GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

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Special Distribution

Committee on Anti-Dumping Practices

MINUTES OF THE MEETING HELD ON 30 APRIL 1991

Chairman: Mr. Didier Chambovey (Switzerland)

1. The Committee on Anti-Dumping Practices ("the Committee") held a regular meeting on 30 April 1991.

2. The Committee adopted the following agenda:

A. Election of officers

B. Request by the USSR for observer status in the Committee

C. Acceptance of the Agreement[1]

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

(i) Yugoslavia (ADP/1/Add.30)

(ii) New Zealand (ADP/1/Add.15/Rev.1/Add.1)

(iii) Australia (ADP/1/Add.18/Rev.1/Suppl.3; ADP/1/Add.18/Rev.1/Suppl.4 and Corr.1; ADP/1/Add.18/Rev.1/Suppl.2 and ADP/W/193, 197, 216, 223, 239, 250 and 267)

(iv) United States (ADP/1/Add.3/Rev.4/Suppl.2; ADP/1/Add.3/Suppl.1 and ADP/W/264; ADP/1/Add.3/Rev.4 and ADP/W/199, 220, 221, 230, 233, 241, 242, 243, 244, 251, 253, 263 and Add1, 270, 271, 272 and 273)

(v) Korea (ADP/1/Add.13/Rev.1/Suppl.1 and ADP/W/257, 268 and 269)

(vi) EEC (ADP/1/Add.1/Rev.1 and ADP/W/190, 191, 207, 208, 215, 222, 227, 228, 234, 245, 246, 247, 248, 249, 252, 255 and 260)

(vii) Canada (ADP/1/Add.6/Rev.3)

(viii) Other legislation

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

E. Semi-annual reports of anti-dumping actions taken by Sweden and Australia during the period 1 January-30 June 1990 (ADP/48/Add.9 and 10)

F. Semi-annual reports of anti-dumping actions taken during the period 1 July-31 December 1990 (ADP/53 and addenda)

G. Reports on all preliminary or final anti-dumping actions (ADP/W/279, 280, 281, 283 and 285)

H. Ad Hoc Group on the Implementation of the Anti-Dumping Code (ADP/W/138/Rev.5)

I. 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/29 and 30)

J. United States - Anti-Dumping Duties on Imports of Anti-Friction Bearings from Sweden (ADP/M/31, paragraphs 61-63)

K. United States - Procedures for Administrative Reviews of Anti-Dumping Duty Orders (ADP/M/31, paragraphs 71-74)

L. United States - Anti-circumvention Enquiry with respect to Colour Television Picture Tubes (ADP/M/31, paragraphs 75-86)

M. Other business:

(i) Request by Sweden for consultations with the United States under Article 15:2 of the Agreement on an anti-dumping duty order on stainless steel plate from Sweden

(ii) anti-dumping investigations by the EEC concerning audio cassettes and audio tape from Japan

(iii) administrative review by the EEC of anti-dumping duties on electronic typewriters from Japan

(iv) anti-circumvention investigation by the United States concerning typewriters from Japan

(v) anti-dumping investigation by Korea of polyacetal resins from the United States

A. Election of officers

3. The Committee elected Mr. Didier Chambovey (Switzerland) as Chairman and Mr. Ashok Sajjanhar (India) as Vice-Chairman.

B. Request by the USSR for observer status in the Committee

4. The Chairman drew the Committee's attention to a request made by the Union of Soviet Socialist Republics for observer status in the Committee (document ADP/W/292). The letter in which this request was made described

the request as "a step by the USSR Government to examine the prerequisites of a possible future accession to the Agreement on Implementation of Article VI of the General Agreement". He proposed that the Committee take note of the decision taken by the GATT Council on 16 May 1990 to grant the USSR observer status in the Council and of the Council's agreement to review the whole issue of the status of observers and their rights and obligations at the end of 1992. The Chairman then proposed that the Committee agree to grant observer status to the USSR and that in this regard it recall that at its meeting on 5-6 May 1980 it had agreed that "Observers may participate in the discussions but decisions shall be taken only by signatories", and that "The Committee may deliberate on confidential matters in special restricted sessions" (ADP/M/2, p.12). Observers received documents relating to the meetings which they attend. He emphasized that the proposed decision related only to the observership in the Committee on Anti-Dumping Practices and did not prejudice action in other fora. The Committee agreed to the Chairman's proposal.

