

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

ADP/M/35

11 March 1992

Special Distribution

Committee on Anti-Dumping Practices

MINUTES OF THE MEETING HELD ON 21 OCTOBER 1991

Chairman: Mr. Ashok Sajjanhar (India)

1. The Committee on Anti-Dumping Practices ("the Committee") held a regular meeting on 21 October 1991.
2. The Committee adopted the following agenda:
 - A. Acceptance of the Agreement;
 - B. Examination of anti-dumping laws and/or regulations of Parties to the Agreement (ADP/1 and addenda):
 - (i) Poland (ADP/1/Add.20/Rev.1);
 - (ii) Yugoslavia (ADP/1/Add.30 and ADP/W/293 and 297);
 - (iii) New Zealand (ADP/1/Add.15/Rev.1/Add.1 and ADP/M/32, paragraphs 25-30);
 - (iv) Australia (ADP/1/Add.18/Rev.1/Suppl.3, ADP/M/32, paragraphs 31-36 and ADP/W/294; ADP/1/Add.18/Rev.1/Suppl.4 and Corr.1 and ADP/M/32, paragraphs 37-41; ADP/1/Add.18/Rev.1/Suppl.5; ADP/1/Add.18/Rev.1/Suppl.2 and ADP/M/32, paragraphs 42-45);
 - (v) United States (ADP/1/Add.3/Rev.4/Suppl.1, ADP/M/32, paragraphs 48-50 and ADP/W/264 and 290; ADP/1/Add.3/Rev.4 and ADP/M/32, paragraphs 51-55; ADP/1/Add.3/Rev.4/Suppl.3);
 - (vi) Korea (ADP/1/Add.13/Rev.1/Suppl.1, ADP/M/32, paragraphs 56-59, and ADP/W/268, 269 and 287);
 - (vii) EEC (ADP/1/Add.1/Rev.1 and ADP/M/32, paragraphs 60-68);
 - (viii) Laws and/or regulations of other Parties to the Agreement.

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

- C. Semi-annual report of the United States on anti-dumping actions taken during the period 1 July-31 December 1990 (ADP/53/Add.11 and ADP/M/32, paragraphs 90-94).
- D. Semi-annual reports on anti-dumping actions taken by Parties to the Agreement during the period 1 January-30 June 1991 (ADP/62 and addenda).
- E. Reports on all preliminary and final anti-dumping duty actions (ADP/W/295, 298 and 299).
- F. Ad-Hoc Group on the Implementation of the Anti-Dumping Code (ADP/W/138/Rev.5 and ADP/M/32, paragraphs 98-101).
- G. United States - Imposition of anti-dumping duties on imports of fresh and chilled Atlantic salmon from Norway - Request by Norway for the Establishment of a Panel under Article 15:5 of the Agreement (ADP/65 and Add.1).
- H. United States - Imposition of anti-dumping duties on imports of cement and cement clinker from Mexico - Request by Mexico for the Establishment of a Panel under Article 15:5 of the Agreement (ADP/66).
- I. United States - Anti-dumping duties on stainless steel plate from Sweden - Request by Sweden for Conciliation under Article 15:3 of the Agreement (ADP/67).
- J. United States - Imposition of anti-dumping duties on imports of seamless stainless steel hollow products from Sweden - Report of the Panel (ADP/47 and ADP/M/32, paragraphs 102-122).
- K. United States - Anti-dumping duties on imports of anti-friction bearings from Sweden (ADP/M/32, paragraphs 123-128).
- L. Other Business:
 - (i) anti-dumping investigation by the United States on imports of certain circular welded steel pipes and tubes from Mexico;
 - (ii) Anti-Dumping Decree adopted by Hungary;
 - (iii) anti-dumping proceedings in the United States regarding portable electric typewriters and flat panel displays;
 - (iv) anti-dumping proceedings in the United States regarding magnesium from Canada, brass sheet and strip from Canada, and nepheline syenite from Canada;
- M. Annual Report to the CONTRACTING PARTIES.

A. Acceptance of the Agreement

3. The Chairman recalled that at the regular meeting of the Committee in April 1991 the observer for Argentina had made a statement on the recent acceptance ad referendum of the Agreement by his country (ADP/M/32, paragraph 9).

4. The observer for Argentina informed the Committee that the ratification of the Agreement was currently under consideration by the legislative authorities in his country. He hoped that the ratification process could be completed soon.

5. The Committee took note of the statement of the observer for Argentina.

B. Examination of anti-dumping duty laws and/or regulations of Parties to the Agreement (ADP/1 and addenda)

- (i) Poland (Chapter 7 of the Customs Law of 29 December 1989, document ADP/1/Add.20/Rev.1)

6. The Chairman drew the Committee's attention to document ADP/1/Add.20/Rev.1, dated 17 July 1991, which contained a notification received from the delegation of Poland of anti-dumping legislation enacted by Poland in December 1989. Questions on this legislation had recently been received by the Committee from the delegations of the United States and Australia (ADP/W/300 and 301, respectively).

7. The representative of Poland introduced the provisions on the application of anti-dumping measures in Chapter 7 of the Customs Law by saying that the adoption of these provisions had to be considered in the context of the process of Poland's transformation to a market economy. This legislation had been drafted with a view to ensuring strict conformity with the requirements of the Agreement. On 20 July 1991 the Polish Parliament had amended Chapter 7 of the Customs Law to transfer the responsibility for the administration of the anti-dumping legislation to the Minister of Foreign Economic Relations (see document ADP/1/Add.20/Rev.1/Suppl.1). Given that so far no anti-dumping investigations had been initiated pursuant to the recently enacted legislation, his authorities lacked the practical experience necessary to be able to respond in detail to certain questions raised by other delegations on matters in respect of which more precise guidelines for the implementation of the legislation would result from administrative practice.

8. In response to a question raised by the delegation of the United States in document ADP/W/300 on the provision in Article 93.3 of the Customs Law regarding the treatment of home market sales at prices less than cost of production, the representative of Poland explained that Article 93.3 set forth a general framework for the treatment of sales below cost of production as not being in the ordinary course of trade. Under this provision each individual home market sale of the exporter or producer

would be tested, to the extent possible on the basis of the available information, to determine whether the sale was at a price less than cost of production. Article 93.3 did not, however, imply that each individual sale found to be at a price less than cost of production would necessarily be disregarded in the establishment of the normal value; this was a matter left to the discretion of the investigating authority which would take its decision on the merits of each individual case. Regarding the provision in Article 94.3 on the use of constructed export prices, he explained that this provision dealt in particular with situations in which the export transaction took place between related parties. The allowances provided for in Article 94.3 for costs incurred between importation and first resale to an independent buyer were in conformity with the last sentence of Article 2:6 of the Agreement. With respect to Article 96.1 of the Customs Law, he observed that this provision contained a rather stringent standard with regard to the definition of the term domestic industry. This term was defined as "the domestic producers as a whole of the like product or only those of them whose collective output accounts for at least one-half of the total domestic production of the like product". This definition would have to be complied with in any determination of injury. Finally, he confirmed that Article 105 provided for reviews of anti-dumping measures required under Article 9:2 of the Agreement. With respect to the criteria for determining whether a modification or termination of an anti-dumping measure was warranted, this Article referred explicitly to the provisions of Articles 91-104 of the Law. Decisions to waive or alter an anti-dumping duty, or to confirm a price undertaking, would be taken on a case-by-case basis.

9. In response to the question raised by the delegation of Australia in document ADP/W/301 on Article 93.3 of the Polish Customs Law, the representative of Poland said that, while this provision did not define the expression "a justified reason to believe ...", his authorities would apply this provision only on the basis of positive evidence. The provision was discretionary in nature and would allow the investigating authorities to take due account of cases such as those mentioned by the delegation of Australia (e.g. end of season sales) in determining whether sales at prices below cost of production were to be disregarded in the establishment of the normal value. Regarding the level of price increases under price undertakings accepted pursuant to Article 104.1, he observed that such price increases would have to be limited to what was necessary to eliminate the injurious effect of the dumping. In this respect he also pointed out that Article 103.2 required that an anti-dumping duty not be imposed in an amount exceeding the margin of dumping.

10. The representative of the EEC noted that, while the representative of Poland had indicated that no anti-dumping investigations had been initiated by his authorities, the most recent semi-annual report submitted by Poland (ADP/62/Add.7) contained information on a number of investigations initiated by Poland.

11. The representative of Poland replied that no investigations had been opened by his authorities since the amendment to the Customs Law in July 1991; the investigations referred to by the representative of the EEC had been initiated prior to the date of that amendment.

