produced by one of the world's most competitive industries, had been practically blocked as a result of the imposition by the United States of anti-dumping duties of almost 60 per cent. Given the effect of these duties on imports of cement from Mexico into the United States, the imposition of the duties was comparable to an embargo. During the course of the last twenty years exports of Mexican cement to the United States had been subject to harassment through various anti-dumping and countervailing duty investigations. Unfortunately, the same had happened with respect to other products in respect of which Mexican industries had achieved international competitiveness. Thus, in the recent past Mexican exports of fresh cut flowers to the United States had been affected by an anti-dumping duty of 200 per cent. In the case of the anti-dumping duties imposed by the United States on imports of cement from Mexico, his authorities had carefully reviewed the relevant determinations made by the United States Department of Commerce and the United States International Trade Commission and had decided to avail itself of its rights under the Agreement. To this end, his delegation had informed the Committee in October 1990 of its request for bilateral consultations with the United States on this matter. These consultations had been exhaustive but had failed to lead to a resolution of the matter, which explained his authorities' decision to request conciliation under Article 15:3 of the Agreement.

4. The representative of Mexico described the main aspects of the matter referred by his delegation to the Committee as follows. Firstly, there were problems pertaining to the regional industry analysis which had been conducted in this investigation, both with respect to the methodology used for determining the existence of material injury and with respect to the standing of domestic producers in the United States to request the initiation of the anti-dumping duty investigation. Secondly, while they did not wish to raise the general question of the compatibility of a cumulative injury analysis per se with the General Agreement, in this particular case his authorities questioned the form in which a cumulative analysis had been carried out of imports of cement from Mexico and imports of cement from Japan, despite the fact that the imports from these two

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\*See document ADP/59/Corr.1.

countries had been subject to independent investigations, that different regions in the United States were involved in these investigations, and that the proceedings with respect to the imports from Mexico and the proceedings with respect to the imports from Japan were in different stages. In this respect he drew the Committee's attention to a recent anti-dumping investigation involving imports of steel wire rope from six countries in which the USITC might use a similar form of cumulative injury analysis. As no injury but only a threat thereof, had been found to exist in the preliminary determination, another investigation of the same product imported from a main exporter had been initiated. The outcome of the first investigation would be totally determined by the possible cumulation of the imports subject to the subsequent investigation with imports subject to the first investigation. Thirdly, there were serious defects in the analysis made by the USITC of the causal relationship between the allegedly dumped imports and material injury; in particular, there had been no showing of a significant price undercutting by the Mexican imports and the United States' authorities had ignored the fact that there were serious problems of conflicting interests on the part of the domestic producers in the United States.

5. The representative of Mexico considered that the matter referred to the Committee by his delegation raised questions of particular importance and that it was in the interest of all Parties to the Agreement that the letter and spirit of Article VI of the General Agreement and of the provisions of the Agreement be confirmed. His authorities were seeking from the Committee a faithful interpretation of the Agreement. Absent a strict interpretation of the Agreement there was a risk that anti-dumping practices could be used as selective safeguard measures to protect domestic industries which had lost their competitiveness. In the case under consideration, the Committee had to pronounce itself clearly on the following questions: firstly, whether in a case involving a regional industry the requirements regarding the standing to file a request for the initiation of an investigation were stricter than the standing requirements in case of a national industry and whether in the present case these requirements had been met. Secondly, with respect to the regional injury analysis conducted by the USITC the question raised by this case was whether the determination required by the Agreement that dumped imports are causing injury to the producers of all or almost all of the production within a separate market could properly be based on a methodology which only analyzed aggregate and average data and whether an assumption that all producers within such a market were being injured could replace an objective analysis based on positive evidence. Thirdly, the case under consideration raised the question of the form in which a cumulative injury analysis had been conducted, in particular in view of the serious procedural and substantive aspects referred to earlier in his statement. Fourthly, there was the question of the conflicting interests of United States' domestic producers, some of which were related to the exporters in question or were themselves importers of the allegedly dumped products and as such were participating in the alleged dumping. This called into question the validity of the determination of material injury and of the decision to allow these producers to act as petitioners in this case.

6. The representative of the United States said that in reaching their determinations in the investigation of imports of cement and cement clinker from Mexico, his authorities had followed the provisions of the Agreement. In its determination of injury the USITC had applied each of the factors specified in the Agreement in light of the information gathered in its extensive investigation. In essence, Mexico's argument was that it disagreed with the conclusions drawn by the USITC. However, Mexico had not been able to show that in reaching those conclusions the USITC had failed to observe the provisions of the Agreement. With respect to the specific points raised by the delegation of Mexico he made the following comments. The question of the standing of domestic producers to request the initiation of an anti-dumping duty proceeding in case of regional industries had not been raised during the bilateral consultations which had taken place between Mexico and the United States and it was inappropriate for this matter to be raised for the first time during this conciliation process. Article 15:1 of the Agreement required that there be an adequate opportunity for consultations regarding a pending matter under the Agreement. With respect to the issue of the standing of petitioners in the context of a regional injury analysis, this adequate opportunity for consultations had been denied to the United States and this matter should consequently not be considered at this stage. On the methodology used by the USITC in arriving at its determination that the producers of all or almost all of the production within the market in question were being injured by reason of dumped imports from Mexico, he pointed out that both the Commissioners who had voted in the affirmative had considered aggregate industry data as well as information concerning the condition of individual plants in the region and had concluded that the data pertaining to individual firms did not detract from the conclusion that the producers of all or almost all of the production within the market in question were being injured.

7. In response to the points raised by the Mexican delegation on the cumulative injury analysis by the USITC, the representative of the United States explained that there was an overlap between the period of investigation in the Mexican and Japanese cases. The USITC had considered the existence of competition between imports from Mexico and Japan and the domestic like product only in the area of the regions where such competition occurred and in which imports from both countries were present. The fact that two different regions were involved was irrelevant as the USITC had limited its examination of the competition between the imports and the domestic like product to the area in which the two regions overlapped. Consequently, there was no basis for the Mexican criticism of the cumulative injury analysis used by the USITC. With respect to the points raised by Mexico on the question of price undercutting, he expressed some surprise that Mexico had raised this question because none of the Commissioners had relied on the existence of price undercutting in arriving at its determination. Rather, the Commissioners had relied on the existence of significant price depression and price suppression. He noted that Mexico had not questioned the findings of the USITC on this issue. Finally, he considered that the argument raised by the delegation of Mexico with regard to the conflict of interests of the domestic producers in the

United States was not admissible in this conciliation procedure as this argument had not been raised in the proceedings before the USITC. In fact, before the USITC Mexican exporters had taken a view diametrically opposed to the views now expressed by the Mexican authorities and had argued that no domestic producers in the United States should be excluded from the definition of the domestic industry. Consequently, there was no basis to argue that the United States had violated the Agreement on this point.

8. The representative of Mexico expressed his surprise about the comment made by the representative of the United States that the question of the standing of the petitioners had not been raised in the bilateral consultations between his delegation and the delegation of Mexico. He mentioned and read in this respect specific questions which had been submitted in writing by his delegation to the United States regarding the percentage of regional production accounted for by domestic producers who supported, opposed, or were neutral with respect to the petition and regarding the number of domestic producers who imported cement from Mexico and the percentage of production within the region in question accounted for by those producers. The United States had provided written answers to these questions. It was thus clear that this matter had been discussed in the bilateral consultations. With respect to the comment made by the representative of the United States on the question of the conflict of interests of domestic producers, he said that this issue had been raised in the proceedings before the USITC and had been discussed by the USITC in its analysis of the appropriateness of the possible exclusion of domestic related parties from the definition of the relevant domestic industry. In any event, the task of the Committee was to review the determinations made by the United States' authorities in light of the provisions of the Agreement.

9. The representative of the United States agreed that the question of what percentage of regional production was accounted for by producers in support of the petition had been discussed in the bilateral consultations between Mexico and the United States. However, what had not been brought to his delegation's attention was the specific legal question of whether a more stringent standing requirement should be observed in cases involving regional industries than in cases involving national industries. He expressed his delegation's concern that in view of the increasing number of dispute settlement proceedings in this area, there should be a full opportunity for consultations between Parties on both factual and legal issues.

10. The representative of Canada said that his authorities shared a number of the concerns raised by Mexico in this case, in particular with regard to the cumulative injury analysis, the treatment of related parties and the analysis of the causal relationship between dumped imports and material injury to the domestic industry in the United States. In the matter of cumulation he noted that, while his authorities were not generally opposed to a cumulative analysis of injury, they shared the concerns of Mexico regarding the type of cumulative analysis undertaken by the USITC in this case. It was his authorities' understanding that the USITC had found that

producers in the Southern-tier region in the United States were being injured not only by reason of the price - and volume - effects of imports from Mexico but also by reason of imports from Japan which were only alleged by petitioners to be dumped. This reliance on allegations would seem to conflict with the requirement of Article 3 of the Agreement that determinations of the existence of material injury be based on positive evidence. As noted earlier during the meeting by the representative of Mexico, this was not an isolated case and Canadian exporters had experienced similar cases with the United States. He noted that the representative of the United States had not contradicted the points made by the Mexican delegation regarding the reliance on alleged margins of dumping. On the question of the treatment of related parties, his authorities were interested in knowing why the United States Department of Commerce had not excluded as petitioners two domestic producers who were related to Mexican exporters. He wondered whether the standing criteria would have been met if these two producers had been excluded. Regarding the question of injury and causality, his authorities considered that while prices of cement could vary significantly depending upon the volumes sold, the USITC had made its price comparisons without taking into account the large discrepancies in reported volumes sold by importers and by domestic producers. The non-comparability of prices might have rendered the price data defective, which in turn would bring into question the price comparisons conducted by the USITC and its estimations of price undercutting. Finally, given the apparent benefits which the two main domestic producers in the United States received from their imports of cement from Mexico, one could also raise questions regarding the existence of a causal relationship between the imports and material injury to the domestic industry.