5. The Chairman then welcomed the USSR as an observer to the Committee and said that the Committee appreciated the interest shown by the Government of the USSR in the work of the Committee in order to develop a better understanding of the prerequisites of a future accession to the Agreement. He recalled that the procedures for accession to the Agreement were separate from the procedures applicable to the granting of observer status and encouraged the USSR to provide the Committee from time to time with reports on its economic reform process as it related to matters covered by the Agreement.

6. The observer for the USSR thanked the Committee for its decision to grant observer status to his country. This status would enable his country to become acquainted with the work of the Committee, which was responsible for the implementation of an important GATT legal instrument. The opportunity to follow the work of the Committee in an observer capacity was especially important for the USSR in view of the recent adoption by the USSR of a customs tariff law which provided for the possibility to apply anti-dumping measures. His delegation would periodically inform the Committee on the economic reform process in the USSR as it related to matters covered by the Agreement.

7. The Committee took note of the statements made.

C. Acceptance of the Agreement

8. The Chairman drew the Committee's attention to document ADP/55 in which the Committee had been informed that on 8 April 1991 Argentina had signed the Agreement ad referendum.

9. The observer for Argentina said that the envisaged acceptance of the Agreement by his country reflected a desire to strengthen the multilateral trading system. However, Argentina was aware of the need to improve upon the existing Agreement and to clarify provisions which had given rise to controversy among Parties to the Agreement. He expressed the hope that

such improvements would be achieved in the context of the Uruguay Round negotiations and result in the acceptance of a revised Agreement by all contracting parties to the General Agreement. He then provided a brief explanation of the criteria under which pursuant to the Argentinian customs legislation anti-dumping measures could be taken by the Minister of Trade. Regarding the procedure for the acceptance of the Agreement by Argentina, he explained that under Argentinian constitutional law all international agreements entered into by Argentina had to be adopted by the Congress. The necessary procedural steps to seek adoption of the Agreement by the Congress had already been taken by his Government. He concluded by indicating that his Government might at a future stage request technical assistance by other Parties to the Agreement and by the GATT secretariat with respect to the administration of its anti-dumping legislation.

10. The representative of the United States welcomed Argentina's decision to accept the Agreement and said that his delegation looked forward to having the opportunity to review the anti-dumping legislation of Argentina.

11. The Committee took note of the statements made.

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

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

12. The Committee had received in document ADP/1/Add.30 a notification from the delegation of Yugoslavia of the Yugoslav legislation on the application of anti-dumping measures, as contained in Article 75 of the Law on Foreign Trade Transactions. The representative of Yugoslavia introduced this legislation by noting that at the time of the acceptance of the Agreement by Yugoslavia, in 1981, there had been no urgent need for the adoption of anti-dumping legislation because of the protected character of the Yugoslav market. As a result of the trade liberalization process initiated in the second half of the 1980's the adoption of provisions for the application of anti-dumping measures had become necessary. She pointed out in this respect that, as a result of the recent elimination of quantitative restrictions on imports at the end of 1990, approximately 87 per cent of all imports were no longer subject to any restrictions. The elimination of quantitative restrictions and the fact that the Yugoslav customs tariff rates were relatively low had focused attention on the absence of a mechanism to deal with unfair international competition. This had led her authorities to decide to introduce legislative provisions concerning the application of anti-dumping measures. Article 75 of the Law on Foreign Trade Transactions provided only for the basic elements regarding the definition of dumping and injury and the requirements for the initiation of an anti-dumping investigation. The Article defined the Federal Secretariat for Foreign Economic Relations as the agency responsible for the initiation and conduct of anti-dumping investigations and provided for the possibility of administrative reviews by the Federal Court of Yugoslavia. All proceedings initiated pursuant to Article 75

were to be conducted directly on the basis of the provisions of the Agreement. In this respect she explained that when Yugoslavia had ratified the Agreement, the Agreement had thereby become part of Yugoslav federal law. So far, no investigations had been opened under the provisions of Article 75.