12. The representative of the EEC said that his delegation would shortly submit a series of rather detailed questions on the Polish anti-dumping legislation. His authorities were concerned about a number of aspects of this legislation. He requested the representative of Poland to indicate whether the Polish authorities intended to limit the amount of anti-dumping duties to an amount necessary to remove the injury found and whether they intended to apply a "public interest" criterion. With respect to Article 104.1 of the Customs Law, he observed that it was not entirely clear until what point in a proceeding the authorities could accept price undertakings. Finally, he asked whether the Polish legislation provided for a "sunset" clause.

13. The representative of Canada expressed his authorities' appreciation for Poland's efforts to incorporate in its legislation the requirements of the Agreement, e.g. with respect to the definition of the term "a major proportion" of domestic production of the like product. He asked whether Poland intended at a future date to issue more detailed regulations or guidelines for the implementation of the provisions on sales below cost of production in Article 93.3 and whether the definition of the term domestic industry in Article 96.1 would also apply for purposes of determining whether a petitioner had the requisite standing to request the initiation of an anti-dumping investigation. In addition, he wondered how the Polish authorities would define the term "negligible" in relation to dumping margins (Article 100.1), whether there was a provision for some type of "sunset" clause and whether there were provisions concerning administrative and judicial reviews of anti-dumping measures.

14. The representative of the United States thanked the representative of Poland for the answers which he had provided and said that his delegation might wish to seek further clarification on a number of points at a later stage.

15. The representative of Poland requested the representatives of the EEC and Canada to provide their questions in writing. Many of these questions related to aspects of the Polish legislation which could only be clarified through the application of the legislation in individual cases.

16. The representative of the EEC stated that the questions which he had raised earlier at the meeting related to rather fundamental issues and considered that answers to these questions should be possible already at this stage.

17. The representative of Canada echoed the comment made by the representative of the EEC. His delegations would, however, submit questions in writing on the Polish legislation.

18. The representative of Poland said that his delegation would provide answers to all questions raised well in advance of the next regular meeting of the Committee.

19. The representative of the EEC expressed his concerns about certain procedural aspects of the Polish legislation. He noted in this respect in particular the absence of provisions on administrative and judicial review and the tight time-limits provided for in the legislation for the determinations of the investigating authorities. His delegation would submit additional questions on the Polish legislation.¹

20. The Committee took note of the statements made and agreed to revert at its next regular meeting to the anti-dumping legislation of Poland. The Chairman invited delegations wishing to ask further questions on this legislation to do so well in advance of the next meeting in order that the delegation of Poland have sufficient time to provide written answers.

(ii) Yugoslavia (Article 75 of the Law on Foreign Trade Transactions, document ADP/1/Add.30)

21. The Chairman recalled that at the regular meeting held in April 1991 the Committee had begun its examination of Article 75 of the Law on Foreign Trade Transactions. At that meeting the delegations of Australia, Canada, the EEC, Hong Kong, Singapore and the United States had asked questions (ADP/M/32, paragraphs 12-24). Subsequent to that meeting, questions in writing had been submitted by the delegations of Canada, Hong Kong and Australia (documents ADP/W/297, 293 and 302, respectively).

22. The representative of Yugoslavia said that she was not in a position to provide responses to the questions raised by Canada, Hong Kong and Australia because, for reasons well known to all delegations, no information had been received from her authorities. Yugoslavia had not taken any anti-dumping actions so far. It was probable that more detailed implementing regulations would be adopted.

23. The representatives of Canada, the EEC and Hong Kong reserved their delegations' rights to revert to the anti-dumping legislation of Yugoslavia on the next practicable occasion.

24. The Committee took note of the statements made and agreed to revert to the anti-dumping legislation of Yugoslavia at a future meeting.

¹See document ADP/W/307.

(iii) New Zealand (Dumping and Countervailing Duties Amendment Act 1990, document ADP/1/Add.15/Rev.1/Add.1)

25. The Chairman recalled that at the regular meeting in April 1991 the Committee had discussed certain amendments to the anti-dumping legislation of New Zealand which had resulted from the removal of the application of anti-dumping measures from trade between New Zealand and Australia (ADP/1/Add.15/Rev.1/Add.1). Questions had been raised at that meeting by the representatives of Canada and the EEC (ADP/M/32, paragraphs 25-30).

26. No comments were made. The Chairman said that the Committee had concluded its examination of the legislation notified to the Committee by New Zealand in document (ADP/1/Add.15/Rev.1/Add.1).

(iv) Australia

27. The Chairman noted that the Committee had before it four documents with respect to the Australian anti-dumping legislation. Firstly, document ADP/1/Add.18/Rev.1/Suppl.3 contained the texts of the Customs Legislation (Anti-Dumping) Amendment Act 1989 and of the Customs Tariff (Anti-Dumping) Amendment Act 1989. Secondly, document ADP/1/Add.18/Rev.1/Suppl.4 and Corr.1 contained the text of the Trade Practices (Misuse of Trans-Tasman Market Power) Act 1990 which provided for certain amendments to the Australian competition legislation following the removal of anti-dumping measures from trade between Australia and New Zealand. Thirdly, the Committee had very recently received a notification of amendments to the Australian Customs Regulations and to the Customs Act 1901 (document ADP/1/Add.18/Rev.1/Suppl.5). The Chairman noted that the matter raised by the delegation of the EEC in document ADP/68 related to one of these recently notified amendments. Finally, document ADP/1/Add.18/Rev.1/Suppl.2 contained the text of the Anti-Dumping Authority Act 1988, the Customs Legislation (Anti-Dumping) Amendment Act 1988 and of the Customs Tariff (Anti-Dumping) Amendment Act 1988.

Customs Legislation (Anti-Dumping) Amendment Act 1989 and Customs Tariff (Anti-Dumping) Amendment Act 1989 (document ADP/1/Add.18/Rev.1/Suppl.3)

28. The Chairman noted that at its regular meeting in April 1991 the Committee had continued its examination of the changes made to the Australian anti-dumping legislation in 1989 (ADP/M/32, paragraphs 32-36). Written questions on these changes had been received from the delegation of Canada (document ADP/W/294).

29. The representative of Australia regretted that his delegation had not yet answered the questions raised by the Canadian delegation in document ADP/W/294 and indicated that responses to these questions would be provided in the near future. He noted that the matters raised in document ADP/W/294 concerned aspects of the Australian legislation which were not affected by the changes made in 1989.

30. The Committee took note of the statement made by the representative of Australia and agreed to revert at its next regular meeting to the amendments notified by Australia in document ADP/1/Add.18/Rev.1/Suppl.3.

Trade Practices (Misuse of Trans-Tasman Market Power) Act 1990
(document ADP/1/Add.18/Rev.1/Suppl.4)

31. The Chairman noted that the Committee, at its regular meeting in April 1991, had continued its examination of legislative amendments which implemented Article 4 of the Protocol to ANZCERTA signed in 1988. At that meeting the representatives of Canada and the EEC had raised questions concerning changes to the Australian competition legislation (ADP/M/32, paragraphs 37-41).

32. The representative of Australia said that his delegation would provide at a later date responses to the questions raised by the delegations of Canada and the EEC.

33. The Committee took note of the statement made by the representative of Australia and agreed to revert at its next regular meeting to the legislation notified in document ADP/1/Add.18/Rev.1/Suppl.4.

Amendments to the Australian Customs Regulations and to the Customs Act of 1901 (document ADP/1/Add.18/Rev.1/Suppl.5)

34. The Chairman noted that the Committee had received a communication from the EEC (document ADP/68) pertaining to one of the amendments notified by Australia in document ADP/1/Add.18/Rev.1/Suppl.5.

35. The representative of Australia recalled that at the regular meeting in April 1991 his delegation had informed the Committee of certain regulatory and statutory amendments under consideration by his authorities. In June 1991 these amendments, pertaining to the Customs Regulations and to the Customs Act 1901, had been adopted. His delegation would formally respond to the communication from the EEC regarding new section 269T(4A) of the Customs Act concerning the definition of the term domestic industry in cases involving processed agricultural products. By way of preliminary comment, he observed that in enacting this provision Australia had fully taken into account its international obligations. This provision was very similar to legislation introduced by the United States in 1988 concerning the definition of industry in cases involving wine and grapes. That legislation had been reviewed by the Committee.

36. The representative of the EEC said that he was not convinced by the reference made by the representative of Australia to the legislation of the United States. He noted in this respect that there had been two dispute settlement proceedings in the Committee on Subsidies and Countervailing Measures on this matter. His delegation regretted that Australia had enacted the new provision at a time when the Uruguay Round negotiations were still ongoing.

37. The representative of Finland, speaking on behalf of the Nordic countries, seconded the statement made by the representative of the EEC on new Article 269T(4A) of the Australian Customs Act 1901. Referring to a statement on page 2 of document ADP/1/Add.18/Rev.1/Suppl.5, he asked whether, as a result of the amendments, it would no longer be possible to calculate a provisional anti-dumping duty at less than the full margin of dumping.