11. The representative of the EEC considered that the matter brought before the Committee by the delegation of Mexico involved a number of questions of a general interest, in particular regarding the cumulative analysis of the existence of injury, the rôle of margins of dumping in the injury analysis, the treatment of related parties and the regional industry analysis. He reserved his delegation's right to revert to these matters at a later stage in light of more detailed information. Some of the aspects raised in this case were also being discussed in the context of the negotiations on anti-dumping in the Uruguay Round. He recalled in this respect that the EEC had made a proposal in these negotiations for an amendment to the provisions of the Agreement regarding a regional industry analysis and considered that the case referred to the Committee by the delegation of Mexico underlined the need for an improvement of the provisions in this area.

12. The representative of Japan said that his authorities had a great interest in this case, which also involved Japanese exporters. He expressed his delegation's concerns regarding the fact that in making its determination of injury in the case of imports of cement from Mexico the USITC had cumulated the imports from Mexico with imports from Japan in respect of which injurious dumping had not yet been established. He reserved his delegation's right to revert to this matter at the appropriate time.

13. The representative of Hong Kong shared the concerns expressed by the representative of Mexico with respect to the determination made in this case by the USITC, particularly regarding the questions of the standing of the petitioners, the treatment of related parties, the cumulative evaluation of injury and the regional industry analysis. These questions were of a generic nature and of central importance to the effective implementation of the Agreement. With respect to the issue of the standing of petitioners, the Agreement was quite clear in the definition of a regional industry in Article 4 and it followed from this definition that the standing requirements in case of such a regional industry were more stringent than in the case of a national industry. Furthermore, investigating authorities were required under the Agreement to verify in each case before opening an investigation whether the standing requirements were met. From the information provided by the delegation of Mexico it appeared that the United States' authorities had not taken such steps in the case under consideration. Her delegation was concerned about the practice of cumulative injury assessment, in particular in view of the differences in the timing of investigations and the geographical areas in the United States involved. She considered that the comment made by the representative of the United States on the overlap between the timing of and the geographical areas involved in the two investigations did not explain why it had been decided by the USITC to cumulate the imports from Japan with the imports from Mexico. On the treatment of related parties in this case she felt that the delegation of Mexico had raised a valid point regarding the conflicting interests of domestic producers in the United States. Article 4:1 of the Agreement provided that when domestic producers were related to exporters of the allegedly dumped product, or were themselves importers of such product, the term domestic industry could be defined by reference to the rest of the domestic producers and she asked why in the case before the Committee the USITC had not excluded such domestic producers from its definition of the relevant domestic industry.

14. The representative of India said that a further clarification was necessary with respect to the cumulative injury analysis conducted by the USITC in its investigation of imports of cement from Mexico. He asked whether his delegation was correct in concluding from the communication from Mexico that the essence of the dispute on this point was Mexico's objection to the cumulative injury analysis because of the different regions involved in the investigation of imports from Mexico and in the investigation of imports from Japan, and because of the fact that a preliminary affirmative finding of dumping had not been made in respect of imports from Japan at the time of the USITC's decision to cumulatively assess the effects of these imports with the effects of the imports from Mexico.

15. The representative of Singapore considered that a number of aspects of the matter raised by the delegation of Mexico dealt with very fundamental questions. She shared the concerns of the Mexican delegation regarding the standing of the petitioners, the regional industry analysis, the cumulative assessment of injury and the examination of the causal relationship between the imports and injury to the domestic industry. The

Agreement imposed a more stringent standard for the determination of injury in case of a regional industry as compared with the determination of injury in case of a national industry. It appeared that this more stringent standard had not been met in this case. She reserved her delegation's right to make further observations on this matter at a later stage.

16. The observer for Colombia noted that in paragraph 2 of document ADP/59 the delegation of Mexico had claimed that the United States Department of Commerce had initiated the anti-dumping duty investigation of imports of cement from Mexico without verifying whether the petition had been filed on behalf of all or almost all of the domestic industry in the region concerned. He asked whether the delegation of Mexico could confirm this. Regarding the points raised by Mexico in respect to the cumulative injury analysis conducted by the USITC, he noted that in paragraph 8(iii) of document ADP/59 Mexico mentioned the fact that imports from Mexico and Japan had been cumulated although different regions within the United States were involved; this, however, would seem to be in contradiction with a statement made earlier at the meeting by the representative of the United States to the effect that the USITC had only taken into consideration the overlapping area between these different regions in which Japanese and Mexican imports of cement were both present. He requested a clarification on this point. Furthermore, he requested an explanation of the difference in timing between the investigation of imports from Mexico and the imports from Japan and the consequences of this difference for the imposition of anti-dumping duties in the two cases.

17. The representative of Mexico reiterated his delegation's objections to the particular form in which the USITC had conducted a cumulative assessment of injury and emphasized that these objections were based on the difference in timing between the investigation of imports of cement from Mexico and the investigation of imports of cement from Japan, and on the fact that different regions within the United States were involved in these two investigations. On the first aspect, he pointed out that the imports from Japan which had been cumulated with the imports from Mexico had not yet been subject to a preliminary determination of dumping. Consequently, the injury determination made by the USITC in the Mexican case had been based on mere allegations and had not involved, as required by the Agreement, an examination of positive evidence. On the second aspect, he observed that Article 4:1(ii) of the Agreement provided that producers within a competitive market in the territory of a Party could be regarded as a separate industry if "the producers within such market sell all or almost all of their production of the product in question in that market", and if "the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory". Thus, underlying this provision was the concept of market isolation. It was inconsistent with this concept to argue that a cumulative injury assessment of imports into different markets was justified in view of the existence of an overlap between these markets: the very notion of such an overlap meant that the markets were not in reality isolated and that reliance on Article 4:1(ii) was inappropriate.

18. In response to the question asked by the observer for Colombia on the issue of the standing of the petitioners, the representative of Mexico said that the objections of his delegation related not only to the failure of the Department of Commerce to verify whether the petitioners had the standing to act on behalf of the domestic industry but also to the fact that given that this case involved a regional industry, a more stringent substantive standard should have been applied in determining whether there was standing. On the question of the regions involved in the two investigations, he explained that the regions involved were different but overlapping in that they both included southern California. Finally, he explained his delegation's position that the price comparison data sought by the USITC were inadequate in view of the fact that the USITC had ignored the large differences in volumes of cement sold by importers and by domestic producers.

19. The representative of the United States considered that the application of a cumulative injury analysis in this case went to the heart of the rationale of the concept of cumulation. Imports from two countries had been present at the same time and at the same place and which together had a competitive effect on the domestic industry. While the timing of the investigation had been different, the periods covered by the two investigations had been virtually identical. On the question of the treatment of related parties and of parties who were also importers, he observed that under Article 4:1 of the Agreement the decision whether or not to exclude such parties from the definition of the domestic industry was left to the discretion of the investigating authorities. Under United States' practice, the essential criterion used in determining whether to exercise this discretion was whether there were indications that the market behaviour of such related parties or of firms which imported the allegedly dumped product was different from the market behaviour of other domestic producers by virtue of the relationship of the parties with the exporters, or by virtue of the fact that they were importers of the allegedly dumped product. In the case under consideration, this reasoning had been applied both by the USITC and the Department of Commerce.

20. The representative of Mexico considered that the Committee's discussion had been exhaustive and constructive. However, there was no change discernible in the position of the United States. Given that his delegation had requested consultations as far back as October 1990 and that a resolution of this dispute was an urgent matter for his country, he requested that a panel be established on this matter.

21. The Committee took note of the statements made. The Chairman encouraged the delegations of Mexico and the United States to make further efforts to reach within the conciliation process which had started a mutually satisfactory resolution of this dispute, consistent with the Agreement.

(ii) United States - Imposition of anti-dumping duties on fresh and chilled Atlantic salmon from Norway - Request by Norway for conciliation under Article 15:3 of the Agreement (ADP/61)

22. The Chairman drew the Committee's attention to document ADP/61, in which the delegation of Norway had requested conciliation under Article 15:3 of the Agreement in respect of the imposition by the United States of definitive anti-dumping duties on imports of fresh and chilled Atlantic salmon from Norway. He also noted that in documents ADP/57 and 58 respectively, the Committee had received communications from the delegations of Norway and the United States regarding bilateral consultations which had taken place between these delegations on this matter.

23. The representative of Norway said that in April 1991 the United States had imposed anti-dumping duties on imports of fresh and chilled Atlantic salmon from Norway. These anti-dumping duties of on average 23.8 per cent, imposed in conjunction with a countervailing duty of 2.27 per cent on the same product, had had the effect of an embargo: from 1261 tons in May 1990 imports of salmon from Norway had decreased to 24 tons in May 1991. Norway considered that the imposition of these duties was a protectionist measure, taken in contravention of the obligations of the United States under the relevant provisions of the Agreement. As such, this measure had resulted in the nullification or impairment of benefits accruing to Norway under the Agreement. The duties imposed by the United States had resulted in a nearly complete disappearance from the United States' market of the largest supplier of salmon. Significant economic interests were at stake in this case for the Norwegian salmon industry.