13. The representative of the EEC asked if the representative of Yugoslavia could provide more detailed information on the manner in which the Yugoslav authorities intended to conduct anti-dumping investigations under Article 75 of the Law on Foreign Trade Transactions.

14. The representative of Yugoslavia said that her authorities would work directly on the basis of the provisions of the Agreement when conducting anti-dumping investigations. Given that the provisions of the Agreement were sometimes too broad, administrative practice would play an important rôle in the development of more precise standards. Her authorities would issue administrative guidelines in the form of a questionnaire destined for use by domestic producers, importers and exporters.

15. The representative of Hong Kong asked whether the Yugoslav authorities had already developed a procedure for the termination of anti-dumping duties imposed under Article 75:7 of the Law on Foreign Trade Transactions. Her delegation might wish to ask further questions on the anti-dumping legislation of Yugoslavia at a future time.[1]

16. The representative of Canada said that his authorities were still studying the anti-dumping legislation of Yugoslavia. By way of preliminary comment, he expressed the hope that the delegation of Yugoslavia would be able to provide the Committee with more detailed information on the procedures for the conduct of investigations. With respect to Article 75:7 of the Law on Foreign Trade Transactions, he asked whether this paragraph had to be interpreted as a sort of "sunset" clause. With respect to Article 75:11, he noted that this paragraph appeared to allow for the imposition of countervailing duties without an examination of injury and asked whether the Yugoslav authorities would indeed impose such duties without making a determination of injury.

17. The representative of Mexico, referring to Article 75:8 of the Law on Foreign Trade Transactions, requested the representative of Yugoslavia to explain the respective rôles of the Yugoslav Chamber of Economy and the Federal Secretariat for Foreign Economic Relations in the initiation and conduct of anti-dumping investigations.

18. The representative of Australia said that, like other delegations, his delegation wished to see more detailed information on the manner in which the Yugoslav authorities intended to administer the provisions in Article 75 of the Law on Foreign Trade Transactions. He referred in this

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[1] See document ADP/W/293.

context in particular to Articles 75:5 and 75:12. The legislation as a whole was simple and he wondered whether there were perhaps other legislative provisions which it would be appropriate for the Committee to examine. His delegation would submit in writing a number of specific questions regarding particular provisions of Article 75.

19. The representative of the EEC said that, while his delegation could formulate a number of specific questions on the provisions of the Yugoslav anti-dumping legislation, at this stage it was important that the Committee first receive more specific information from Yugoslavia on the manner in which it intended to implement this legislation, in particular with respect to matters of procedure.

20. The representative of the United States seconded the comments by other delegations regarding the need for the Committee to receive specific information on the implementation of the provisions of Article 75 of the Yugoslav Law on Foreign Trade Transactions. With respect to Article 75:6, he asked how the concept of "a branch of domestic industry" was compatible with the requirement of the Agreement that, except in cases of injury to an industry in a particular region, injury be assessed in relation to a domestic industry as a whole.

21. The representative of Singapore said that her delegation shared the interest expressed by other delegations in more detailed information regarding the implementation of the anti-dumping legislation of Yugoslavia and she reserved her delegation's right to revert to this legislation at the next meeting of the Committee.

22. The representative of Yugoslavia said that she would appreciate it if further questions could be submitted in writing. In response to questions raised by the representatives of Canada and Hong Kong she said that, as provided for by the Agreement, the duration of anti-dumping investigations conducted under Article 75 of the Law on Foreign Trade Transactions would not exceed one year. She confirmed that the second part of Article 75:7 provided for a type of "sunset" clause; although no specific time period was established in this provision limiting the duration of anti-dumping duties, the paragraph allowed for the conduct of a review whenever circumstances existed warranting a termination of anti-dumping duties. Regarding the application of countervailing duties under Article 75:11, she said that this paragraph only provided in general terms for the legal basis for the possible future application of countervailing duty measures; in its current form, this provision did, however, not provide for the authority of the Federal Secretariat for Foreign Economic Relations to initiate and conduct countervailing duty investigations. If the need for such authority arose, new legislation would be enacted to that effect.