38. The representative of the United States said that his delegation might wish to submit written questions on the recent amendments to the Australian legislation at a later stage. He expressed some surprise at the comment made by the Australian representative on the Wine Equity Act, given that this was no longer existing law in the United States. His delegation was interested in the rationale behind the Australian practice regarding the timing of the "sunset" provision and might develop some questions on this aspect. With regard to the comment of the representative of Finland, he stated that under the Agreement the "lesser duty" provision was not a mandatory rule.

39. The representative of Singapore expressed her delegation's concern regarding the recent amendment concerning the definition of the term domestic industry.

40. The representative of Hong Kong said that her delegation was still studying the recent amendments to the Australian anti-dumping legislation and wished to revert to this legislation at a later date. Of particular interest to her delegation was the amendment concerning the definition of the term domestic industry.

41. The representative of Australia, responding to the question of the representative of Finland, said that as a result of the amendments a provisional duty would have to correspond to the full margin of dumping. As noted by the representative of the United States, this was fully consistent with the Agreement.

42. The Committee took note of the statements made and agreed to revert to the recent amendments to the Australian anti-dumping legislation at its next regular meeting. The Chairman requested that delegations wishing to raise questions on document ADP/1/Add.18/Rev.1/Suppl.5 do so well in advance of that meeting.

Anti-Dumping Authority Act 1988, Customs Legislation (Anti-Dumping) Amendment Act 1988 and Customs Tariff (Anti-Dumping) Amendment Act 1988 (document ADP/1/Add.18/Rev.1/Suppl.2)

43. The Chairman recalled that the Committee had been discussing the above-mentioned amendments made to the Australian anti-dumping legislation in 1988 since the regular meeting held in October 1988. Written answers received from the delegation of Australia to questions raised by the delegations of the United States, the EEC and Korea had been circulated in documents ADP/W/216, 250 and 267. At the regular meeting in April 1991 the representative of Singapore had reserved her delegation's right to revert to these amendments at the next regular meeting of the Committee.

44. The representative of Singapore said that at this stage her delegation did not have any further specific questions on the Australian anti-dumping legislation as amended in 1988.

45. The Committee took note of the statement made by the representative of Singapore. The Chairman said that the Committee had concluded its examination of the legislative amendments notified by Australia in document ADP/1/Add.18/Rev.1/Suppl.2.

(v) United States

46. The Committee had before it the following documentation concerning anti-dumping legislation of the United States. Firstly, document ADP/1/Add.3/Rev.4/Suppl.1 contained the text of revised anti-dumping duty Regulations of the Department of Commerce. Secondly, the texts of legislative amendments resulting from the Omnibus Trade and Competitiveness Act of 1988 and the United States-Canada Free Trade Agreement Implementation Act had been circulated in document ADP/1/Add.3/Rev.4. Finally, the Committee had very recently received from the delegation of the United States a notification of amendments to certain regulations of the United States International Trade Commission (document ADP/1/Add.3/Rev.4/Suppl.3).

Revised Regulations of the Department of Commerce (document ADP/1/Add.3/Rev.4/Suppl.1)

47. The Chairman noted that at the regular meeting held in April 1991 the delegation of Canada had indicated its wish to study in greater detail the answers provided by the delegation of the United States in document ADP/W/290 to questions submitted by the delegation of Canada in document ADP/W/264.

48. The representative of Canada said that his delegation was generally satisfied with the responses provided by the delegation of the United States in document ADP/W/290.

49. The Committee took note of the statement made by the representative of Canada. The Chairman said that the Committee had concluded its examination of the revised anti-dumping duty Regulations of the Department of Commerce.

Amendments to the anti-dumping provisions of the Tariff Act of 1930 resulting from the Omnibus Trade and Competitiveness Act of 1988 and from the United States-Canada Free Trade Agreement Implementation Act of 1988 (document ADP/1/Add.3/Rev.4)

50. The Chairman recalled that written answers provided by the delegation of the United States to questions raised by several delegations had been made available in documents ADP/W/230, 241, 242, 243, 270, 271, 272 and 273. At the Committee's regular meeting held in April 1991 the

representative of Singapore had made some further observations on the amendments made in 1988 to the legislation of the United States and had reserved her delegation's right to revert to these amendments at the next regular meeting of the Committee (ADP/M/32, paragraph 52).

51. The representative of Singapore noted that the delegation of the United States had responded in writing to a series of initial questions raised by her delegation. At the most recent regular meetings of the Committee, her delegation had made comprehensive comments on certain aspects of the Omnibus Trade and Competitiveness Act which were not consistent with the Agreement. She requested the delegation of the United States to respond in writing to these comments and reserved her delegation's right to revert to the legislation of the United States at the next regular meeting of the Committee.

52. The representative of the United States recalled that his delegation had already provided detailed written responses to questions submitted in writing by the delegation of Singapore. His delegation was prepared to respond in writing to the observations made by the delegation of Singapore at the recent meetings if those observations were reformulated in the form of specific questions and submitted in writing. He also observed that any delegation could always raise a matter concerning the legislation of another Party to the Agreement under the item "laws and/or regulations of other Parties".

53. The representative of Singapore said that, before the next meeting of the Committee, her delegation would submit further written questions on the legislation of the United States, based on her comments and observations made at the recent regular meetings of the Committee.

54. The Committee took note of the statements made and agreed to revert at its next regular meeting to the amendments to the anti-dumping legislation of the United States notified in document ADP/1/Add.3/Rev.4.

Revised Regulations of the United States International Trade Commission (document ADP/1/Add.3/Rev.4/Suppl.3)

55. The Committee had before it in document ADP/1/Add.3/Rev.4/Suppl.3 a notification recently received from the delegation of the United States regarding amendments to certain regulations of the United States International Trade Commission (USITC). The representative of the United States explained that the amended Regulations of the USITC (pp.13-36 of document ADP/1/Add.3/Rev.4/Suppl.3) were entirely of a procedural nature. The amendments reflected in these revised Regulations (in particular Section 207 of the Regulations) implemented certain procedural provisions of the Omnibus Trade and Competitiveness Act of 1988, but the Regulations also dealt with certain aspects of USITC procedures not specific to anti-dumping and countervailing duty proceedings (e.g. Section 201 of the Regulations).

56. The observer for Colombia, referring to Section 207.26 of the revised USITC Regulations, asked how the United States defined the term "short life cycle merchandise" and whether, in cases involving such products, there would be expedited anti-dumping investigations.

57. The representative of the United States replied that the provisions in Section 207.26 only laid down the procedures to be followed by the USITC in cases involving short life cycle products. The substantive law regarding the treatment of short life cycle products was provided for in the Omnibus Trade and Competitiveness Act of 1988.

58. The Committee took note of the statements made and agreed to revert at its next regular meeting to the revised USITC Regulations. The Chairman requested delegations wishing to ask questions on these Regulations to do so in writing well in advance of the next meeting of the Committee so as to give the delegation of the United States sufficient time to respond to such questions.

- (iv) Korea (Amendment of the Presidential Decree of the Korean Customs Act on Anti-Dumping/Countervailing Duty, document ADP/1/Add.13/Rev.1/Suppl.1)

59. The Chairman recalled that at the Committee's meeting held in April 1991 the delegations of the EEC and the United States had reserved their delegations' rights to revert at the next regular meeting to the amendments to the Korean anti-dumping legislation notified in document ADP/1/Add.13/Rev.1/Suppl.1. The delegation of the EEC had on that occasion indicated that it needed some more time to review the answers provided by the delegation of Korea in document ADP/W/287 to questions raised by the EEC (ADP/M/32, paragraphs 56-59).

60. The representative of the United States said that his delegation had no further specific questions to ask on the amendments to the Korean legislation in ADP/1/Add.13/Rev.1/Suppl.1, but that it remained concerned about certain aspects of the Korean anti-dumping legislation and practice. He recalled in this context that his authorities had invoked the dispute settlement provisions of the Agreement in respect of a particular anti-dumping measure taken by Korea and reserved his delegation's right to revert to the Korean legislation under the item "laws and/or regulations of other Parties".

61. The representative of the EEC said that his delegation would submit in writing a question concerning an answer provided by the delegation of Korea to questions raised by Canada.¹

62. The Committee took note of the statements made and agreed to revert at its next regular meeting to the amendments to the Korean anti-dumping legislation notified in document ADP/1/Add.13/Rev.1/Suppl.1.

¹See document ADP/W/308.