24. After providing a brief description of some characteristics of the Norwegian salmon industry, in which he emphasized that this industry was composed of a large number of very small producers, the representative of Norway gave the following account of the proceedings which had resulted in the imposition of anti-dumping duties by the United States. On 28 February 1990 an anti-dumping duty petition had been filed with the United States Department of Commerce by the coalition for Fair Atlantic Salmon Trade (FAST), alleging that imports of Norwegian salmon were being dumped and causing material injury to the United States' domestic salmon industry. In its subsequent investigation of dumping, the Department of Commerce had investigated imports made during the period 1 September 1989-28 February 1990. Following a preliminary affirmative determination of material injury by the USITC, the Department of Commerce had in October 1990 imposed an average provisional anti-dumping duty of 2.96 per cent. On 25 February 1991 the Department of Commerce had issued a final affirmative determination of dumping in which it had found individual margins of dumping for seven exporters ranging from 15.65 to 31.81 per cent. For the eighth exporter which had been investigated the highest of the margins of dumping found among the seven other exporters had been used as the best information available. All other exporters had been assigned a margin of 23.8 per cent, equal to the average of the margins found in

respect of the eight investigated exporters. On 16 April 1991 the USITC had found that an industry in the United States had been materially injured by reason of the imports of salmon from Norway. As a result, definitive anti-dumping duties had been in force since mid-April 1991. The representative of Norway noted that the acting chairman of the USITC had dissented from the affirmative determination of the majority of the USITC and had observed that "The majority's conclusion is unsupported by substantial record evidence and may well be contrary to law".

25. The representative of Norway noted that bilateral consultations had taken place on this matter between Norway and the United States. As these consultations had failed to lead to a mutually acceptable solution, the Norwegian authorities had decided to request the Committee to undertake conciliation in this matter under Article 15:3 of the Agreement. The main issues in dispute in this case concerned the question of the standing of the petitioner, the determination of dumping by the Department of Commerce, and the determination of injury by the USITC.

26. With regard to the question of the standing of the petitioner, the representative of Norway referred to the views of his delegation as described in document ADP/61. He noted that the petition filed by FAST had been completely dependent upon the financial support of one (Canadian-owned) company. Referring to the Report of the Panel established by the Committee in the dispute between Sweden and the United States on the imposition by the United States of definitive anti-dumping duties on stainless steel pipes and tubes from Sweden (ADP/47), he observed that, while this Panel had concluded that investigating authorities were required to satisfy themselves before initiating an investigation that a petition had been filed on behalf of the domestic industry, in the case of the investigation of imports of salmon from Norway the Department of Commerce had not verified whether the petition had been filed on behalf of the domestic industry but had assumed that this was the case. Thus, the United States had once more ignored the provisions of the Agreement regarding the standing of petitioners and the investigation had therefore not been initiated in accordance with the Agreement.

27. With respect to the determination of dumping made by the Department of Commerce in its investigation of imports of salmon from Norway, the representative of Norway pointed out that in determining the normal value of the imported salmon the Department had found that home market sales in Norway were too small in volume to serve as an adequate basis for comparison with export prices and had in its preliminary determination established the normal value on the basis of exporters' prices to third countries. However, at a later stage of the investigation, following allegations by the petitioner that export sales to third countries were at prices less than costs of production, the Department had based the normal value on the costs of production of the salmon farmers plus exporters' expenses, instead of the costs of production of the exporters, which would have been based on their acquisition costs. Norway considered that the Department should have calculated a constructed value based on the

exporters' acquisition costs, in view of the fact that Norwegian farmers did not know the ultimate destination of the salmon which they were selling and because exporters bought salmon from a large number of farmers whose production costs they could not know.

28. The representative of Norway further pointed out that the Department had investigated a sample consisting of eight exporters accounting for approximately 60 per cent of salmon exports to the United States. In the context of the Department's decision to conduct a cost of production investigation level, additional information from the farmers had been necessary. For this purpose, the Department had initially determined that a sample of eleven farms (later reduced to seven) could be considered as representative of the 700 salmon producing farms. While this sample was flawed and not based on generally recognized sampling techniques, the Department had not attempted to correct its sample or to gather additional information. Having found that the sample consisting of seven farms was representative, the Department had concluded that the costs of production of these seven farms could not be weight averaged because this would not yield representative results. Instead, it had relied on a simple average of these costs of production. This use of an unweighted average of the costs of production for farms of different sizes and with different cost levels had greatly increased the average costs of production. Had the Department used a weighted average of the costs of production, the result would have been an average dumping margin of 8.16 per cent, instead of 23.8 per cent. Furthermore, the average costs of production of the farms calculated by the Department had included costs based on the best information available. The Department had created a situation in which exporters, even though they had not withheld any information and had responded to the best of their ability to extensive questionnaires, had been penalized for the alleged failure of farmers to provide adequate information even though the exporters had no control over that information.

29. The representative of Norway also noted that while respondents to anti-dumping duty questionnaires should have at least thirty days to respond, in the case at hand exporters had been given only fifteen days to respond to section A of the Department's questionnaire. This was a clear violation of the Recommendation<sup>1</sup> adopted by the Committee in this matter. The information obtained in this manner had been used in the construction of the sample of the farms, despite the fact that the Department of Commerce was aware that the information supplied was not completely accurate. As a result, the exporters had been penalized even though they had done their utmost to comply with the request for information. Regarding the comparison between the normal value and export prices, he considered that when a single cost of production and constructed value was used, a fair comparison could be achieved only if a single average export price was used. If, as in this case, no single average export price was

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<sup>1</sup>BISD 30S/30

used, the result would inevitably be findings of dumping because small fish always drew lower prices per kilo than large fish. Finally, his authorities also questioned other aspects of the determination of dumping made by the Department of Commerce, including the method of allocation of general and administrative expenses, the inclusion of the five Krona freezing fee in the costs of production and the finding of the Department that fresh Atlantic salmon was not perishable and he reserved his delegation's right to revert to these aspects at a later stage. He concluded by saying that the arbitrary methods and calculations of the Department, combined with a series of choices made in a protectionist spirit to the detriment of Norwegian interests, had led to an unwarranted determination of dumping.

30. Regarding the affirmative determination of injury of the USITC, the representative of Norway considered that an objective examination of the relevant economic indicators clearly showed that this determination was unfounded.

31. Regarding the volume of imports of salmon from Norway into the United States, the representative of Norway noted that in April 1991, at the time of the final determination of the USITC, imports of salmon from Norway were less than 15 tons, compared to 1,075 tons in April 1990 and 1,258 tons in April 1989. During the period covered by the investigation of dumping (i.e. the period of six months prior to the date of the filing of the petition) Norway had exported 5,984 tons of salmon to the United States, compared to 6,132 tons for the period September 1988-February 1989. Thus, imports of salmon from Norway had actually decreased when the period covered by the investigation of dumping was compared with the period September 1988-February 1989. Furthermore, during the period 1987-1989, when imports of salmon from all other countries into the United States had risen, imports from these third countries rose relatively more than imports from Norway. From 1987 to 1990 imports of salmon from all countries other than Norway had grown rapidly. While imports from Norway had remained at the same level, imports from Canada and Chile had shown a dramatic increase. The entire decrease in imports from Norway in 1990 compared to 1989 had been more than offset by increased imports of salmon from Canada and Chile. Turning to the evolution of domestic consumption of salmon in the United States, he considered that no evidence of record concerning domestic consumption supported the determination of the USITC. During the period 1987-1990 the United States' market for fresh and chilled Atlantic salmon had grown strongly; from 1988 to 1989 domestic consumption had increased by 54 per cent. However, the market share of imports from Norway had declined from 75 per cent in 1987 to 60.2 per cent in 1989 and 36.7 per cent in 1990. The market share of the domestic industry in the United States had increased from 1988 to 1989 and shipments of United States' producers of gutted Atlantic salmon had tripled from the period 1987-1988 to the period 1988-1990. Thus, in a rapidly expanding market Norway had been the only country to experience a declining market share.

32. The representative of Norway considered that the finding of the USITC that imports of Norwegian salmon had significantly depressed prices of the domestic like product was contradicted by the evidence in the record. Market prices for Norwegian salmon had been consistently higher than prices of salmon of United States' producers and of imports from Canada and Chile during the entire period of investigation and the gap between the price levels of Norwegian salmon and salmon of United States' producers had widened since the middle of 1990. At the moment when the Department of Commerce made its final determination prices of Norwegian salmon had been 35 to 40 per cent higher than prices of United States' and Canadian salmon and the price difference with salmon imported from Chile had been even larger. Thus, the available data demonstrated that Norwegian salmon had been sold at prices significantly above the prices for salmon from domestic producers in the United States and from producers in the main competing countries and it was therefore difficult to see how the effect of the imports from Norway could have been to depress domestic prices of salmon to a significant degree.

