GENERAL AGREEMENT ON

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Committee Anti-Dumping Practices

MINUTES OF THE MEETING HELD ON 5 OCTOBER 1988

Chairman: Mr. R.J. Arnott (Australia)

1. The Committee held a special meeting on 5 October 1988. The purpose of this special meeting was to consider a request made by the delegation of Sweden in document ADP/38 for conciliation under Article 15:3 of the Agreement. This request concerned various aspects of dumping and injury determinations made by the relevant authorities in the United States in October and November 1987 with respect to imports of stainless steel pipe and tube from Sweden. Some discussion of these determinations had taken place at the regular meeting of the Committee held on 30 May and 1 June 1988 (ADP/M/22, paragraphs 88-93). In a letter dated 9 September 1988 the Chairman had been informed by the delegation of Sweden that on 14 July 1988 bilateral consultations on this matter under Article 15:2 had taken place between Sweden and the United States but that these consultations had not led to a mutually satisfactory resolution. Accordingly, the delegation of Sweden had requested that a special meeting be held for the purpose of conciliation under Article 15:3 of the Agreement.

2. The representative of Sweden introduced his delegation's communication contained in document ADP/38 by saying that after the United States International Trade Commission (USITC) had made a final affirmative final determination of injury in November 1987 with respect to imports of stainless steel pipes and tubes from Sweden, the Swedish National Board of Trade had thoroughly examined this determination and concluded that it had resulted in nullification or impairment of benefits accruing to Sweden under the Agreement. Subsequently, the Swedish Ministry of Foreign Affairs had decided to refer this case to the Committee on Anti-Dumping Practices. He explained that this decision had been taken for three main reasons. Firstly, the exports of the product in question were of significant economic interest. Secondly, in the determinations made by the United States authorities clear deviations from the rules of the Agreement had occurred which should be subject to multilateral scrutiny. Thirdly, the approach adopted by the United States authorities raised a number of issues of principle which should be considered by the Committee. Consultations under Article 15:2 of the Agreement had taken place on 14 July 1988. These consultations had not resulted in a mutually satisfactory resolution. The Swedish Government had therefore decided to exercise its rights under the Agreement and to request a conciliation meeting as provided for in Article 15:3 of the Agreement. However, one could question whether

conciliation would be possible in the absence of a revocation by the United States of the determinations made in this case. In the absence of such revocation, the Swedish authorities would pursue this matter and eventually make a request that a panel be established. The views of his Government on this case had been set out in detail in the communication circulated in document ADP/38. His Government's primary objection to the determinations made by the United States, concerned the injury determination by the USITC.

However, his Government also objected to certain aspects of the determination of dumping made by the United States Department of Commerce. Finally, the communication by the Swedish Government raised a number of issues of principle relating to the procedures followed by the United States authorities.

3. The representative of the United States said that his Government welcomed the opportunity for conciliation on this matter. His authorities understood the economic interests of Sweden involved in this case. However, this case involved high margins of dumping and exports which accounted for about 20 per cent of the United States market. Under these circumstances there was ample justification for the determinations of dumping and injury made by the United States authorities. He then provided detailed responses to the points made by the Government of Sweden in document ADP/38; these responses have been circulated in document ADP/W/187. He requested the representative of Sweden to clarify whether his Government intended to pursue its claim on the dumping issue; the introductory remarks made at this meeting by the Swedish delegate seemed to suggest that in the view of the Swedish authorities the basic issue was the injury determination made by the USITC. He concluded by expressing the hope that the responses and explanations provided by his delegation would address the concerns raised by Sweden and lead to a mutually satisfactory resolution of this matter.

4. The representative of Canada said that the matter referred to the Committee by the delegation of Sweden underlined the necessity of a strict compliance with the requirement that anti-dumping measures be applied only in case of a clear relationship between dumped imports and injury to a domestic industry. In connection with the points raised by the delegation of Sweden concerning the standing of petitioners, he said that his authorities agreed with the views expressed by Sweden that the investigating authorities should examine whether a petitioner had filed a case on behalf of the domestic industry affected. His authorities also shared the view that in this respect, the attitude of the United States deprived exporters of the protection offered by the Agreement against arbitrary investigations.