(vii) EEC (Council Regulation (EEC) No. 2423/88 of 11 July 1988, document ADP/1/Add.1/Rev.1)

63. The Chairman recalled that the Committee had reverted to Council Regulation (EEC) No. 2423/88 of 11 July 1988 at its regular meeting held in April 1991 (ADP/M/32, paragraphs 60-68). No specific substantive points had been made in the discussion at that meeting, but the delegations of Hong Kong, Singapore and Japan had reiterated their request that the delegation respond in writing to questions submitted by these three delegations in, respectively, documents ADP/W/260, 255 and 252, to which the delegation had responded orally at the Committee's regular meeting held in April 1991. The representative of the EEC had expressed the view that the Committee had exhausted its examination of the EEC legislation and had requested that the Committee conclude its examination of this legislation. The Chairman then proposed that the Committee request the delegation of the EEC to provide in the near future written answers to the questions submitted by the delegations of Hong Kong, Japan and Singapore on the understanding that the legislation of the EEC would be inscribed on the agenda of the next regular meeting of the Committee only if one of these delegations raised well in advance of that meeting specific aspects of the answers of the EEC in respect of which further clarification was necessary. In that case, the discussion of the EEC legislation at the next regular meeting would be limited to those specific aspects and the Committee would at that meeting conclude its examination of the EEC legislation. It was so agreed.

(viii) Laws and/or regulations of other Parties to the Agreement

64. No statements were made under this item of the agenda.

C. Semi-annual report of the United States on anti-dumping actions taken in the period 1 July-31 December 1990 (ADP/53/Add.11)

65. The Chairman recalled that at the regular meeting in April 1991 the delegations of Mexico and Pakistan had asked some questions on the semi-annual report of the United States covering the period 1 July-31 December 1990, while the delegation of the EEC had reserved its right to revert to this report at the next regular meeting of the Committee (ADP/M/32, paragraphs 90-94).

66. No comments were made on this semi-annual report.

D. Semi-annual report of anti-dumping actions taken in the period 1 January-30 June 1991 (ADP/62 and addenda)

67. The Chairman noted that the following Parties had informed the Committee that they had not taken any anti-dumping actions during the first six months of 1991: Austria, Egypt, Hong Kong, India, Norway, Pakistan, Romania, Singapore, Sweden, Switzerland and Yugoslavia (document ADP/62/Add.1). Recently, he had been informed by the delegation of the Czech and Slovak Republic that no actions had been taken by that Party during this period. No semi-annual reports had been received from the delegations of Brazil, Hungary and Japan.

68. The representative of Japan said that his country had not taken any anti-dumping actions during the first-half of 1991.

69. The Committee then examined the semi-annual reports of Parties to the Agreement which had informed the Committee of anti-dumping actions taken during the period 1 January-30 June 1991:

New Zealand (ADP/62/Add.2)

70. No comments were made on this semi-annual report.

Canada (ADP/62/Add.3)

71. No comments were made on this semi-annual report.

Finland (ADP/62/Add.4)

72. No comments were made on this semi-annual report.

Korea (ADP/62/Add.5)

73. No comments were made on this semi-annual report.

EEC (ADP/62/Add.6)

74. No comments were made on this semi-annual report.

Poland (ADP/62/Add.7)

75. The representative of the EEC requested the delegation of Poland to make available to the Committee copies of the official notices pertaining to the initiation and termination of the investigations mentioned in document ADP/62/Add.7 and reserved his delegation's right to revert to this semi-annual report at the next regular meeting of the Committee.

76. The representative of Poland said that his delegation would promptly provide the documentation requested by the representative of the EEC.

77. The Committee took note of the statements made.

United States (ADP/62/Add.8)

78. The representative of the United States, responding to a question of the representative of Mexico, noted that on page 17 of document ADP/62/Add.8 the correct figures for the margins of dumping in the second of the two review proceedings on fresh cut flowers from Mexico were 0-264.43 per cent.

79. The representative of Mexico recalled that on previous occasions his delegation had already expressed its concerns regarding the lack of information in the semi-annual reports on certain items of critical

importance. In the semi-annual report presently before the Committee there was in many cases no or insufficient information provided in columns 11 (trade volume), 12 (dumped imports as percentage of domestic consumption) and 13 (percentage of trade volume of the exporting country investigated). A similar comment about insufficient information provided in a semi-annual report could also be made on the semi-annual reports submitted by other Parties. His delegation therefore intended to request the Committee at a future date to review the standard format used for the submission of the semi-annual reports.

80. The representative of the United States said that generally the cases in which certain information in columns 11 and 12 was missing in his country's semi-annual report involved administrative review proceedings, which in the United States were conducted on a company-specific basis. As a result, in most cases the information to be provided in columns 11 and 12 was of a confidential nature and could not be divulged by the United States in the semi-annual report. However, with respect to initial investigations, the United States did include in its semi-annual report the information on the items mentioned in columns 11 and 12.

81. The Chairman said that the need to provide full information in semi-annual reports had to be recognized, but account had also to be taken of the types of constraints mentioned by the representative of the United States.

82. The Committee took note of the comments made.

Australia (ADP/62/Add.9/Rev.1)

83. No comments were made on this semi-annual report.

Mexico (ADP/62/Add.10)

84. The Chairman said that, because of the late circulation of this semi-annual report, the Committee would revert to it at its next regular meeting.

E. Reports on all preliminary or final anti-dumping duty actions
(documents ADP/W/295, 298 and 299)

85. The Chairman noted that copies of notices of preliminary or final determinations had been made available for consultation in the secretariat by the delegations of Australia, Canada, the EEC, Korea, New Zealand and the United States.

86. No comments were made on any of these notices.

- F. Ad-Hoc Group on the Implementation of the Anti-Dumping Code - Draft Recommendation on the acceptance of price undertakings in anti-dumping investigations involving imports from developing countries (document ADP/W/138/Rev.5)

87. The Chairman observed that the Committee had been considering this draft recommendation for quite some time. At the regular meeting in April 1991 the delegations of the EEC and the United States had suggested that the Committee defer its further consideration of this draft recommendation to a later date, after the completion of the anti-dumping negotiations in the Uruguay Round (ADP/M/32, paragraphs 99-100). No opposing views had been expressed by other delegations on this proposal. The Chairman therefore proposed that the Committee would revert to this draft recommendation at a future meeting if and when the Committee was specifically requested by any delegation to continue its consideration of this matter. It was so agreed.

- G. United States - Imposition of anti-dumping duties on imports of fresh and chilled salmon from Norway - Request by Norway for the Establishment of a Panel under Article 15:5 of the Agreement (ADP/65 and Add.1)

88. Before introducing this item of the agenda, the Chairman made some comments of a general nature which were relevant to this as well as the next two items of the agenda. In a number of recent cases in which the provisions of Article 15 of the Agreement were invoked requests for conciliation and/or for the establishment of panels had been received at a rather late stage. Moreover, in some cases these requests had initially been formulated in a rather summary fashion and had necessitated the circulation of supplements to provide a fuller description of the matters covered by the requests for conciliation or for the establishment of a panel. In the interest of third parties which, at the conciliation stage or during the panel proceedings, might wish to express their views on the issues in dispute and in order to avoid situations in which panels had to spend some time to clarify what was and what was not covered by their terms of reference, he urged all delegations to be more disciplined as regards the timely submission of requests for conciliation or for the establishment of a panel and to ensure that such requests defined in a precise manner the issues disputed between the parties concerned.

89. The Committee took note of the Chairman's statement.

90. The Committee had before it in documents ADP/65 and Add.1 a communication from Norway containing a request for the establishment of a panel under Article 15:5 of the Agreement in the matter of the imposition by the United States of definitive anti-dumping duties on imports of fresh and chilled Atlantic salmon from Norway. The Chairman recalled that this matter had been the subject of a request for conciliation under Article 15:3 of the Agreement which had been considered by the Committee at a special meeting held on 19 July 1991 (ADP/M/33, paragraphs 22-59).

91. The representative of Norway said that by now the members of the Committee were quite familiar with the facts of the matter in respect of which his delegation requested the establishment of a panel. Bilateral consultations between the United States and Norway, held in May 1991, and conciliation under Article 15:3 of the Agreement in July 1991 had failed to result in a resolution of this matter. Under these circumstances his authorities were left with no choice but to request the establishment of a panel in order to review whether the actions taken by the United States in imposing anti-dumping duties on salmon from Norway were consistent with the provisions of the Agreement and to make appropriate recommendations. The issues to be examined by this panel had been described by his delegation in the communications circulated in documents ADP/65 and Add.1.

92. The representative of the United States said that, since the procedural requirements for the establishment of a panel in the matter at hand had been met, his delegation did not object to the establishment of a panel at this time.

93. The representative of the EEC reserved his delegation's right to present its views to the panel to be established by the Committee at the request of Norway.