33. The representative of Norway further considered that the available evidence concerning relevant factors showed that the domestic industry in the United States was not suffering material injury. Capacity and production of producers in the United States had risen strongly during most of the period 1987-1990 as producers responded to a strongly increased demand for Atlantic salmon. Indicators of employment in the domestic industry also reflected growth during the period 1987-1989. The domestic industry in the United States had thus experienced a natural development in which the setbacks felt by certain firms were due to competition and to other factors not related to imports of salmon from Norway. Furthermore, there had been no noticeable increase in the market share of the domestic industry since the almost total disappearance from the United States' market of Norwegian salmon. This strongly indicated that the imports of salmon from Norway could not have injured the domestic industry in the United States.

34. The representative of Norway also questioned the determination of the USITC that an industry in the United States had been materially injured by reason of imports of fresh and chilled Atlantic salmon from Norway. In this respect, he noted that the USITC had made one single determination of injury for both the anti-dumping duty investigation and the countervailing duty investigation had not investigated whether material injury had been caused exclusively by the allegedly dumped imports of salmon from Norway. Thus, the USITC had failed to demonstrate that material injury had been caused "through the effects" of dumped imports. Even if one assumed that the domestic industry in the United States had been materially injured, a combination of factors not related to the imports from Norway explained this injury, such as the large landings of wild Pacific salmon, problems due to mismanagement, the strong increase of imports of lower-priced salmon from other countries and the inability of the domestic industry in the United States to market its product on a year-round basis. If the allegedly dumped imports of Norwegian salmon had caused material injury, the embargo-like impact of the imposition of the anti-dumping duties should

have been reflected in an easily identifiable improvement in the development of the domestic industry in the United States. This, however, had not been the case. Prices of Norwegian salmon had been well above those of salmon from competing countries before the Department of Commerce had made its final determination. After the virtual disappearance of Norwegian salmon from the United States' market, there had not been an increase in the domestic prices of salmon in the United States. While the Agreement required that material injury be found to be caused through the effects of dumping, the approach adopted in this case by the USITC meant that a causal relationship could be established if the allegedly dumped imports caused any injury at all without regard to the nature or the size of the alleged dumping, the materiality of the injury caused by the effects of the dumping and without regard to whether some of the imports were known to be dumped. Thus, the United States had been unable to demonstrate any causal connection between the effects of the alleged dumping and the alleged material injury to the domestic industry in the United States.

35. In concluding his intervention, the representative of Norway said that in the case at hand the United States had not been able to demonstrate the existence of dumping, material injury, or a causal relationship between the alleged dumping and material injury. Consequently, the duties imposed by the United States were in contravention of the obligations of the United States under the relevant provisions of the Agreement and amounted to a nullification or impairment of benefits accruing to Norway under the Agreement.

36. The representative of the United States said, in response to the comments made by the representative of Norway, that since at least the early 1980s the Norwegian Government had undertaken a large-scale and co-ordinated programme through a Regional Development Fund to support Norwegian businesses located in a specific area of Norway and, since this area included the most fertile areas for raising salmon, to increase the production of salmon in Norway to sustain the local population economically. The success of this programme was evidenced by the doubling of the production of salmon in Norway between 1988 and 1990. This had created massive overproduction which could not be absorbed by the Norwegian domestic market. Consequently, Norway had looked to overseas markets to unload the excess production. One primary export market had been the United States. Shipments of salmon from Norway to the United States grew from 18 million pounds in 1987 to 31 million pounds in 1989. During the period of peak rising import penetration (1988-1989) into the United States' market Norwegian exporters decreased prices by 40-50 per cent in order to sell their product. The large import volume generated by overproduction overwhelmed and glutted the United States' market and left the Norwegian exporters in the position of the dominant force in the market, forcing other competitors to respond to their price moves or be forced out of the market.

37. The representative of the United States then noted that, in the mid-1980s, before overproduction of Norwegian salmon became apparent, the domestic industry in the United States had made substantial capital

investments in anticipation of the 1987-1990 three-year growing cycle. As a result, production and production capacity had begun to increase. However, in mid-1988 prices had started to fall sharply which had caused domestic firms to sell salmon before it was fully grown, thus sacrificing tonnage of product shipped (the average weight of shipments by domestic producers of adult salmon had declined substantially from 1988-1989 to 1989-1990) and to sell earlier in the season, thus taking a lower price and experiencing cash-flow problems. These problems had been amply reflected in the industry's performance during the period: lower revenues in 1989, substantial gross losses and operating losses, inability to recover costs, and perhaps, most importantly, an inability to invest and expand and achieve greater economies of scale to lower unit costs and re-establish profitability.

38. The representative of the United States considered that the United States' domestic salmon industry had unquestionably been injured by reason of the imports of salmon from Norway. The concerns expressed by the delegation of Norway on the determination of the USITC involved essentially the following three basic contentions: firstly, the argument that imports from Norway were not the sole cause of the injury suffered by the industry in the United States. On this point, he argued that there was no requirement in the Agreement that imports be the sole cause of injury to a domestic industry and that the causation standard in the present Agreement differed from that contained in the Anti-Dumping Code concluded in 1967. Secondly, Norway was arguing that the industry in the United States had asked for help too late in that by the time the industry had compiled and presented the evidence to the authorities in the United States and the authorities had completed their thorough inquiry, some key injury indicators had improved from the depths of the 1988-1989 period. While it was true that certain indicators had shown some improvement over 1988-1989, what had happened was somewhat akin to a hit-and-run driver who saw the victim stand up and walk away from the scene of the accident after being hit, not recognizing that the victim might have significant internal injuries which had not completely manifested themselves. Norway was essentially asking that this circumstance not be actionable under the Agreement. The United States rejected this interpretation as being inconsistent with the purpose of the Agreement. Critical indicators of future performance and ability to compete - for example, capital investment - had shown no abatement of injury. In addition, the Agreement nowhere required that injury be found over a specified period of time or at a particular moment in time. Indeed, the essence of the practice of the United States, which accurately reflected the letter and intent of the Agreement, was to examine the question of injury over a period of three years to ensure that a full measure could be taken of what was going on in an industry. The third basic contention of Norway with respect to the question of injury was that import volume had peaked in 1989 and declined in 1990. In fact, the data demonstrated that import volume had declined significantly in 1990. However, the facts also showed that this had occurred after the investigation had commenced and, in particular, after the imposition of provisional measures. Article 10:1 of the Agreement indicated that the prevention of injury during the pendency of an investigation was an explicit purpose of the use of such measures.

39. In response to the points made by the representative of Norway on the determination of dumping made by the Department of Commerce, the representative of the United States found it curious that in this conciliation process the Norwegian authorities were arguing that the Department should have calculated costs of production on the basis of exporters' acquisition price plus exporters' costs. In fact, during the proceedings before the Department the Norwegian respondents had expressed the opposite view and argued "that acquisition prices are not relevant to the COP analysis".<sup>1</sup> The Department had agreed with this position of the Norwegian exporters. Both Article VI of the General Agreement and Article 2:4 of the Agreement referred exclusively to the cost of production. Article VI of the General Agreement mentioned specifically the "cost of production of the product". Thus, Article VI did not contemplate, let alone mandate, the use of an exporter's cost of acquisition in lieu of the actual cost of production of a product subject to investigation. It followed that when, as was the case in the investigation of salmon from Norway, the exporter and producer of the product were not identical, the cost of production data for use in a constructed value calculation had to relate to the cost of production by the actual producer of the product. This approach was similar to the approach followed by the Department in cases involving products exported by trading companies; in those cases the Department also based the calculation of costs of production on the costs of the actual producer. Although in such cases knowledge by the producer of the ultimate destination of the product would have an impact on the selection of the relevant transactions for determining the export price, this factor was irrelevant with respect to the issue of determining the cost of production of the product.

40. Regarding the sampling method used by the Department of Commerce in this case, the representative of the United States pointed out that nothing in the Agreement or in Article VI of the General Agreement dictated the use of rigorous statistical sampling methodologies. In light of the time constraints and the incomplete information at its disposal, the Department had constructed a sample which was as representative as possible under the circumstances. At the time the Department had determined that it was necessary to construct a sample in order to gather cost of production information it had intended to construct a sample of farms which had supplied each of the individual exporters during the period of investigation. This methodology was designed to arrive at representative costs for each of the eight exporters based on their individual experiences. In order to construct this sample the Department had requested the exporters to provide a list of farms which had supplied each of the exporters during the period of investigation. The Department had

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<sup>1</sup>56 Fed. Reg. 7672 (25 February 1991).

randomly selected eleven farms from that list and sent questionnaires to those farms. Approximately two weeks after the questionnaires had been sent to the farms, the exporters had informed the Department that the list used as a basis for the sample was flawed because it included four farms which had not actually supplied salmon to the exporters who had made export sales to the United States during the period of investigation. At that point, the Department had decided not to select another four farms from what was then acknowledged to be an inaccurate list. Moreover, given the late stage in the proceedings, the Department had had no choice but to proceed with the information provided by the seven remaining farms. The sample used nevertheless remained a representative one in that it included small, medium-sized and large farms and farms from different regions in Norway, thus taking into account variables which in the view of the Norwegian exporters explained divergencies in costs. That the information used to construct this sample was incomplete could not be considered to be the responsibility of the Department. It was standard practice to use responses to section A of the questionnaire to narrow the focus of investigations. In this case these responses had identified certain business relationships between exporters and fishing industry organizations, fish processors and fish farmers. Understandably, and in conformity with the Agreement, the Department had relied on the presumed accuracy of the responses to proceed with the investigation and to construct a sample of farms for use in its cost of production analysis.