5. The representative of Finland said that his authorities shared many of the views expressed in the communication from Sweden circulated in document ADP/38. He mentioned in particular the findings made by the USITC on the condition of the domestic industry in the United States, the manner in

which the USITC had examined the issue of the existence of a causal relationship between the dumped imports and the injury to the domestic industry, the exclusion of certain producers from the definition of the relevant domestic industry, the question of the standing of the petitioner, the treatment of confidential information and the discrepancy between the investigation period for the purpose of the determination of injury and the investigation period for the purpose of the determination of dumping. His authorities would carefully study the replies provided by the United States on the points raised by Sweden. His delegation advocated a strict compliance with the rules of the Agreement on the determination of dumping and injury which tried to achieve a balance between the interests of the domestic industry and the interests of foreign exporters. He considered that the United States practice, as illustrated by the case referred to the Committee by Sweden, did not contribute to the current efforts to ensure stricter disciplines on the use of anti-dumping measures.

6. The representative of Norway said that it seemed to his delegation that the measures taken by the United States in this case were not in full conformity with the provisions of the Agreement. His delegation considered in particular that the United States authorities had failed to demonstrate a causal link between the imports of Sweden and the injury to the domestic industry, as required under Article 13:4 of the Agreement.

7. The representative of Korea said that the matter referred to the Committee by the delegation of Sweden raised a number of fundamental questions, e.g. regarding the criteria for the determination of material injury and for the determination of the existence of a causal relationship between dumped imports and injury to a domestic industry. His authorities were in favour of more multilateral scrutiny of anti-dumping measures and for this reason they welcomed the decision by Sweden to refer this matter to the Committee. His delegation would carefully study this case and follow with great attention the discussions on this matter.

8. In response to the question by the representative of the United States on the precise scope of the complaint by Sweden, the representative of Sweden said that his authorities objected not only to the injury determination but also to the determination of dumping made in this case. Regarding the comments made by the delegation of the United States on the manner in which the USITC had reached its affirmative injury determination, his delegation disagreed with the analysis by the United States delegation of the evolution of the volume of imports of stainless steel pipes and tubes and of the issue of price undercutting. On the issue of the volume of imports of seamless pipes and tubes from Sweden, he noted that the USITC had based its conclusion on the existence of a causal link between the dumped imports and the injury to the domestic industry on the "significant volume" and the "high import penetration" of the subject imports during the investigation period. However, there had been no evidence of an increase of the volume of these imports, either in absolute or relative terms. His delegation considered that a determination of a causal link between dumped imports and injury to a domestic industry only on the basis of the two

factors identified by the USITC constituted a serious danger for any established exporters. Given that there had been no increase in the volume of the imports from Sweden, it was necessary to demonstrate that there were other factors which explained how the dumped imports had caused injury to the domestic industry. However, the report by the USITC did not identify such other factors.

9. The representative of the United States said that in 1984 imports of seamless steel pipes and tubes from Sweden accounted for 20 per cent of the United States domestic market. In the period 1985-1986, there had been a slight decrease of these imports, but in 1987 the imports had again increased. Thus, the imports had continued to account for a significant market share, a factor which was explicitly mentioned in the Agreement. Moreover, the USITC had not only examined the volume of the imports but, as required by the Agreement, it had also examined other relevant factors such as prices of the imported products and the condition of the domestic industry. He reserved his delegation's right to make further comments on the point raised by the delegation of Sweden concerning the analysis by the USITC of the volume of the imports of seamless steel pipes and tubes from Sweden.

10. The representative of Sweden said that his authorities had a completely different interpretation of the data on the import volume. He noted that imports of the products subject to investigation, expressed as a percentage of total apparent consumption in the United States, had not increased in 1987 but had decreased by 0.5 per cent. He also referred to the requirement of Article 3:2 of the Agreement that investigating authorities must consider whether there has been a significant increase in dumped imports, and reiterated that, in the absence of an increase of the volume of dumped imports, Article 3:2 required that other factor be shown to exist to explain the injurious effects of the imports. He considered that the United States delegation had not provided an adequate response on this point. On the issue of price undercutting, he said that Article 3:2 required that the investigating authorities consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the domestic like product. His authorities were of the view that the term "significant price undercutting" should be interpreted to mean both a significant level of price undercutting and a significant quantity of imports at a price below the price of the domestic like product. The report by the USITC contained insufficient evidence to support a finding of significant price undercutting by the imports from Sweden. Each year approximately 13,000 orders were placed in the United States for the purchase of seamless steel pipes and tubes from Sweden. The USITC had, however, in its examination of the issue of price undercutting, investigated only 22 cases involving competition between domestic products and imported products. In the view of his delegation, it would have been logical for the USITC to conclude that, given the very limited number of cases involving competition between the domestic product and the imported product, the Swedish imports generally did not compete with the domestic product. Furthermore, only in four of the cases investigated by the USITC