23. In response to the question raised by the Mexican representative on Article 75:8 of the Law on Foreign Trade Transactions, the representative of Yugoslavia said that the Yugoslav Chamber of Economy did not play a rôle in the formal investigation phase of an anti-dumping proceeding. Rather, the rôle of the Chamber was to gather in the pre-investigation phase data

relevant to the preparation of a complaint and to transmit complaints to the Federal Secretariat for Foreign Economic Relations. Regarding the request by a number of delegations for information on the details of the manner in which Article 75 was intended to be administered, she said that her authorities would probably develop guidelines on matters of procedure, which would be notified to the Committee when adopted. On the concept of "a branch of domestic industry" in Article 75:6 she said that the English translation was perhaps not entirely correct. What was intended by this provision was that injury should be assessed in relation to the domestic producers of the like product.

24. The Committee took note of the statements made and agreed to revert at its next regular meeting to the provisions of Article 75 of the Yugoslav Law on Foreign Trade Transactions.

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

25. The Chairman recalled that at the Committee's meeting held on 29 October 1990 the representative of New Zealand had made a statement explaining the amendments effected by the Dumping and Countervailing Duties Act 1990 (ADP/M/31, paragraph 4). No questions had been raised on this Act at that meeting nor had questions been received with respect to this Act after that meeting.

26. The representative of Canada raised a number of questions regarding the changes made to the competition laws of New Zealand consequent to the removal of anti-dumping measures between New Zealand and Australia. He noted that this matter was of great interest to Canada given that it had a Free-Trade Agreement with the United States. His delegation wished to know in particular whether there had been changes to New Zealand's competition laws with respect to the ability to bring persons or corporate entities within the jurisdiction of courts of New Zealand and the ability of the courts to enforce remedies and to compel certain behaviour. Furthermore, his delegation was interested in knowing whether any changes had occurred with respect to the question of territorality and with respect to the more general question of enforcement of judgements, penalties and orders. He asked the representative of New Zealand to indicate whether there had been support for or opposition to the removal of anti-dumping measures between New Zealand and Australia by particular industries in New Zealand and how long this measure had been under consideration before it had been implemented. He further asked whether the amended competition laws of New Zealand had already been applied, whether there had ever been problems between New Zealand and Australia regarding questions of origin, and whether New Zealand was also considering a possible removal of application of countervailing measures from trade with Australia.

27. The representative of the EEC asked whether New Zealand and Australia would each apply identical competition laws to their mutual trade or whether trade between New Zealand and Australia would be subject to an integrated body of competition rules, administered by a single agency.

28. In response to the questions raised by the representative of Canada, the representative of New Zealand confirmed that the removal of anti-dumping measures between Australia and New Zealand had been accompanied by certain changes to the competition legislation of New Zealand. With respect to the question of jurisdiction, the New Zealand Commerce Act had been amended to provide for a prohibition of the use of a dominant position in the Australian market if such a dominant position had anti-competitive effects in the market of New Zealand. In order to give effect to this prohibition the New Zealand Commerce Commission, which administered and implemented the Commerce Act, was now empowered to serve notice upon Australian residents and upon persons carrying on business in Australia requiring such residents or persons to provide the Commission with information and documents. The Commerce Commission also had the authority to receive information and documents on behalf of the Trade Practices Commission, the Australian equivalent of the Commerce Commission. In order to facilitate the judicial process in relation to trans-Tasman competition law cases, amendments had been made to the Judicator Act, the Reciprocal Enforcement of Judgements Act, and to the Evidence Act. As a result, New Zealand proceedings could be heard in Australia and evidence and submission of counsel could be provided by video-link or telephone conference. Furthermore, the New Zealand High Court was empowered to take evidence at the request of the Federal Court of Australia and Australian counsel were allowed to practice in the New Zealand High Court. In response to the question raised by the representative of the EEC, she explained that the respective competition laws of New Zealand and Australia remained separate; these laws were similar but not identical and were obviously not applied by a single body.