41. The representative of the United States considered that it was inconsistent for Norway to claim that the sample used for the purpose of the cost of production analysis had not been representative and at the same time argue that the results achieved on the basis of this sample should have been weight averaged to arrive at an industry-wide cost figure. Although the sample used by the Department had indeed reflected all relevant aspects of the industry, one of the farms included had been found to be one of the largest salmon farms in Norway. Such large farms generally represented only four per cent of salmon production in Norway. Since this farm accounted for the largest proportion of the combined production of the seven farms included in the sample, a weighted average cost figure would have disproportionately reflected the costs of the largest farms in Norway. In order to avoid such an obviously skewed result, the Department had obtained an industry-wide average cost figure by taking a single average of costs of the individual farms.

42. Regarding the use made by the Department of Commerce of the best information available, the representative of the United States mentioned the provisions on this matter in Article 6:8 of the Agreement which had been further elaborated in a Recommendation<sup>1</sup> adopted by the Committee.

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<sup>1</sup>BISD 31S/283

This Recommendation clarified that if information was not supplied within a reasonable period of time, the investigating authorities were free to make determinations on the basis of the facts available, including those contained in the complaint filed by the domestic industry. The mere fact that the use of sampling techniques might require a blending of data was no excuse for investigating authorities to ignore the fact that data provided to them was inaccurate or incomplete. It was undeniable in the case at hand that there were instances in which the Department had been compelled to use, consistent with the guidelines contained in the Committee's Recommendation, certain information which the respondents would construe as adverse when the information provided by them had been found to be inaccurate or unverifiable. However, there had also been many instances in this case in which the Department had relied on the information provided by the respondents in spite of strong objections raised by the petitioner. This had certainly been the case with respect to the data on cost of production provided by the farms, in respect of which the petitioner had argued that significant amounts of information had not been provided until verification. On the comments made by the delegation of Norway on the time limit of fifteen days for the responses to section A of the Department's questionnaire, he stated that the Department's<sup>1</sup> practice in this regard was consistent with the relevant Recommendation<sup>1</sup> of the Committee insofar as the questionnaire used by the Department was made up of various sections each of which was generally sent to respondents at different points in time during the course of an investigation. Thus, the relatively simple section A of the questionnaire was used to narrow the scope of subsequent sections of the questionnaire and reduce the reporting burden on respondents. At a minimum thirty days were provided to respondents to reply to the various sections of the entire questionnaire. Moreover, if a company had difficulties in responding to any of these sections, the Department would normally grant an extension of up to two weeks. In the case under consideration it was only with respect to section A of the questionnaire that respondents had been requested to reply within two weeks. Only one respondent had requested for an extension of the deadline of one day and this request had been granted. If the task of replying to this section was as difficult as claimed by the Norwegian authorities, one would have expected that a large number of firms would have made a request for an extension of the deadline and that they would have requested for an extension of more than one day.

43. The representative of the United States considered that in the case under consideration the USITC had applied each of the factors specified in the Agreement in light of the information gathered in its investigation. Essentially, Norway was arguing that it disagreed with the conclusions drawn by the USITC from that information. However, Norway had not demonstrated that the USITC had failed to follow the relevant provisions of

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<sup>1</sup>BISD 30S/30

the Agreement in evaluating the evidence and reaching its conclusions. There was no question that the domestic salmon industry in the United States had been materially injured. The financial performance of the industry showed a precipitous decline in 1989. Net sales declined, there were enormous operating losses and serious cash-flow problems, among other factors. The industry had continued to experience operating losses into 1990 and because of its financial problems the largest domestic producer had ceased its operations and sold its assets to another firm. In response to the comments made by the representative of Norway on developments subsequent to the final determination of the USITC, he argued that under the Agreement the USITC had to make its determination within one year. An evaluation of that determination had to be based on facts which were before the USITC rather than on facts pertaining to subsequent developments. In any event, the comments made by the representative of Norway on this point only served to underline the depths of the injured condition experienced by the domestic industry. As had been pointed out by the USITC, there had been reduced investment by the industry at the very time when one would have expected the industry to expand. This reduced investment had meant that fewer juvenile salmon had been raised. It was only natural that the decline of production of juvenile salmon was followed shortly thereafter by a decline in production of adult salmon. Thus, the injurious impact of the Norwegian imports had been felt through the time at which the USITC rendered its final determination.

44. The representative of the United States further considered that there was no question that the materially injured condition of the domestic industry was due to the imports from Norway. Imports from Norway had increased from 7.69 million kgs. in 1987 to 8.9 million kgs. in 1988 and 11.4 kgs. in 1989, which represented an increase of fifty per cent. The decline in imports of Norwegian salmon in 1990 could be explained by the filing in early 1990 of anti-dumping and countervailing duty petitions and the application of provisional measures later that year. It was no coincidence that the decline of the volume of imports from Norway began after provisional measures had been introduced. Norway had pointed out that its market penetration had declined when compared with the market penetration of other exporting countries. However, it was important to bear in mind the massive volume increase of the Norwegian imports. Throughout the investigation period, Norway had been the dominant force in the United States' salmon market. For example, the increase in the volume of Norwegian exports over this period was larger than total shipments of United States' domestic producers in either 1988-1989 or 1989-1990. The effect of this massive and increasing presence of Norwegian salmon in the United States' market had been reflected in the price level for salmon in the United States. Prices of Atlantic salmon produced by the domestic industry had fallen by at least one-third between mid-1988 and the end of 1989, closely tracking declining prices of Norwegian salmon. The price decline in the United States' market was attributable to the oversupply of salmon. In response to the claim by Norway that there had been many instances at which Norwegian salmon had been priced above domestically produced salmon, he pointed out that the USITC had found that prices of Norwegian salmon had fallen significantly and that prices of domestically

produced salmon had fallen accordingly. Thus, while the price relationship between Norwegian salmon and domestic salmon had remained fairly close, the decline in the prices of salmon imported from Norway had resulted in a corresponding decline of prices of domestically produced salmon. In order to find price depression or price suppression it was not necessary to find actual price underselling. The price depression and suppression caused by the imports from Norway had resulted in lower sales revenue in 1989, leading in turn to substantial growth and operating losses. The cash-flow problem experienced by the domestic producers had forced them to sell salmon before it had reached full maturity, which had meant that they received lower prices. The argument of Norway that the fact that imports had been declining at the time of the final determination of the USITC should have been dispositive overlooked that the USITC had found that the domestic industry was experiencing present material injury at the time of that determination. In spite of the decline of the volume of imports from Norway, the USITC had found that there continued to be injurious effects caused by these imports. The domestic industry had continued to show losses in 1990 and the lower production in 1990 had been the result of the earlier increase in the volume of imports from Norway. Thus, the three important indices of the injured condition of the domestic industry - present losses, reduced size and difficulty in obtaining capital - were present at the time of the USITC's determination. Norway's view that a declining volume of imports at the time of a final determination should be dispositive was thus flawed.

45. Regarding the factors mentioned by the representative of Norway as alternative factors explaining the condition of the domestic industry in the United States, the representative of the United States observed that there was no competition between domestically produced Atlantic salmon and Pacific salmon. On the alleged inability of domestic producers to sell salmon throughout the year, he referred to his earlier explanation of how low prices had forced the domestic producers to sell early in the season in order to generate cash-flow. He noted in this respect that since the imposition of the anti-dumping duty order the domestic industry had been able to sell later in the season. With respect to the presence of imports from third countries, he pointed out that the actual data indicated that these imports remained relatively unimportant and that imports from Norway continued to constitute the dominant force in the United States' market in terms of volume and prices. Imports from third countries and domestic production had followed the downward spiral caused by the oversupply resulting from the Norwegian imports. The increase in imports from Norway from 1988 to 1989 had been equal to the total volume of imports from Canada, the next largest supplier. Given this relative size of the Canadian imports, it was difficult to attribute injury to these imports.

46. The representative of Norway said the statement on the method of calculating cost of production which had been referred to by the representative of the United States (supra, paragraph 39) did not reflect a position taken by the Norwegian Government. Regarding the sampling technique used by the Department of Commerce, he wondered how it could be argued that the eleven farms selected for inclusion in the cost of

production analysis could be considered representative of the 700 salmon farms operating in Norway. Moreover, the eleven farms had been selected on the basis of information provided by exporters which had experienced difficulties responding to the Department's request for information. The Department had been aware that this information was not accurate but had not sought any further information. While the Department had agreed to delete four of the eleven farms, his authorities continued to be of the view that the seven farms did not constitute a representative sample. On the comments made by the representative of the United States on the evolution of prices, he considered that the increased presence of Norwegian salmon was the result of the competitiveness of the Norwegian salmon industry. His delegation believed that the anti-dumping and countervailing duty actions taken by the United States amounted to a selective safeguard measure the aim of which was to dispose of a successful competitor. This tampering with market economy principles had, however, not been successful in that the anti-dumping and countervailing duties imposed had not had any identifiable impact on the United States domestic industry. Following the virtual disappearance of Norwegian salmon from the United States' market prices in that market had not increased. Furthermore, the entire decrease of the volume of imports from Norway had been more than offset by increasing imports from Canada and Chile.