94. The Committee took note of the statements made and decided to establish a panel in the matter referred to the Committee by the delegation of Norway in documents ADP/65 and Add.1. The Committee authorized the Chairman to decide in consultation with the two parties to the dispute, on the Panel's terms of reference and to decide after obtaining the agreement of the two parties, on the Panel's composition.¹

H. United States - Imposition of anti-dumping duties on imports of cement and cement clinker from Mexico (document ADP/66)

95. The Committee had before it in document ADP/66 a recently received communication from Mexico containing a request for the establishment of a panel under Article 15:5 of the Agreement in the matter of the imposition by the United States of definitive anti-dumping duties on imports of cement and cement clinker from Mexico. The Chairman recalled that this matter had been the subject of a request by Mexico for conciliation under Article 15:3 of the Agreement which had been considered by the Committee at a special meeting held on 19 July 1991.

96. The representative of Mexico said that his delegation was now formally requesting the establishment of a panel in the dispute between the United States and Mexico concerning the imposition by the United States of anti-dumping duties on cement and cement clinker from Mexico. Mexico had exhausted all other procedures provided for in the Agreement to reach a

¹See document ADP/69 for the terms of reference and composition of this Panel.

satisfactory solution to this matter. As described in documents ADP/59 and ADP/66, the principal issues to be examined by the panel concerned the standing of the petitioners, the regional injury analysis, the cumulative assessment of the effects of imports and the question of the causal relationship between imports from Mexico and injury to the domestic industry. His authorities considered that the actions taken by the United States in imposing the anti-dumping duties in question were inconsistent with inter alia, Articles 1, 3, 4, 5 and 6 of the Agreement. The panel to be established in this dispute should take due account of Article 15:7 of the Agreement.

97. The representative of the United States said that, since the procedural requirements for the establishment of a panel in this matter had been met, his delegation did not object to the establishment of a panel at this time.

98. The representatives of Canada and the EEC reserved their delegations' rights to intervene as interested third parties in the panel proceedings.

99. The Committee took note of the statements made and decided to establish a panel under Article 15:5 of the Agreement in the matter referred to the Committee by the delegation of Mexico in document ADP/66. The Committee authorized the Chairman to decide, in consultation with the two parties to the dispute, on the terms of reference of the Panel and to decide, after obtaining the agreement of the two parties, on the Panel's composition.¹

I. United States - Anti-dumping duties on stainless steel plate from Sweden - Request by Sweden for conciliation under Article 15:3 of the Agreement (document ADP/47)

100. The Committee had before it in document ADP/67 a request by the delegation of Sweden for conciliation under Article 15:3 of the Agreement in the matter of an outstanding anti-dumping duty order in the United States on imports of stainless steel plate from Sweden. The Chairman recalled that this matter had been discussed in the Committee at the regular meeting held in April 1991 (ADP/M/32, paragraphs 138-142) at which the delegation of Sweden had informed the Committee that it had requested consultations on this matter with the United States under Article 15:2 of the Agreement (ADP/56).

101. The representative of Sweden introduced the communication from his delegation circulated in document ADP/67 by saying that imports of stainless steel plate from Sweden had been subject to anti-dumping duties in the United States since 1973. The anti-dumping duty currently in force was applied at a rate of 4.46 per cent. Consultations held on 9 July 1991

¹See document ADP/71 for the terms of reference and composition of this Panel.

in Washington between the United States and Sweden had failed to lead to a mutually agreed solution to this matter. Sweden had therefore decided to invoke the provisions for conciliation in Article 15:3 of the Agreement. The most important aspects of the matter concerned, firstly, the fact that the United States considered that the injury determination made in 1973 was confirmed to be valid; secondly, the fact that the United States had never on its own initiative considered whether a review of the anti-dumping duty order was warranted; thirdly, the fact that information submitted by a Swedish exporter of the product in question, Avesta AB, had been considered insufficient by the United States' authorities to warrant a review and, finally, the manner in which this exporter had "inherited" the dumping margin of 4.46 per cent. Sweden considered that the continued imposition of the anti-dumping duties on imports into the United States of stainless steel plate from Sweden was contrary to the provisions of the Agreement and that, as a result, benefits accruing to Sweden under the Agreement had been nullified or impaired.

102. Regarding the reliance by the United States on an injury determination made in 1973, the representative of Sweden noted that Article 9:1 of the Agreement provided that "an anti-dumping duty shall remain in force only as long as, and to the extent necessary, to counteract dumping which is causing injury". There was an explicit time element in the words "only as long as". In the view of his authorities these words implied that, after a reasonable period of time had elapsed since a final determination, the investigating authority must satisfy itself that a duty in force was still necessary to counteract injurious dumping. Article 9:2 provided that "the investigating authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or if any interested party so requests and submits positive information substantiating the need for review". Thus, investigating authorities were expressly required to review ex officio the need for the continued imposition of an anti-dumping duty; without this requirement, an anti-dumping duty could remain in force forever. In the case under consideration it should have been evident to the United States that it had to satisfy itself that the continued imposition of the anti-dumping duty was necessary, given that this duty had been in force for eighteen years. The United States apparently considered that injurious dumping of the product in question was continuing. Sweden was of the opinion that this assessment was without any basis and that the United States had failed to fulfil its obligations under Article 9 of the Agreement.

103. The representative of Sweden then turned to the question of the evidence submitted by the Swedish exporter to the United States' authorities in support of the request for a review. On two occasions, in 1985 and 1987, Avesta AB had provided the USITC with information showing the absence of any injurious effects of the company's exports of the subject produced. The evidence provided by Avesta AB pertained to profound changes which had occurred since 1971-1972 with regard to the levels of imports from Sweden, a new marketing strategy of the Avesta Group regarding its participation in the United States' market, a new product-mix of its exports to the United States and the state of the domestic industry

in the United States. Thus, the evidence showed that imports of stainless steel plate from Sweden were at negligible levels. In 1990, those imports accounted for 0.6 per cent of consumption in the United States, compared to 11.52 per cent in 1972. In addition, Sweden's share of total imports of the product to the United States had declined since the early seventies. In 1972 imports from Sweden had represented 58 per cent of these imports, compared to only 6 per cent in 1990. Regarding the condition of the domestic industry in the United States, the representative of Sweden pointed out that the industry had increased its share of the domestic market by almost 200 per cent between 1972 and 1990. In addition, the imports from Sweden now included certain types of stainless steel plate which did not exist in the early seventies and were not produced by any domestic producer in the United States. The evidence provided on these points by Avesta AB had met the requirements of Article 9:2. By not investigating this evidence of changed circumstances the United States had failed to act in conformity with its obligations under the Agreement.

104. With respect to the amount of anti-dumping duties payable on imports of stainless steel plate from Sweden into the United States, the representative of Sweden explained that the latest administrative review conducted in the early eighties had resulted in a zero margin of dumping for what was then Avesta Jernverk and a margin of 4.46 per cent of what was then Nyby-Uddeholm. Since that time a substantial reorganization had taken place in the Swedish steel industry. Avesta Jernverk had changed its name to Avesta AB in 1984 and in 1985 Avesta AB had acquired 100 per cent of the shares of Nyby-Uddeholm; subsequently, this latter company had been liquidated. As a result of this restructuring, Avesta AB had completely reorganized its production entities. The different production facilities owned by Avesta AB had changed their product-mixes and were no longer producing the same products as before. Consequently, Avesta AB should have been regarded as a new exporter with a totally new production structure and export-mix. As a new exporter, Avesta AB should have been subject to anti-dumping duties only as a result of a new investigation. If Avesta AB were not to be considered a new exporter, the United States' authorities should have taken account of Article 8:3 of the Agreement, which provided that "the amount of the anti-dumping duty must not exceed the margin of dumping as established under Article 2". Logically, the only margin of dumping which could be assigned to Avesta AB, if that company was not treated as a new exporter, was the zero margin established in the latest administrative review for Avesta Jernverk, the predecessor of Avesta AB. Thus, in applying a rate of duty of 4.46 per cent to imports from Avesta AB, the United States either imposed a duty on a company not investigated, which was contrary to Article VI of the General Agreement, or levied a duty exceeding the margin of dumping established, which was contrary to Article 8:3 of the Agreement.

105. The representative of the United States said that for a correct understanding of the matter raised by Sweden it was necessary to consider the procedures under United States' domestic law with respect to outstanding anti-dumping duty orders. The Department of Commerce conducted annual reviews of anti-dumping duty orders on request.

Avesta AB had not requested that the Department conduct such a review. If it had made such a request, the Department would have reviewed the dumping determination. The Department of Commerce could revoke an anti-dumping duty order if, during three consecutive annual administrative reviews, no dumping was found or when as a result of changed circumstances the domestic industry notified the Department that it was no longer interested in the continued imposition of the anti-dumping duty. In addition, if during a period of five years no interested party had requested that the Department conduct an administrative review of an anti-dumping duty order, the Department would publish a notice of its intent to revoke the order on the basis of a lack of interest on the part of the domestic industry.