29. With regard to the question of the position of industries from New Zealand with respect to the removal of anti-dumping measures between New Zealand and Australia, the representative of New Zealand said that while some concerns had been expressed by some industries prior to the enactment of the new legislation in July 1990 and shortly thereafter, more recently there had been no such concerns expressed. The process of negotiations between New Zealand and Australia on the removal of anti-dumping measures in their mutual trade had lasted approximately one year. She explained that the Commerce Act as amended, had not replaced the application of anti-dumping law as such between New Zealand and Australia, except that price behaviour, if anti-competitive, could be subject to the provisions of the Commerce Act. So far there had been no proceedings under the amended Commerce Act involving cases which previously might have been covered by anti-dumping legislation. Consequently, there had been no problems between the two countries regarding questions of origin. Finally, she pointed out that that there were continuing differences in industries assistance policies between New Zealand and Australia. While these differences had not been an obstacle to the removal of anti-dumping measures between the two countries, they explained that no steps were under consideration to remove the application of countervailing duty measures between New Zealand and Australia.

30. The Committee took note of the statements made and agreed to revert at its next regular meeting to the New Zealand Dumping and Countervailing Duties Act 1990.

(iii) Australia

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

31. The Chairman recalled that at the meeting held on 29 October 1990 the representative of Australia had explained the background of amendments made to the Australian anti-dumping legislation in 1989 and notified in document ADP/1/Add.18/Rev.1/Suppl.3 (see ADP/M/31, paragraph 6). At that meeting, the representatives of Canada and Singapore had reserved their right to revert to these amendments (ADP/M/31, paragraph 8).

32. The representative of Canada said that his delegation had provided written questions to the Australian delegation regarding the legislative amendments notified in document ADP/1/Add.18/Rev.1/Suppl.3.[1/] He hoped that the Australian delegation would provide written responses to these questions before the next regular meeting of the Committee.

33. The representative of the EEC said that his delegation had received information regarding proposed changes to the Australian anti-dumping legislation which were presently being considered by the Australian authorities. In particular, it appeared that one change under consideration was the acceleration of the investigation process. He asked whether his information was correct and whether Australia would notify amendments to its legislation to the Committee. He also asked the representative of Australia to explain how his authorities considered it possible to further accelerate the investigation process.

34. The representative of Australia said that his delegation had only just received the questions by the delegation of Canada and would provide detailed responses to these questions at the next regular meeting of the Committee. He confirmed that the Australian authorities had announced their intention to shorten the statutory deadlines for the conduct of anti-dumping investigations. It was intended to shorten the period for the conduct of preliminary investigations from 175 to 135 days. In order to meet the new deadline the Australian authorities would allocate significantly more resources to the investigation process. He noted that no draft legislation had so far been prepared to implement this change.

35. The representative of the EEC thanked the representative of Australia for his reply and said that his delegation looked forward to receiving more detailed information on the proposed legislative amendments.

36. The Committee took note of the statements and agreed to revert at its next regular meeting to the Customs Legislation (Anti-Dumping) Amendment Act 1989 and the Customs Tariff (Anti-Dumping) Amendment Act 1989.

[1/] See document ADP/W/294.

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

37. The Chairman recalled that at the regular meeting on 29 October 1990 the representatives of Canada and Singapore had reserved their right to revert at a later stage to the legislative changes notified in document ADP/1/Add.18/Rev.1/Suppl.4 and Corr.1 which implemented Article 4 of the protocol to ANZCERTA signed in 1988 (ADP/M/31, paragraph 8).

38. The representative of Canada said that his delegation had the same questions regarding the changes made to the Australian competition legislation following the removal of anti-dumping measures between New Zealand and Australia as it had raised with respect to the competition legislation of New Zealand (supra, paragraph 26).