47. The representative of the EEC said that there were certain aspects of this case which were of a more general interest. By way of preliminary remark, he expressed some sympathy for the manner in which the United States had determined the normal value in face of a very large number of exporters and producers. His authorities had experienced similar problems in a recent anti-dumping investigation of Norwegian salmon and the case presently before the Committee underlined the need to have in a revised Agreement an explicit rule permitting the use of sampling techniques in case of a large number of parties involved. Regarding the questions raised by Norway with respect to the injury determination of the USITC, it seemed to him that these questions involved mostly issues of fact rather than issues of legal interpretation of the Agreement. He reserved his delegation's right to revert to this matter at a later stage.

48. The representative of Canada shared the concerns expressed by the delegation of Norway on the question of the standing of the petitioner if the Department of Commerce had not in fact verified whether the petition had been filed on behalf of a major proportion of the domestic salmon industry. This was an important matter for his authorities and he recalled that in the dispute between Sweden and the United States on anti-dumping duties on stainless steel pipes and tubes from Sweden his delegation had intervened on this issue. He reserved his delegation's right to make further comments on the case at hand at a later stage.

49. The representative of Finland, speaking on behalf of Finland and Sweden, noted that the disputes referred to the Committee at this meeting had a number of aspects in common. In all the three cases questions were involved concerning the standing of petitioners, the methodology for calculating the existence of dumping and the determination of the existence

of injury. The factual information provided by the delegations of Mexico, Norway and Hong Kong pointed to practices which were a justifiable cause of concern for exporters. It seemed that there was an element of arbitrariness in these practices which was inconsistent with the objective of promoting liberal international trade. The fact that common issues were involved in the three cases before the Committee underlined the importance of a successful conclusion of the negotiations on anti-dumping in the Uruguay Round in order to establish clearer and strengthened rules. Unambiguous rules could help to avoid recourse to dispute settlement proceedings. He noted that at the Mid-Term Review of the Uruguay Round improvements to the GATT dispute settlement procedures had been agreed upon and expressed the hope that the parties to the disputes presently before the Committee would be guided by the improved procedures.

50. The representative of Japan said that his authorities were concerned about a number of aspects of the determinations made in this case by the United States' authorities. Firstly, if, as had been alleged by Norway, there had indeed been no verification of the standing of petitioners, this would be a very serious matter. In this respect, he referred to the findings of the Panel in the dispute between the United States and Sweden on stainless steel pipes and tubes from Sweden (ADP/47). Secondly, his delegation considered that a comparison between a single normal value and individual export prices inevitably led to the creation of artificial dumping margins. Thirdly, the determination of injury was questionable, given the declining market share and absolute volume of the imports from Norway. It was furthermore difficult to understand how there could have been a finding of a causal connection between the imports from Norway and the injury to the domestic industry in the absence of price undercutting by the Norwegian imports.

51. The representative of Singapore, referring to the provisions in Article 4:1 and Article 5:1 of the Agreement, expressed the view that investigating authorities must satisfy themselves before initiating an investigation that the request for such an investigation had indeed been made on behalf of the relevant domestic industry. The findings of the Panel in the dispute between Sweden and the United States on stainless steel pipes and tubes from Sweden were very clear on this point (ADP/47). Given the effect on trade of the mere initiation of an investigation, the practice of the United States of merely assuming that there was standing was inconsistent with the Agreement. The determination of dumping by the Department of Commerce was questionable because of the use of sampling techniques which were not statistically valid, the arbitrary use of the best information rule and the comparison of average normal values with individual export prices. She pointed out with respect to this latter aspect that artificial margins of dumping resulted from this type of comparison. She considered that there was at present no legal basis in the Agreement for the use of sampling techniques and that anti-dumping duty investigations had to be company specific. On the injury determination made by the USITC she said that the Agreement required that it be demonstrated that dumped imports, through the effects of dumping, were causing injury to a domestic industry. Investigating authorities were

also required to examine other possible factors which explained the injury to the domestic industry and were under an obligation not to attribute to dumped imports the injury caused by such other factors. The manner in which the USITC had made its determination of injury in the case under consideration was not in conformity with these requirements.

52. The representative of Hong Kong expressed the view that the Agreement required that there be a verification of the standing of a petitioner; absent such verification, the initiation of an investigation and subsequent application of anti-dumping measures were questionable. On the methodology used in the determination of dumping by the Department of Commerce, she wondered whether there had been any evidence that sales to third countries were being dumped when the Department had decided not to base the normal value on such export sales. Her delegation considered that, if third country export sales were available, it would be more in line with the requirement of the Agreement to ensure a fair comparison between the export price and the normal value to use such export sales as a basis for the determination of the normal value than to use a constructed value. Finally, she believed that the USITC had failed to demonstrate a causal connection between dumped imports and material injury to the domestic industry in that it had made one single injury determination for the purpose of both its countervailing duty investigation and its anti-dumping duty investigation.

53. The representative of Korea considered that the issue raised by the delegation of Norway regarding the standing of the petitioner was a very important matter. If there had not been a verification of the standing of the petitioner, this would be inconsistent with the Agreement.

54. The representative of the United States said that it had to be borne in mind that the Committee was holding this meeting in the context of a type of quasi-judicial process in which it was important to look carefully to what the Agreement actually provided. For example, the text of the Agreement was quite clear in that there could be a causal connection between dumped imports and material injury even absent a finding of price undercutting. Similarly, unlike what had been contended by the representative of Singapore, the Agreement in Article 3:4 did not require the authorities to examine other factors which could explain injury; the Agreement merely provided that there might be other factors which at the same time were injuring the industry and that the injury caused by such other factors must not be attributed to the dumped imports. On the comment made by the representative of Singapore of the trade-disruptive effect of the initiation of an investigation, he said that the right to open an anti-dumping investigation was an explicitly protected right of all contracting parties to the General Agreement. The Agreement provided in rather general terms for the initiation of an investigation upon a written request by or on behalf of the affected industry and did not contain the requirements referred to by other delegations of prior authorization of the request by the industry and of a verification by the authorities of industry support for the request. While the Panel in the dispute between Sweden and the United States on stainless steel pipes and tubes had found

that the United States' authorities should have verified the standing of petitioners, it had made this finding on the basis of the particular facts before it and had made it clear that it did not wish to set forth a general rule. Furthermore, the Panel Report had not been adopted. The United States had at the most recent meeting of the Committee made a proposal which would have permitted adoption of the substantive standard reflected in the Report. Even if the Report had been adopted, the normal reasonable period of time allowed for its implementation would not have passed. In addition, the concept of judicial precedent was not recognized in GATT practice and it was therefore unclear whether the Panel Report would have any implications for future disputes. He underlined the need for all delegations to be quite juridical in their approach to disputes under the Agreement. On a number of points the Agreement did not provide precise guidance on a specific methodology to be used and investigating authorities had therefore found reasonable ways to implement the Agreement on such points. In addition, a review under the Agreement of measures taken by national authorities often raised questions of legal interpretation. He urged the Parties to the Agreement to bear these general considerations in mind in this as well as in other cases.

55. The representative of Japan reiterated his delegation's view that in the absence of price undercutting it was difficult to understand how there could be a demonstration of the existence of significant price depression or price suppression. He reserved his delegation's right to revert at a later stage to the matter referred to the Committee by Norway.

56. The Chairman encouraged the delegations of Norway and the United States to make further efforts to reach a mutually satisfactory solution, consistent with the Agreement.

57. The representative of Norway said that his delegation had already held consultations with the United States and had been prepared to hold another round of consultations at the beginning of July. His delegation had prepared a second series of questions to the United States, to which it had not yet received answers. While his authorities believed that they might in the near future have to request that the Committee establish a panel in this matter, they also considered that throughout a dispute settlement process a party to a dispute should give sympathetic consideration to a request from another party to the dispute for consultations. However, in the case under discussion, any possible further bilateral consultations should not have any implications for the application of the time limits laid down in Article 15 of the Agreement with respect to the various stages of the dispute settlement process.

58. The representative of the United States said that in the very near future his delegation would provide written responses to the questions raised bilaterally by the delegation of Norway.

59. The Committee took note of the statements made.

(iii) United States - Imposition of definitive anti-dumping duties on man-made fibre sweaters from Hong Kong - Request by Hong Kong for conciliation under Article 15:3 of the Agreement (ADP/60)

60. In document ADP/60 the Committee had received from the delegation of Hong Kong a request for conciliation under the procedures of Article 15:3 of the Agreement concerning the imposition by the United States of definitive anti-dumping duties on imports of man-made fibre sweaters from Hong Kong. The Chairman recalled that in April 1991 the Committee had been informed by the delegation of Hong Kong that it had requested bilateral consultations with the United States on this matter (ADP/54).

61. In introducing his delegation's request for conciliation (ADP/60), the representative of Hong Kong observed that while dumping was usually made possible by the existence of an isolated market in the exporting country (due primarily to such factors as import restrictions, high customs tariffs, non-tariff measures and anti-competitive practices), the conditions for such an isolated market were not present in Hong Kong, which had one of the most competitive business environments in the world. As far as individual companies in Hong Kong were concerned, viability and profits were the primary basis of their existence and it made no sense for companies in Hong Kong to undermine their financial position through dumping. In the case of the Hong Kong man-made fibre sweater industry, which comprised some 380 manufacturers and exporters, most companies were small and hence financially not strong enough to sustain any dumping strategy. Moreover, the manufacturers and exporters were not receiving any subsidy from the Government of Hong Kong. The prices which they fetched for their products and the costs which they incurred to obtain their inputs were those prevailing in open, competitive markets, in which there was no government involvement. Under these circumstances, his authorities had been greatly concerned by the allegations of dumping made against firms from Hong Kong and had carefully scrutinized the details of the measures taken by the United States with respect to man-made fibre sweaters.