had the Swedish company obtained the order. Thus, there was no basis for the view that, as a result of a significant price undercutting, the Swedish exporter had been able to gain a larger share of the United States market.

11. The representative of the United States said that the analysis of price undercutting by the USITC had been in full conformity with the requirements of the Agreement. A very elaborate investigation had been undertaken to make price comparisons between domestic products and products imported from Sweden. On the basis of some of the larger orders the USITC had found clear evidence of a substantial price undercutting. His delegation disagreed with the interpretation of the concept of "significant price undercutting" suggested by the delegation of Sweden; the Agreement did not require that there be evidence of price undercutting with respect to a significant quantity of sales. In any event, even if one accepted this interpretation the analysis by the USITC would be fully consistent with the Agreement because the USITC had found a consistent pattern of underselling and had investigated a volume of imports from Sweden which accounted for 15-20 per cent of the United States market.

12. The representative of Sweden made several comments on the findings made by the USITC regarding the condition of the domestic industry. Firstly, he noted that the conclusion of the USITC with respect to the condition of the domestic industry had been based on a definition of the relevant domestic industry which excluded redrawers. Since the situation of the redrawers was healthier than the situation of the integrated producers, this exclusion had biased the USITCs analysis of the condition of the domestic industry. Secondly, an important element in the finding by the USITC that the domestic industry was suffering injury had been the fact that during the period covered by the investigation, one domestic producer had left the industry. The report on the investigation by the USITC did not explain why this producer had left the industry; the Swedish authorities had reason to believe that this decision was not due to competition by imports from Sweden.

13. The representative of the United States said that in the view of his authorities the fact that a large producer had gone bankrupt in a period when Swedish exporters were dumping at a rate of 26 per cent and accounted for nearly 20 per cent of the United States market weighed in favour of the affirmative injury determination by the USITC. His authorities were not in a position to give the reasons mentioned by the company in question for its bankruptcy as this information was confidential. In any event, determinations of injury had to be based on an assessment of the condition of the domestic industry as a whole. In this context he quoted the following passage from the first report of the Group of Experts on anti-dumping and countervailing duties, adopted on 13 May 1959:

> "The Group then discussed the term 'industry' in relation to the concept of injury and agreed that, even though individual cases would obviously give rise to particular problems, as a general guiding principle judgements of material injury should be related to total national output of the like commodity concerned or a significant part thereof."

He further denied that the USITC had excluded redrawers from their examination of the condition of the domestic industry producing seamless steel pipes and tubes and pointed out that the report accompanying the determination by the USITC explicitly discussed the condition of the redrawers in terms of relevant factors such as production, capacity and capacity utilization, shipments, year-end inventories and employment.

14. The representative of Sweden then addressed two aspects of the determination of dumping by the United States Department of Commerce. Firstly, he considered that the Department had not taken into consideration certain factors affecting the comparability of the export price and the normal value. In particular, the Department had failed to make an allowance for differences in quantity between export sales and foreign market sales. In addition, the Department had compared prices to customers in the United States with prices to an unrelated party in a third country. Secondly, he stated that the Department had not taken into account exchange rate fluctuations. During the period of the investigation (May-October 1986) the value of the dollar had fallen from SKr 7.15 to SKr 6.88, while the value of the German mark rose from SKr 3.21 to SKr 3.43. At the same time the dollar-mark exchange rate had fallen by 12 per cent. This meant that to the extent that the normal value of one of the producers had been calculated on the basis of export prices to the Federal Republic of Germany, the producer would have had to continuously adjust its prices in both markets in order to avoid that a dumping margin would arise solely as a result of exchange rate fluctuations. It was obvious that such continuous adjustment of prices was inconsistent with normal business practices. It was evident that the margin of dumping would have been significantly lower if the Department had used exchange rates in effect three months prior to the dates of the exchange rates which it had used. His delegation considered that this problem of how calculations of dumping margins could be affected by exchange rate fluctuations was an issue of general interest which should be further examined by the Committee. He also noted that it was difficult to see how exports from Sweden could have caused injury to the domestic industry in the United States in view of the depreciation of the United States dollar which had led to a substantial improvement of the condition of the United States industry.