106. The representative of the United States then pointed out that revocation of an anti-dumping duty order could also result from a review conducted by the USITC. The USITC would initiate such a review when, on its own initiative or on the basis of information provided in a request for a review, it determined that there were changed circumstances warranting a review. If a request for such a review was submitted, the USITC first considered whether a review was warranted. An investigating team was assigned to the matter and interested parties had the opportunity to make comments. This team evaluated the information gathered and the USITC then determined whether there existed positive evidence showing that a review of the anti-dumping duty order was warranted. If there was such evidence, a review was opened. If not, the USITC would publish a notice explaining its decision not to initiate a review. The USITC had followed this procedure in considering the requests made in 1985 and 1987 by Avesta AB for a review of the anti-dumping duty order on stainless steel plate from Sweden. On both occasions the USITC had gathered information and had concluded that Avesta had failed to present evidence of changed circumstances warranting the opening of a full review.

107. The representative of the United States disagreed with the manner in which the delegation of Sweden had described the position of the United States on the injury determination made in 1973. The issue in dispute was not whether the United States considered that that determination was still valid. The current condition of the domestic industry was not really essential to this dispute because, by definition, the imposition of an anti-dumping duty could be expected to remove the injury to the domestic industry. Rather, the key question was what effect the possible revocation of the anti-dumping duty order would have on the domestic industry. The current condition of the industry was at best only one of the factors to be considered in making that determination. Sweden was also incorrect when it claimed that the United States' authorities had never taken the initiative to investigate the matter. In fact, between 1980 and 1984 the Department of Commerce had on its own initiative conducted annual reviews; at that time the conduct of such reviews was mandatory under United States' legislation. In addition, on two occasions the USITC had considered whether a review of the injury determination was warranted. There was no requirement in Article 9 of the Agreement that an anti-dumping duty be reviewed solely on the basis of the mere passage of time. Sweden had misread the discussions which had taken place in 1977 in

the context of the Analytical Inventory of Problems and Issues Arising under the Anti-Dumping Code to find such a requirement. The document referred to by Sweden (document COM.AD/W/68) did not provide an interpretation of Article 9 of the Kennedy Round Anti-Dumping Code (which was identical to Article 9 of the current Agreement), but reflected views of some delegations. The discussion reflected in this document noted the absence in Article 9 of a fixed time-period for revocation of an anti-dumping duty. As such, this discussion refuted Sweden's position that Article 9 of the current Agreement somehow had to be interpreted as requiring the revocation or review of an anti-dumping duty order after a certain period of time had elapsed.

108. The representative of the United States further stated that Sweden had misinterpreted Article 9 of the Agreement to require a showing of a continuation of injury to a domestic industry as a necessary condition for the continued imposition of the anti-dumping duty. The United States considered that there was no such requirement in the Agreement. Article 9 required that the authorities should review the need for the continued imposition of an anti-dumping duty "where warranted" but did not articulate a specific standard to be applied in such a review. The standard applied by the USITC was whether revocation of an order would cause, or threaten to cause, material injury to a domestic industry. This standard was in full conformity with the requirements of Article 9.

109. In response to the observations of the representative of Sweden in the declining volume of imports of stainless steel plate from Sweden, the representative of the United States said that the decline of the import volume and market share was the natural result of the imposition of the anti-dumping duty order. The issue was not whether import volume and market share had in fact declined, but whether they would increase again if the anti-dumping duty order would be removed. On this fundamental issue Avesta AB had failed to provide the USITC with credible evidence. Since the decline of imports predated Avesta's acquisition of a plant in the United States, the assertion that the decline was caused by this acquisition was manifestly incorrect. Also, Avesta AB had asserted that its exports to the EEC had grown, demonstrating that the EEC was now a more attractive export market than in 1973. This assertion, however, was based on data which were not adjusted for the expansion of EEC membership after 1973. When an adjustment was made to account for this factor, the increase of exports to the EEC proved to be minimal. Avesta AB had next argued that the increased ratio of concentration in the Swedish industry constituted sufficient reason to conduct a review. However, Avesta's monopolization of the Swedish industry had not been accompanied by a decrease of the production capacity in that industry and Avesta AB had never been able to explain how its monopolization of the Swedish industry would reduce the likelihood of its exports to the United States being dumped. Avesta AB had also argued that it was now exporting special patented types of stainless steel plate to the United States and that the United States industry was not producing many of these types of steel. In this respect, the representative of the United States said that all types of stainless steel plate exported by Avesta AB to the United States were

used for the same purposes as stainless steel plate produced in the United States. Avesta AB had never demonstrated that the types of product which it exported to the United States were not interchangeable with stainless steel plate produced in the United States. In sum, all the factors referred to by the delegation of Sweden in its request for conciliation had been considered by the USITC but had been found to be legally or factually insufficient to warrant the initiation of a review of the injury determination.

110. With regard to the points made by Sweden concerning the margin of dumping assigned to Avesta AB, the representative of the United States said that in the latest administrative review of the anti-dumping duty order in 1984 the Department of Commerce had determined an "all others" rate of 4.46 per cent. After Sweden had raised in bilateral consultations held in July 1991 the question of the rate applied to Avesta AB, the Department of Commerce had made an enquiry with the United States Customs Service. The information resulting from that enquiry led the Department to believe that entries of stainless steel plate exported by Avesta AB were in fact assessed at a rate of zero of duty. The Department was further considering whether this was indeed the case and, if so, whether the application of this rate was appropriate under the circumstances. Clearly, this was a somewhat unusual situation in which the two previous exporters who were investigated no longer existed and the exporter who existed today was in some fashion related to both previous exporters. However, the fact remained that under United States' legislation each year an opportunity was provided for an administrative review and that the relevant Swedish exporter had not requested such a review. In light of these circumstances, it was difficult to understand how it could be claimed that the United States had failed to provide Avesta AB with an opportunity to have its own pricing practices reviewed by the United States' authorities.

111. The representative of Finland said that even under the standard applied by the USITC in considering the possible revocation of an anti-dumping duty it was difficult to see how injury to a domestic industry could result from the revocation of an anti-dumping duty of 4.46 per cent levied on imports accounting for not more than 0.6 per cent of domestic consumption of the like product in the United States.

112. The representative of Canada shared the concerns expressed by the delegation of Sweden in respect of the continued imposition of the anti-dumping duty order on stainless steel plate. Canada had had similar experiences with the United States in the past. He reserved his delegation's right to revert to this matter at a future meeting.

113. The representative of Sweden said that the statement made by the representative of the United States contained no new elements compared to arguments advanced by the United States in the bilateral consultations. This statement overlooked two important points. Firstly, it was not the responsibility of the exporting company to ensure that the anti-dumping duty was being applied in a manner consistent with the Agreement.

Secondly, no review had taken place in the case at hand of the injury determination. Regarding the question of the interpretation of Article 9, he emphasized that his delegation had not claimed that this provision contained a "sunset" clause; rather, it had argued that there was a time element implied by the use of the words "only as long as" in the first paragraph of the Article. The United States was neglecting this time element and had also failed to carry out a review ex officio, which it was obliged to do under the Agreement. The standard applied by the United States to determine the sufficiency of the evidence provided in support of a request for an injury review was so stringent that it was difficult to imagine a situation in which the United States would initiate a review and possibly revoke an order as a result of such a review. In view of the statement of the representative of the United States that all arguments presented by the Swedish exporter had been found by the USITC to be legally or factually insufficient to warrant the initiation of an injury review, it would seem that there was no basis for conciliation in this matter. He therefore reserved his delegation's right to take further steps under the dispute settlement procedure of Article 15 of the Agreement.

114. The representative of the United States noted with respect to the comment of the representative of Finland that there might be some confusion regarding the precise percentage of domestic consumption in the United States accounted for by the imports from Sweden of the product in question. He therefore urged the members of the Committee not to draw any immediate conclusions from the figures which had been mentioned.

115. The Committee took note of the statements made. The Chairman encouraged the two parties to the dispute to make further efforts to find a mutually satisfactory solution to the dispute, consistent with the Agreement.

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

116. The Chairman recalled that the Report of this Panel had been submitted to the Committee in August 1990, and had been discussed in the Committee in September and November 1990 and at the regular meeting held in April 1991 (ADP/M/32, paragraphs 102-122). Differing views had been expressed in these discussions, in particular with respect to the appropriateness of the recommendations made by the Panel in paragraph 5.24 of its Report. Since the meeting in April the Chairman of the Committee had conducted informal consultations with the delegations of Sweden and the United States, but it seemed that these consultations had not led to a result which would enable the Committee to adopt the Report at this meeting.