39. The representative of Australia said that his delegation would provide detailed responses to these questions at the next regular meeting of the Committee.

40. The representative of the EEC requested the delegation of Australia to provide information on the questions which, earlier in the meeting, he had raised in relation to the competition law of New Zealand (supra, paragraph 27).

41. The Committee took note of the statements made and agreed to revert at its next regular meeting to the Trade Practices (Misuse of Trans-Tasman Market Power) Act 1990.

(c) 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)

42. The Chairman recalled that the amendments made to the Australian anti-dumping legislation in 1988 and notified in document ADP/1/Add.18/Rev.1/Suppl.2 had been discussed at the regular meetings of the Committee since October 1988. In documents ADP/W/216, 250 and 267 the delegation of Australia had provided written answers to questions raised by the delegations of the United States, the EEC and Korea. At the regular meeting of the Committee held on 29 October 1990 the representative of Singapore had indicated that she wished to have some more time to review the amendments made in 1988 in light of legislative changes which had been introduced subsequently.

43. The representative of Singapore said that, while at this juncture she did not have specific questions on the Australian legislation contained in document ADP/1/Add.18/Rev.1/Suppl.2, her delegation nevertheless wished to have the opportunity to revert to this legislation at the next regular meeting of the Committee.

44. The representative of Australia noted that the legislation enacted in 1988 was scheduled to expire after five years and that by the end of 1991 a detailed review of this legislation had to be undertaken. He hoped that the delegation of Singapore would submit any questions which it might have before his authorities initiated this review process.

45. The Committee took note of the statements made and agreed to revert at its next regular meeting to the provisions of the Australian Anti-Dumping Authority Act 1988, the Customs Legislation (Anti-Dumping) Amendment Act 1988 and the Customs Tariff (Anti-Dumping) Amendment Act 1988.

(iv) United States

(a) Anti-Dumping and Countervailing Duties: Interim-Final Rule (document ADP/1/Add.3/Rev.4/Suppl.2)

46. The Chairman noted that this Interim-Final Rule had for the first time been on the agenda of the Committee at its regular meeting held on 29 October 1990 (ADP/M/31, paragraphs 13-14). No questions on this Interim-Final Rule had been raised at that meeting and no questions on this Rule had been submitted in writing subsequent to that meeting.

47. No questions were raised on the Interim-Final Rule. The Chairman said that the Committee had conducted its examination of this Rule.

(b) Revised Anti-Dumping Duty Regulations of the Department of Commerce (document ADP/1/Add.3/Rev.4/Suppl.1)

48. The Chairman noted that the Committee had very recently received in document ADP/W/290 written responses by the delegation of the United States to questions raised by Canada in document ADP/W/264 on the revised anti-dumping duty regulations of the Department of Commerce.

49. The representative of Canada said that his delegation needed more time to study the responses provided by the United States in document ADP/W/290 and wished to revert to these responses at the next regular meeting of the Committee.

50. The Committee took note of the statement made by the representative of Canada and agreed to revert at its next regular meeting to the revised anti-dumping duty regulations of the Department of Commerce.

(c) 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)

51. The Chairman recalled that written responses by the United States to questions raised by several delegations on the amendments made to the anti-dumping legislation of the United States in 1988 had been circulated

in documents ADP/W/230, 241, 242, 243, 270, 271, 272 and 273. At the Committee's regular meeting held on 29 October 1990 the representatives of Hong Kong and Singapore had made further comments on these amendments (ADP/M/31, paragraphs 19-22).