15. The representative of the United States said that during the investigation no claim for an adjustment for differences in levels of trade had been made. As regards the issue of adjustments for differences in quantity, he said that both Swedish companies involved in the investigation had requested that such adjustments be made; the Department of Commerce had carefully examined these claims but it had found that there was no clear correlation between the differnces in quantities sold and the different prices. On the question of exchange rate changes, he noted that the company whose normal value had been determined on the basis of exports to the Federal Republic of Germany had not made a claim that an adjustment be made with respect to exchange rate changes. If the Swedish exporters

considered that this was a factor for which an adjustment should be made, it could raise the issue in the course of an administrative review of the anti-dumping duty order.

16. The representative of Sweden noted that the United States delegation had argued that on some of the points made by his delegation on the comparison between the export price and normal value, no claims for adjustments had been made by the companies involved in the investigation. In the view of his delegation, however, it was the responsibility of the investgating authorities to consider all factors relevant to the comparison between the export price and normal value, irrespective of whether specific claims for adjustments were made by the exporters subject to investigation.

17. The representative of the United States said that his delegation could not accept the view that the investigating authorities in an anti-dumping duty investigation were under an obligation to examine each possible claim for an adjustment which theoretically could be made. In the view of his delegation it was entirely appropriate for the investigating authorities to limit themselves to an examination of the specific claims made by the parties participating in the investigation.

18. The representative of Sweden then made some comments on other aspects of the determinations made by the United States authorities in this case. On the issue of the standing of the petitioner, he considered that the United States practice was not in accordance with the Agreement insofar as the United States authorities relied on a petitioner's representation that it had, in fact, filed its petition on behalf of the domestic industry until it was affirmatively shown that this was not the case. In the particular case referred to the Committee by his delegation, only a few of the fourteen domestic producers had expressed support for the petition. He also expressed his authorities' concerns about the discrepancy between the period of investigation for the injury determination and the period of investigation for the dumping determination and about the treatment by the USITC of certain information as confidential.

19. The representative of the United States explained that the original petition which had led to the investigation of the imports from Sweden had been filed on behalf of the domestic industry in the United States producing both seamless and welded stainless steel pipes and tubes. The petitioners were the Speciality Tubing Group and its six members. Among these six members were two of the fourteen producers of seamless steel pipes and tubes in the United States. In its report the USITC had described one of these two producers as "one of the largest integrated producers of seamless stainless steel pipes and tubes" in the United States. The other producer owned three manufacturing facilities. There were three other integrated producers of seamless steel pipes and tubes, one of which closed its production facilities in August 1985. Thus, there had been support for the petition by at least two of the four integrated producers, who accounted for a substantial proportion of the domestic

production. The remainder of the domestic industry producing seamless steel pipes and tubes consisted of nine redrawers. Of these nine redrawers, only two had expressed opposition to the petition. However, one of these two redrawers was related to one of the Swedish exporters. Moreover, at a later stage the petition had received support from a labour union which had acted on behalf of workers employed at four redraw mills accounting for a majority of redraw production. His delegation, therefore, considered that the facts of this case did not support the contention that the petition had not been supported by a majority of the domestic industry.

20. The representative of Sweden thanked the delegation of the United States for the replies it had provided. His authorities would carefully study these replies and in light of their examination of these replies they would decide what further steps they would take in this matter. He believed, however, that there were good reasons for the Swedish Government to request the establishment of a panel and expressed the hope that, should his Government decide to request a panel, the United States would adopt an attitude consistent with the view expressed by the United States in the Uruguay Round that dispute settlement proceedings should be initiated and concluded promptly.

21. The representative of the United States expressed the hope that the conciliation process would be meaningful and that the Swedish authorities would carefully examine the answers provided by his delegation to the points raised by Sweden.

22. The Committee took note of the statements made and the Chairman encouraged the delegations of Sweden and the United States to make their best efforts to achieve a mutually satisfactory resolution of their dispute which would be consistent with the Agreement.