117. The representative of Sweden said that in the case under consideration his authorities' expectations regarding the functioning of the dispute settlement mechanism had been met insofar as the Panel had conducted a fair and thorough review of the case, and had concluded that the imposition of

anti-dumping duties by the United States on imports of stainless hollow steel products from Sweden was not in conformity with the Agreement. On the basis of this conclusion, the Panel had formulated the only remedy which was logically possible and had suggested that the Committee request the United States to revoke the anti-dumping duties imposed and to reimburse the anti-dumping duties already paid. It was indeed difficult to see what other remedy was possible in respect of a measure which by its very nature was specific and often aimed at the exports of a specific company. While in this respect the dispute settlement mechanism had thus met his delegation's expectations, there was unfortunately a disturbing lack of willingness on the part of the United States to abide by its accepted obligations. This was a serious matter. As a result of the imposition in 1987 of an anti-dumping duty which was inconsistent with the Agreement, the Swedish company concerned had had to pay more than eight million US dollars in anti-dumping duties and had spent large sums of money in the course of legal proceedings. The decline of the volume of its exports to the United States had forced the company to reduce its production in Sweden.

118. The representative of Sweden then referred to a recent communication from the Nordic countries to the Uruguay Round Negotiating Group on Institutions which addressed, inter alia, the question of the nature of panel recommendations. This communication concluded that to introduce limitations as to the capacity of panels to make specific recommendations, when appropriate, would significantly limit the effectiveness of the GATT dispute settlement system and would significantly affect the benefits accruing to the contracting parties under the General Agreement. It would also be in conflict with the stated objectives of the Uruguay Round. The Panel Report under consideration was now for the fifth time appearing on the Committee's agenda. It involved a clear-cut case and the Panel's recommendation should have been adopted and implemented a long time ago. The non-adoption of this Report raised the question of how contracting parties could be expected to accept new obligations in the various areas of the Uruguay Round if there was no effective discipline in the dispute settlement area. He concluded his statement by urging the Committee to adopt the Report at the present meeting.

119. The representative of the United States expressed his delegation's disagreement with the suggestion that in the matter at hand the United States was not abiding by its obligations with respect to the settlement of disputes under the Agreement. Sweden and the United States had a fundamental difference of opinion on a matter of principle regarding the appropriateness of the remedy recommended by the Panel in its Report. His delegation had indicated on several occasions that, if the Committee would exercise its authority to amend the Report to replace the remedy recommended by the Panel with a much more traditional, general remedy, the United States would immediately agree to the adoption of the Report and accept the consequent obligation to change its relevant practice or legislation in order to implement the substantive findings of the Panel. The United States remained prepared to agree to the adoption of the Report on this basis; that the Report had still not been adopted was due to the insistence that the recommendation for a specific remedy be maintained.

120. The Committee took note of the statements made and agreed to revert to this Report at a future meeting. The Chairman indicated that the Chairman of the Committee would continue his informal consultations with interested delegations.

X. United States - Anti-dumping duties on imports of anti-friction bearings from Sweden (document ADP/M/32, paragraphs 123-128)

121. The Chairman recalled that this matter had been under consideration in the Committee since October 1989 and had been discussed most recently at the regular meeting held in April 1991 (ADP/M/32, paragraphs 123-128).

122. The representative of Sweden recalled that in 1989 the United States Department of Commerce had made a final affirmative determination of dumping concerning imports of anti-friction bearings. One of the companies affected by this determination was SKF Sweden in respect of which the Department had established an average margin of dumping of more than 100 per cent. This very high margin was explained by two factors. Firstly, the Department had determined that the Swedish home market was not viable because it was less representative than certain third country markets. This treatment of the Swedish home market as not being viable was in the view of Sweden contrary to Article 2 of the Agreement. Secondly, the Department had considered the information provided by SKF to be inaccurate. Although SKF had fully co-operated with the Department and had submitted tons of information in what must have been the largest amount of information ever submitted in an anti-dumping investigation, the Department had based its determination of dumping on the "best information available". In the view of Sweden, this was inconsistent with Article 6 of the Agreement.

123. The representative of Sweden then noted that on 11 July 1991 the Department of Commerce had published the final results of an administrative review covering imports of anti-friction bearings from SKF. In this review sales in the domestic market in Sweden had been used as a basis for the establishment of the normal value and the Department had taken into account the information provided by SKF. The review had resulted in a reduction of the margins of dumping for ball bearings and cylindrical roller bearings from over 100 per cent to 6.43 per cent and 4.12 per cent, respectively. This was a satisfactory evolution. On previous occasions, his delegation had also questioned whether the petitioner in the investigation which had led to the imposition of the anti-dumping duty order on anti-friction bearings had acted "on behalf of" the domestic industry. The answers given by the delegation of the United States to the questions raised on this point by Sweden were not entirely satisfactory and this issue thus remained unresolved. However, in light of the principles already established in the Report of the Panel in the dispute between Sweden and the United States on stainless steel hollow products, his delegation did not consider it opportune to pursue this aspect of the matter. He concluded by saying that there was no need for the Committee to keep this matter on its agenda but that this case, as so many other cases, illustrated the need for clarifications of the Agreement in the context of the Uruguay Round negotiations.

124. The Committee took note of the statement made by the representative of Sweden.

L. Other Business

(i) Anti-Dumping investigation by the United States on imports of certain circular welded steel pipes and tubes from Mexico

125. The representative of Mexico drew the Committee's attention to the recent initiation by the United States of an anti-dumping investigation of imports of certain circular welded steel pipes and tubes from Mexico. The products subject to investigation were covered by a voluntary export restraint arrangement concluded between the United States and Mexico in 1989. He wondered how the United States could justify the simultaneous application of quantitative restrictions under the voluntary export restraint arrangement and anti-dumping measures, in particular in light of the fact that in the period January-September 1991 Mexico had used only 29.6 per cent of its export quota. It was difficult to see how there could be unfair trade practices where, as in this case, the authorities controlled the volume of the imports of the product in question. Secondly, he asked whether all countries supplying this product to the United States were covered by the investigation. It seemed that two important supplying countries (Canada and Japan) which accounted for market shares much larger than many of the exporting countries subject to the investigation were not included within the scope of the investigation. If this was correct, his delegation wished to know the reasons for the exclusion of these two countries. Thirdly, he asked what was the background of the petitioner in this case, the Committee on Pipe and Tube Imports. It seemed that this was a coalition formed specifically for the purpose of filing this anti-dumping duty petition and he expressed his concerns about this practice of allowing ad hoc coalitions to file petitions. He also asked in this respect whether the Department of Commerce had verified whether the petitioner had the requisite standing to file the petition and, if so, what was the percentage of domestic production accounted for by the domestic producers who had expressed support for the initiation of this investigation. Finally, in light of the fact that the petitioner had identified the recession in the domestic building industry as one of the principal causes of the injury which it was suffering, he wondered how the USITC would establish the existence of a causal relationship between the allegedly dumped imports and the injury to the industry, and distinguish between injury caused by these imports and injury caused by other factors. He requested the delegation of the United States to provide written responses to these questions.

126. The representative of Brazil noted that Brazilian exporters were also subject to an anti-dumping investigation in the United States of imports of certain steel pipes and tubes started simultaneously with the one cited by Mexico. His delegation would pursue this matter bilaterally with the delegation of the United States but supported the request by Mexico for a discussion in the Committee to clarify certain aspects of the case.

127. The representative of the United States observed that the investigation referred to by the delegation of Mexico had been initiated only very recently; as a result, on some of the points raised by Mexico he could not at this time provide a full response. Regarding the simultaneous application of quantitative restrictions and the initiation of anti-dumping proceedings, he said that it still remained to be determined in a thorough investigation by the USITC whether the existence of export restrictions administered by Mexico in respect of the product in question permitted a finding of injury caused by the imports concerned. The voluntary export restraint arrangements concluded by the United States in the steel sector clearly did not proscribe the initiation of anti-dumping investigations but provided for a right of exporting countries the imports of which were subject to such investigations to request consultations with the United States to determine whether termination of the arrangement, in whole or in part, was appropriate. On the number of supplying countries covered by the investigation, he observed that one could only speculate on the reasons the petitioner might have had not to include certain countries within the scope of the petition. Regarding the past history of the Committee on Pipe and Tube Imports, he said that this Committee had been formed in past cases as a petitioning group representing United States domestic producers of the like product. It was not clear why the formation of this type of coalitions should be a cause of concern; indeed, the representation of domestic producers by such coalitions could make it easier to ascertain whether a petition was filed with adequate support by the domestic industry. In response to the question raised by the representative of Mexico as to whether the Department of Commerce had verified the standing of the petitioner, he said that the Department continued to apply its past practice and, pending a change in the relevant provisions of the Agreement, the Department intended to continue to apply this practice. Finally, on the question of how the USITC would take into account possible other factors which were causing injury to the domestic industry, he observed that this was a matter still to be considered by the USITC in its investigation.