52. The representative of Singapore noted that at the regular meeting of the Committee in October 1990 she had made comments on the provisions in the United States Omnibus Trade and Competitiveness Act of 1988 regarding third country dumping, valuation of inputs in constructed value calculations involving transactions between related parties, downstream product monitoring, and cumulative injury assessment. Her delegation was still not convinced by the oral responses given by the delegation of the United States on these issues and she regretted that the United States had not provided any answers in writing. Regarding the provisions on measures to prevent the circumvention of anti-dumping duties in Section 1321 of the Omnibus Trade and Competitiveness Act, she said that, notwithstanding the responses given by the United States to questions raised by her delegation in document ADP/W/251, her delegation remained concerned about these provisions, which were not consistent with Article VI of the General Agreement and with the provisions of the Agreement. Section 1321 allowed for the extension of the scope of application of an anti-dumping duty order to products which were not like the product subject to the original order. As such, Section 1321 conflicted with Article 2:2 of the Agreement. Furthermore, Section 1321 was also inconsistent with the requirements of Article VI:2 and VI:6(a) of the General Agreement and with provisions of the Agreement in that it did not provide for a separate investigation to determine whether imported parts or components, finished products assembled in a third country, products which had undergone minor alterations, or later-developed products were being dumped in the United States and causing injury to the domestic industry producing a like product. Regarding Section 1323 of the Omnibus Trade and Competitiveness Act of 1988, which provided for the establishment of product categories for short life cycle products and for expedited investigations in case of multiple offenders, she considered that there was no legal basis under the Agreement or under Article VI of the General Agreement for the accelerated conduct of anti-dumping investigations based upon the particular product category subject to investigation and upon involvement of exporters in previous anti-dumping investigations. Under the provisions of the Agreement and of the General Agreement each case had to be examined on its own merits. The shorter deadlines laid down in Section 1323 would have a negative effect on the quality and thoroughness of the investigation process and make it more difficult for exporters to provide necessary information. As a result, these shorter deadlines would inevitably lead to higher margins of dumping, based on imperfect data. She concluded her statement by reiterating her request for written answers from the delegation of the United States to her comments made at the present and at the last regular meeting of the Committee and by reserving her delegation's right to revert to the legislation of the United States at the next regular meeting of the Committee.

53. The representative of the United States said that his delegation would be happy to respond in writing to any further questions and comments by other delegations on the legislation of his country if such questions and comments were submitted in writing. His delegation considered more generally that, absent further specific written questions on a Party's anti-dumping legislation, the Committee should at some point conclude its examination of that legislation. He then informed the Committee that the United States International Trade Commission (USITC) had very recently published amended regulations concerning administrative protective order procedures. These regulations would be notified to the Committee so as to allow the Committee to review the regulations at its meeting in Autumn 1991.

54. The representative of Singapore said that her delegation could not agree with the suggestion that there should be a time limit to the Committee's examination of anti-dumping legislation of a Party. As long as there were questions or concerns raised with respect to the legislation of a Party the Committee should be able to revert to the matter.

55. The Committee took note of the statements made and agreed to revert at its next regular meeting to the amendments introduced in 1988 to the anti-dumping legislation of the United States.

(v) 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)

56. The Chairman recalled that at its regular meeting held on 29 October 1990 the Committee had had before it in documents ADP/W/268 and 269 answers provided by the delegation of Korea to questions asked by the delegations of Canada and the EEC regarding the amendments to the Korean anti-dumping legislation notified in document ADP/1/Add.13/Rev.1/Suppl.1. At that meeting the representative of the EEC had raised some additional questions (ADP/M/31, paragraphs 25-28). Responses to these questions received from the delegation of Korea had recently been circulated in document ADP/W/287.

57. The representative of the EEC thanked the delegation of Korea for the replies which it had provided in document ADP/W/287. His delegation needed more time to study his document and he, therefore, reserved his delegation's right to revert to the Korean legislation at the next regular meeting of the Committee.

58. The representative of the United States also reserved his delegation's right to revert to the Korean legislation at the next regular meeting of the Committee.

59. The Committee took note of the statements made and agreed to revert at its next regular meeting to the amendment of the Presidential Decree of the Korean Customs Act on Anti-Dumping/Countervailing Duty.