62. The representative of Hong Kong explained that, following an investigation opened in October 1989 of imports of man-made fibre sweaters from Hong Kong, Korea and Taiwan, the United States had in September 1990 issued an anti-dumping duty order requiring importers of sweaters from Hong Kong to pay anti-dumping duties at the rates set out in document ADP/60, paragraph 5. His authorities had undertaken a careful study of the determinations of injury and dumping underlying this anti-dumping duty order and had come to the conclusion that these determinations, and the consequent imposition of anti-dumping duties, were not in conformity with the provisions of the Agreement. As such, the imposition of these duties had resulted in the nullification or impairment of benefits accruing to Hong Kong under the Agreement. As a result of the anti-dumping duties, exports of man-made fibre sweaters from Hong Kong to the United States had declined in 1990 by one-third compared with 1989, which represented a loss in trade of some US\$40 million. This trend was continuing in 1991. As bilateral consultations on this matter in May 1991 had not led to a

mutually satisfactory solution of the matter, Hong Kong had decided to refer the matter to the Committee under the procedures of Article 15:3 of the Agreement. As set out in greater detail in document ADP/60, the main issues of concern to his authorities related to the procedures followed by the United States in the initiation of the investigation, the determination of injury made in respect of the imports from Hong Kong, the determination of dumping and the adverse effects resulting from the uncertainty caused by the annual administrative review procedures in the United States. He reserved his delegation's right to raise additional issues at a later stage.

63. The representative of Hong Kong considered that the initiation of the investigation which had resulted in the anti-dumping duties presently in dispute had been inconsistent with the obligations of the United States under Article 5:1 of the Agreement. As confirmed by the Panel established in the dispute between Sweden and the United States on stainless steel pipes and tubes from Sweden (ADP/47), Article 5:1 of the Agreement was to be interpreted to mean that a written request for the initiation of an anti-dumping duty investigation must be approved or authorized by the industry affected before an investigation could be opened. In the case at hand, support for the request to open an investigation had been expressed by fourteen companies which accounted for, respectively, 9.2 and 9.8 per cent of domestic production of sweaters in the United States in 1987 and 1988. This could not be interpreted to constitute authorization or approval by a major proportion of the domestic industry. Finally, the United States' authorities had not attempted to satisfy themselves, before initiating this investigation, that the request received met the conditions of Article 5:1.

64. The representative of Hong Kong, referring to paragraphs 15-27 of document ADP/60, then stated his authorities' views on the determination of injury of the USITC with respect to sweaters from Hong Kong, which they considered was inconsistent with Article 3 of the Agreement. Firstly, in its examination of the volume of imports from Hong Kong, the USITC had ignored how the quantitative restrictions on exports from Hong Kong had distorted Hong Kong's position as an exporter in the United States' market, as shown in the annex to document ADP/60. The data in this annex indicated that exports to the United States from Hong Kong had stayed flat since the imposition of quantitative restrictions in 1982. Quantitative restrictions resulted in artificial constraints on suppliers, so that in this case the available supply of sweaters from Hong Kong had been insufficient to meet demand for sweaters from Hong Kong. The consequence of this distortion was that a declining overall market for man-made fibre sweaters would not necessarily reduce the demand for man-made fibre sweaters from Hong Kong to less than the quota level in effect; it might merely reduce the disequilibrium between demand for Hong Kong man-made fibre sweaters and available supplies under quota. Thus, Hong Kong's full utilization of its quota in a declining market (with a consequent automatic increase in relative market share) was not a meaningful factor to be considered in the determination of injury. It was unfair to penalize Hong Kong on the basis of a distorted situation, in particular in view of

the fact that this distorted situation had resulted from a request of the Government of the United States to Hong Kong. In the given circumstances, a fair test to evaluate the volume of imports from Hong Kong would have been an examination of these imports in absolute terms, which would have indicated that the imports had not increased significantly within the meaning of Article 3:2 of the Agreement. Furthermore, in each year since 1982 imports of man-made fibre sweaters from Hong Kong into the United States had represented a smaller share of total imports of man-made fibre sweaters into the United States than in 1982.

65. The second aspect of the determination of injury of the USITC questioned by the representative of Hong Kong concerned the cumulative assessment of the effects on the domestic industry of the imports from Hong Kong, Korea and Taiwan. In his delegation's view, the imports from Hong Kong should have been evaluated in isolation, given that imports from Hong Kong were subject to special distorting circumstances under the Multi-Fibre Arrangement and that the pattern of imports from these three sources had been quite different. While imports from Hong Kong had been stable, imports from one of the other suppliers had increased and imports from the other supplier had decreased substantially during the relevant period. In 1987-1989 imports from Hong Kong accounted for only 7-8 per cent of the United States' market, compared with 19-24 per cent for Korea and 20-22 per cent for Taiwan. Thirdly, the price data used by the USITC as a basis for their finding of a significant price undercutting by the imports from Hong Kong had been inadequate. Fourthly, the limited price data available also did not provide any evidence in support of the finding of the USITC that the imports from Hong Kong depressed prices in the United States of the domestic like product to a significant degree or had prevented price increases to a significant degree. Fifthly, Hong Kong was of the view that in determining a causal connection between the imports from Hong Kong and injury to the domestic industry, the United States' authorities had acted inconsistently with Article 3:4 of the Agreement by attributing to the imports from Hong Kong injuries caused by other factors. In particular, the United States' authorities had failed to examine the trend in the volume and prices of imports from countries not subject to investigation. The volume of those imports had increased substantially since 1982 to reach a level of twice the volume of imports from Hong Kong and prices of the imports were one-third below the prices of imports from Hong Kong. In addition, the USITC had failed to examine sufficiently contradiction and change in demand.

66. Regarding the determination of dumping made by the United States' Department of Commerce, the representative of Hong Kong considered that the methodology used and certain decisions taken in the use of a constructed normal value had resulted in a finding of dumping where no dumping existed. With reference to paragraph 28-41 of document ADP/60, he pointed to the following two problem areas. Firstly, Hong Kong was concerned with important matters of principle, such as the use by the United States of minimum percentages for the amounts for selling, general and administrative expenses and for profits in a constructed normal value and the practice of the United States to reduce individual export prices above the normal value

to the level of the normal value. In the case at hand, these aspects of the methodology used by the United States' authorities had inflated the constructed normal value and had had an adverse effect on the finding of dumping, penalizing the company concerned in an unfair manner. Secondly, there had been in this case other factors, set out in paragraphs 37-41 of document ADP/60, which had adversely affected the determination of dumping. He mentioned in this connection the appropriate way in which to allocate quota changes and the method for calculating general and administrative expenses and yarn cost.

67. Referring to paragraphs 42-45 of document ADP/60, the representative of Hong Kong proceeded to explain his delegation's views on the manner in which the administrative review procedures of the United States caused uncertainty for producers in Hong Kong of man-made fibre sweaters. Under these procedures it was possible for the anti-dumping duty rates to be adjusted upwards pursuant to administrative reviews and such adjustment would be retrospective in effect. This applied also to companies which had not even been investigated. The uncertainty caused by these procedures and the prospect of retrospective application severely undermined trade. The administrative review system in the United States was in particular disadvantageous for companies with a small volume of exports since at least three consecutive annual administrative reviews with negative findings of dumping were necessary before the anti-dumping duty order could be removed. In light of the high costs of participating in such reviews, it would not make commercial sense for the small exporters to request a review. Consequently, they would continue to be affected by the anti-dumping duties and by the uncertainty caused by the possible retrospective adjustments of the anti-dumping duty rates. Finally, he noted that companies which had not exported man-made fibre sweaters to the United States prior to a dumping the investigation period would nevertheless be subjected to the anti-dumping duty order. Since such companies could be definition not have been dumping, they should be exempted from the application of anti-dumping duties. The application of anti-dumping duties on imports from such companies constituted an unjustified barrier to trade and contravened Article VI of the General Agreement.

68. The representative of the United States noted that the points raised by the delegation of Hong Kong regarding the determination of dumping related to a number of questions of principle, certain issues specific to this case and to the nature of the administrative review procedures in the United States. The position of the United States on the use of minimum percentages for profits and selling, general and administrative expenses and on the treatment of individual export prices above the normal value had been stated repeatedly in this Committee and in the Uruguay Round negotiations and it was therefore not necessary to further dwell on these questions. Regarding the specific issues raised by Hong Kong on the allocation of general and administrative expenses and the calculation of yarn cost, it seemed to him that the premise underlying Hong Kong's views was that if, in the hundreds of individual judgements which an investigating authority was called upon to make in the course of an

investigation, each one of those discretionary judgements did not turn in favour of the exporter, the decision should be presumed to be invalid, unfair and inconsistent with obligations under the General Agreement. His delegation rejected this assumption. With respect to the question of general and administrative expenses, he explained that early and repeatedly in this investigation, the Department of Commerce had requested the respondent exporter in question to supply consolidated financial statements for 1989, interest expenses reflective of the consolidated group and general and administrative expenses reflecting expenses incurred by the corporate headquarters. The exporter's responses to these requests had been incomplete and failed to explain whether the reported expenses did, in fact, reflect consolidated expenses. Thus, it was the exporter's inability to provide a consolidated financial statement which prevented the Department of Commerce from independently confirming whether or not reported expenses were consolidated. As a result, it was not until a late stage of the investigation, at verification, that investigators of the Department had discovered that the information provided was not what they had asked for. In retrospect, it might have been simpler and wiser for the Department to have let matters stand where they were, i.e. to have simply observed that the company had not provided the requested information. Instead, the Department had decided to waive its normal rule not to accept new information at verification and had permitted the respondent to provide what information it could, calculated on the basis of consolidated expenses. Hong Kong was now arguing that, instead of that information, the Department should have accepted a letter, submitted after verification, from the exporter's auditors which summarized consolidated costs of sales, interest expenses and office and general expenses and which provided a purported "reconciliation" of the "audited" data with the data provided at verification. The information in this letter obviously could not be verified. Moreover, it still did not consist of the audited consolidated statements which had been requested and it had been submitted long after the time periods specified by the Department and permitted by the Department's Regulations. If there was any reason to find fault with the Department's actions, it was in allowing the exporter repeated opportunities to submit new (and still inadequate) information, ultimately past the point at which the reliability of the information could be verified.