128. The representative of Mexico thanked the representative of the United States for his replies and reserved his delegation's right to revert to this matter at the next regular meeting of the Committee. He reiterated his request that the United States respond in writing to the questions raised by his delegation.

129. The representative of Brazil also reserved his delegation's right to revert to this matter at the next regular meeting of the Committee.

130. The representative of the United States said that he would have to consult his authorities on the appropriateness of providing further information on an investigation which had only been initiated and in which not even a preliminary determination had been made. If affirmative determinations were made his delegation would be happy to share with other delegations to the extent possible the information which formed the basis for such determinations. However, some of the questions raised by the delegation of Mexico struck him as being somewhat premature.

131. The representative of the EEC observed with regard to the first point raised by the delegation of Mexico that under certain circumstances the conduct of an anti-dumping investigation and the possible consequent application of anti-dumping measures in respect of a product subject to quantitative import restrictions could be justifiable. What mattered in an anti-dumping investigation were the prices of the product concerned; the pricing of a product was, however, not regulated by restrictions of the volume of imports of the product.

132. The Committee took note of the statements made and agreed to revert to this matter at its next regular meeting. The Chairman said that it was his understanding that the delegation of the United States would to the extent possible provide written answers to the questions raised by the delegation of Mexico in advance of the next regular meeting of the Committee.

(ii) Anti-Dumping Decree adopted by Hungary

133. The representative of the EEC said that it had been brought to the attention of his delegation that Hungary had recently adopted an Anti-Dumping Decree (Decree No. 111/1990). This Decree had not yet been notified to the Committee. His delegation would shortly submit written questions on this Decree with a view to discussing this Decree at the next regular meeting of the Committee.

134. The Committee took note of the statement made by the representative of the EEC and agreed to revert to this matter at its next regular meeting.

(iii) Anti-dumping proceedings in the United States regarding portable electric typewriters and flat panel displays

135. The representative of Japan drew the Committee's attention to a recent anti-dumping proceeding in the United States regarding portable electric typewriters. In April 1991, Brother Industries, USA had filed a petition for the imposition of anti-dumping duties with respect to imports of portable electric typewriters from Singapore, made in Singapore by a company affiliated with Smith Corona Corporation. In June 1991 the USITC had issued an affirmative preliminary determination of injury with regard to these imports. However, on 25 September 1991, the Department of Commerce had determined that Brother Industries USA did not qualify as a "domestic producer" for the purpose of the United States anti-dumping legislation and had therefore terminated the investigation of portable electric typewriters from Singapore. In determining that Brother Industries USA was not a "domestic producer", the Department had based itself on the fact that the number of parts used by this company which originated in the United States and the value added by the company in the United States were low, and on the fact that the research and development

¹See document ADP/W/306.

pertaining to the typewriters produced in the United States by Brother was conducted outside the United States. His delegation was of the view that the Department's determination that Brother was not a "domestic producer" was in fact based on considerations relating to the nationality of the ownership of the company, as was demonstrated by the fact that in November 1990 the Department of Commerce had accepted an anti-dumping petition filed by Smith Corona with respect to imports of word processors from Japan. The percentage of parts used by Smith Corona originating in the United States and the value added by this company in its production operations in the United States were, however, much lower than in the case of the typewriters produced by Brother Industries USA in the United States. His delegation considered that there had thus been discriminatory treatment of Brother Industries USA and would further pursue this matter under the General Agreement, if necessary.

136. The representative of Japan then turned to the matter of the imposition by the United States on 4 September 1991 of definitive anti-dumping duties on flat panel displays from Japan. The duties were imposed at a rate of 62.67 per cent for active matrix liquid crystal displays and 7.02 per cent for electric luminescent, while no duties were imposed on imports of passive matrix liquid crystal displays and of plasma. In its final affirmative determination, the USITC had determined that dumped imports were causing injury to the domestic industry producing flat panel displays; in this determination the USITC had not distinguished between the four categories of the product for which the Department of Commerce had made separate determinations of dumping. In October 1991, seven Japanese producers of liquid crystal displays had appealed the determination of the USITC to the United States Court of International Trade. His authorities considered that the USITC should have made separate determinations of injury for each of the four categories distinguished by the Department of Commerce. In addition, they questioned the manner in which the USITC had treated active matrix liquid crystal displays in its determination. While there was no production of this product category in the United States the USITC had included this product in its determination on the grounds that domestic producers in the United States were engaged in some research and development with respect to this product. He concluded his statement by reserving his delegation's rights in this matter.

137. The representative of the United States observed that, while it was understandable that delegations wished to promptly inform the Committee of their concerns regarding actions taken by other Parties, if no advance notice was given that a particular matter would be raised under "Other Business", this would necessarily limit the ability of a delegation to which questions were addressed to provide relevant information. His delegation had not been informed in advance of the meeting by the delegations of Mexico, Japan and Canada that they intended to raise under "Other Business" questions regarding certain recent actions by the United States.

138. Turning to the comments made by the representative of Japan on the investigation of imports of portable electric typewriters from Japan, the representative of the United States explained that the Department of Commerce had ultimately determined that Brother Industries USA did not have the requisite standing to represent the domestic industry. He denied that this determination had been unfairly based on the nationality of this company. The Department of Commerce had allowed all interested parties to comment on the question of Brother's status as a "domestic producer" of portable electric typewriters and the Department had made its determination on the basis of the voluminous information provided by the interested parties. A number of factors had been taken into consideration by the Department in reaching this determination; the two factors cited by the representative of Japan were only some of the factors considered. Thus, the Department had considered such factors as employment, technical expertise, value added in the United States, sourcing of parts in the United States and other costs and activities in the United States. The Department had explicitly stated in its determination that no one or several of these factors were necessarily decisive. While he was not in a position to comment on the question to what extent the facts in the investigation of portable electric typewriters differed from the facts in the word processors case, he cautioned that each case had to be judged on its own merits and in light of the evidence presented to the investigating authorities. Finally, he wondered on what legal basis Japan intended to pursue this matter, given that the case at hand involved a petition filed in the United States for the initiation of an anti-dumping duty investigation of imports of portable electric typewriters from Singapore.

139. With regard to the points raised by the representative of Japan on the injury determination in the flat panel displays case, the representative of the United States said that his understanding was that the USITC had found two separate like products which were produced by one industry. His delegation would be happy to provide more detailed information in writing if the delegation of Japan submitted specific questions in writing.

140. The Chairman said that the observation made by the representative of the United States regarding the need for advance notice of items to be discussed under "Other Business" was a valid one. It was only fair and appropriate that the delegations concerned and the secretariat be informed as far in advance of the meeting as possible of matters to be discussed under "Other Business".

141. The Committee took note of the statements made.

(iv) Anti-dumping proceedings in the United States regarding magnesium from Canada, brass sheet and strip from Canada, and nepheline syenite from Canada

142. The representative of Canada brought to the attention of the Committee a recently initiated anti-dumping and countervailing duty investigation in the United States of imports of magnesium from Canada. His authorities were of the view that this investigation had been initiated on the basis of

a petition filed by a producer who did not have standing to act on behalf of the relevant domestic industry in the United States. Bilateral consultations had taken place on this matter between the United States and Canada but had not been successful. His authorities therefore intended to pursue this matter further, initially in the Committee on Subsidies and Countervailing Measures but at a later date also in this Committee.

143. The representative of Canada then turned to a recent anti-circumvention investigation initiated by the United States concerning the anti-dumping duty order on brass sheet and strip from Canada, which had entered into force in January 1987. The initiation of this anti-circumvention investigation was inconsistent with the obligations of the United States under the Agreement and under the General Agreement and constituted unjustifiable harassment of Canadian exports. If the United States' authorities believed that there was circumvention of an existing anti-dumping duty order, the appropriate course of action would be to initiate a new anti-dumping investigation on the transformed product.

144. Finally, the representative of Canada expressed his authorities' concerns regarding an anti-dumping investigation of imports of nepheline syenite from Canada. As in the case of magnesium, the standing of the petitioner in this case to act on behalf of the domestic industry was questionable. In addition, no evidence had been provided in the petition in support of the view that the imported product was like a domestic product. The petition had also failed to provide any evidence to support the claim that in this case the relevant domestic industry had to be defined on a regional basis. His delegation might wish to revert to this matter at a later stage.

145. The representative of the United States said that he would refer to this authorities the points raised by the representative of Canada.

146. The Committee took note of the statements made.

M Annual Report to the CONTRACTING PARTIES

147. The Committee adopted its annual report (1991) to the CONTRACTING PARTIES (document L/6938).

Date of the next meeting of the Committee

148. The Chairman said that the next regular meeting would take place in the week of 27 April 1992.