69. In the view of the representative of the United States, Hong Kong's concerns regarding the administrative review process were premature and based on somewhat conflicting and invalid assumptions. On the one hand, Hong Kong criticized the administrative review procedures in the United State because they imposed an administrative and financial burden on reviewed firms and introduced uncertainty resulting from the retrospective examination of transactions. On the other hand, Hong Kong also criticized the treatment by the United States of companies which were either new exporters or which were not individually investigated on grounds that, without being investigated, there was no basis for subjecting such firms to duties. The arguments for assigning a residual rate to uninvestigated firms from the country subject to the dumping finding were well known and he wondered what Hong Kong would have investigating authorities do with

regard to such companies. The arguments presented by Hong Kong meant that, if exporters were reviewed, they were deemed to be harassed, unduly burdened and subjected to uncertainty while, if they were not reviewed, they were deemed to be short-changed, denied individual justice and subjected to uncertainty. It was neither the objective nor the practice of the United States' authorities to subject exporters to unreasonable burdens, undue certainty or costly legal requirements and his delegation did not accept that these were the consequences of participating in administrative review procedures in the United States. To the contrary, given the degree of access to information and involvement in the pricing investigation which all interested parties retained in administrative reviews in the United States, exporters probably had much greater foreknowledge of and influence over the review results than was the case under most other countries' anti-dumping systems.

70. Responding to the issues raised by Hong Kong with regard to the determination of injury made by the USITC in this case, the representative of the United States noted that under Article 3:2 of the Agreement the existence of a significant increase in the volume of dumped imports could be evaluated either in absolute terms or relative to production or consumption of the like product in the importing country. The effect, if any, of quantitative restrictions applied pursuant to the Multi-Fibre Arrangement had to be considered within the context of the factors set forth in Article 3 of the Agreement. He also pointed out that the Multi-Fibre Arrangement itself provided that this Arrangement did not affect the rights and obligations under the General Agreement of participating countries, thus explicitly divorcing restrictions applied under the Arrangement from the application of anti-dumping remedies. The evaluation by the USITC of the factors set forth in Article 3 of the Agreement had therefore been appropriate.

71. The representative of Hong Kong said that it had rightly been pointed out by the representative of the United States that this case involved a number of questions of principle. These questions were important and needed to be addressed. With respect to the more specific issues concerning the treatment of general and administrative expenses and yarn cost, he explained that since the rate of the residual duty applied on imports from exporters not individually investigated had been based in this case on the margin of dumping found in respect of only one exporter, it was important to examine in detail the methodology used by the Department of Commerce in calculating this margin. In response to the observation made by the representative of the United States on the large number of judgement calls which had to be made by investigating authorities, he said that each of those judgements must be reasonable. For example, with regard to the calculation of the amount for general and administrative expenses, the Department of Commerce had used a figure reflecting the general and administrative expenses of all the companies of the corporate group to which the exporter subject to investigation belonged. Some of these companies had high general and administrative expenses because of the nature of the retail business in which they were involved. It was obvious that, given that the United States' authorities would start a first

administrative review of the anti-dumping duty order in September 1991, exporters from Hong Kong were presently faced with uncertainty regarding the final amount of liability for payment of anti-dumping duties in respect of their current exports. He reiterated the view that exporters who had not exported the product in question to the United States prior or during the period of investigation could not have been dumping and should therefore have been exempted from the anti-dumping duty order. Finally, he reiterated his authorities' view on the manner in which the market distortion created by the existence of quantitative restrictions on imports from Hong Kong on the subject product should have been taken into account in the injury determination.

72. The representative of the EEC considered that this dispute involved a number of highly technical aspects which needed further study. While the use of fixed percentages for the amounts of selling, general and administrative expenses and for profits could perhaps be questioned, the specific percentages used by the United States were by themselves not excessive. The existence of quantitative restrictions under the Multi-Fibre Arrangement generally could not be said to preclude the possibility of dumping and injury resulting therefrom. He reserved his delegation's right to revert to this case at a later stage.

73. The representative of Mexico requested a further clarification of the retrospective nature of the administrative process for the review of anti-dumping duty orders in the United States.

74. The representative of Brazil observed that reference had been made by the United States to Article 1:6 of the Multi-Fibre Arrangement. He asked how in the case before the Committee account had been taken of paragraph 25 of the 1986 Protocol<sup>1</sup> extending the Multi-Fibre Arrangement. This paragraph provided that "It was felt that in order to ensure the proper functioning of the MFA, all participants should refrain from taking measures on textiles covered by the MFA, outside the provisions therein, before exhausting all the relief measures provided in the MFA".

75. The representative of Singapore shared the views of Hong Kong on the questions of standing of the petitioner, the determinations of dumping and injury and on the imposition of residual duties. She disagreed with the implication of the statement of the representative of the United States that there was no need to discuss in this Committee matters of principle such as the use of minimum percentages for the amounts of selling, general and administrative expenses and profits and the disregard of export prices above the normal value. The practices of the United States as applied in this case were not in conformity with the requirements of Article 2 of the Agreement.

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<sup>1</sup>BISD 33S/7.

76. The representative of Canada considered that the Agreement clearly required that a request for the initiation of an anti-dumping duty investigation be supported by producers accounting for a major proportion of the domestic production of the industry. In the light of the information provided by Hong Kong on the percentages of domestic production represented by the petitioners in the case before the Committee, it would appear that this requirement had not been met.

77. The representative of Japan said that the matter referred to the Committee by Hong Kong involved a number of aspects of concern to his delegation, including the practice of the United States' authorities regarding the issue of the standing of petitioners, the use of fixed percentages of certain components of a constructed normal value, the disregard of export prices above normal value and the finding of injury in the absence of a significant degree of price undercutting. He reserved his delegation's right to make more detailed comments on this case.

78. The representative of Hungary noted that two of the three cases discussed by the Committee at the present meeting involved questions relating to the practice of cumulative injury assessment and doubted whether this practice always resulted in correct conclusions.

79. The representative of Hong Kong, responding to a comment made by the representative of the EEC, referred to a study mentioned on page 7 of document ADP/60 which showed that the median performances for forty-seven United States' public firms gave a return of 3.2 per cent on sales. Against this background, there was no basis for the use of an 8 per cent minimum figure for profits in constructed normal values of the imported products. The 10 per cent minimum for selling, general and administrative expenses in a constructed normal value was arbitrary and unnecessary. In the case under consideration, the United States' authorities had verified the actual data regarding the selling, general and administrative expenses incurred by the company in question. Nothing could have been more reasonable than to use that actual and verified information.

80. The representative of the United States said that the issue raised by the representative of Brazil regarding paragraph 26 of the 1986 Protocol extending the Multi-Fibre Arrangement had never been referred to by exporters during the investigation or by the Government of Hong Kong during the bilateral consultations.

81. The Committee took note of the statements made. The Chairman encouraged the delegations of Hong Kong and the United States to make further efforts to arrive at a mutually satisfactory solution of this matter, consistent with the Agreement.

(iv) Request by Egypt for technical assistance

82. The Chairman informed the Committee of a letter recently received by the Director-General of GATT from the delegation of Egypt in which that delegation requested technical assistance both from the GATT secretariat

and from Parties to the Agreement with regard to the preparation of anti-dumping legislation. He<sup>1</sup> noted in this respect that in May 1980 the Committee had taken a Decision<sup>1</sup> which provided inter alia the following:

"Developed countries Parties to this Agreement shall endeavour to furnish, upon request and on terms to be agreed, technical assistance to developing countries Parties to this Agreement, with regard to the implementation of this Agreement; including training of personnel, and the supplying of information on methods, techniques and other aspects of conducting investigations on dumping practices."

83. The representative of Egypt explained that his Government had decided to introduce anti-dumping legislation in the context of its recent trade liberalization programme. This legislation would be in full conformity with Egypt's international obligations. In view of the technical difficulties involved in the drafting of such legislation and the establishment of an adequate administrative structure to implement the legislation, his authorities had decided to request technical assistance, as provided for in the Decision taken by the Committee in May 1980.

84. The representatives of the United States and the EEC expressed their authorities' willingness to furnish Egypt the technical assistance requested.

85. The representative of Egypt thanked the representative of the United States and the EEC and hoped that other delegations would also be prepared to grant technical assistance to his Government.

86. The Committee took note of the comments made.

87. The Chairman then closed the meeting.

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<sup>1</sup>BISD 27S/16-17