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

60. The Chairman recalled that the Committee had continued its examination of Council Regulation (EEC) No. 2423/88 of its regular meeting held on 29 October 1990 (ADP/M/31, paragraphs 33-38). Written answers given by the delegation of the EEC to questions raised on this Regulation by a number of delegations had been circulated in documents ADP/W/207, 208, 245, 246, 247, 248 and 249). At the meeting held in April 1990 the representative of the EEC had orally replied to further questions which had been submitted in documents ADP/W/252, 255 and 260 by the delegations of Japan, Singapore and Hong Kong. At that meeting and at the meeting held in October 1990 these delegations had requested that the EEC submit its replies to these questions in writing.

61. The representative of Hong Kong recalled that at the previous two regular meetings her delegation had requested the delegation of the EEC to respond in writing to the questions raised by her delegation in document ADP/W/260 in order for her delegation to be able to study in greater detail the replies given by the EEC. She regretted that the EEC had not provided written responses and reserved her delegation's right to revert to Council Regulation (EEC) No. 2423/88 at the next regular meeting of the Committee.

62. The representative of Singapore recalled that her delegation had also requested the delegation of the EEC to reply in writing to questions formulated by her delegation in document ADP/W/255. It was important to have written answers in view of the technical complexity of the matter. She reserved her delegation's right to revert at the next regular meeting to the EEC's anti-dumping legislation.

63. The representative of Japan also requested the delegation of the EEC to provide written answers to the questions raised by his delegation in document ADP/W/252. He noted that the issues addressed in these questions were important and were related to subjects being discussed in the context of the Uruguay Round negotiations.

64. The representative of the EEC said that he had taken note of the statements made by the representatives of Hong Kong, Singapore and Japan. He recalled that at the regular meeting held on 29 October 1990 his delegation had already expressed the view that the Committee had exhausted its discussion of Council Regulation (EEC) No. 2423/88 and had noted that, while at the meeting in April 1990 delegations had been invited by the Chairman to submit any additional questions on the EEC's legislation by 15 June 1990, the Committee had not received any further questions (ADP/M/31, paragraph 37). He noted that since the meeting held in October no further written questions had been submitted and therefore considered that it was no longer necessary that the Committee keep the EEC's legislation on the agenda for its regular meetings.

65. The representative of Hong Kong said that, if her delegation had received written answers from the delegation of the EEC, this might well have led to further questions in writing by her delegation. The fact that

no additional written questions had been submitted by her delegation could therefore not be considered to imply that there was no longer a need to examine the EEC's legislation.

66. The representative of the EEC referred to the view expressed earlier at the meeting by the representative of the United States that, absent any new questions or comments, the Committee should conclude its examination of the legislation of a Party. Given that no new issues had been raised with respect to the anti-dumping legislation of the EEC, he requested the Chairman to terminate the Committee's examination of this legislation.

67. The representative of Singapore requested that the Committee keep on its agenda the examination of the EEC's anti-dumping legislation. She emphasized in this respect the importance of the Committee's examination of the legislation of Parties to the Agreement.

68. The Committee took note of the statements made. The Chairman said that the Committee would revert at its next regular meeting to Council Regulation (EEC) No. 2423/88. Meanwhile, he would consult with interested delegations.

(vii) Canada (Special Import Measures Act, as amended, and Regulations implementing the Special Import Measures Act, as amended, document ADP/1/Add.6/Rev.3)

69. The Chairman recalled that at its meeting held on 29 October 1990 the representative of Canada had explained changes made in 1989 to the Canadian Special Import Measures Act and to the Regulations amending that Act (ADP/M/31, paragraph 40). No questions had been asked on these amendments at that meeting and the Committee had not received any questions on this matter after that meeting.

70. No questions were raised or comments made on the amendments notified by Canada in document ADP/1/Add.6/Rev.3. The Chairman said that the Committee had concluded its examination of this legislation.

(viii) Other legislation

71. No comments were made under this item. The Committee agreed to keep this item on the agenda of its next regular meeting.

E. Semi-annual reports of anti-dumping actions taken by Sweden and Australia during the period 1 January-30 June 1990 (ADP/48/Add.9 and 10)

72. The Chairman recalled that the semi-annual reports of anti-dumping actions taken by Sweden and Australia during the period 1 January-30 June 1990 had not been available for circulation prior to the regular meeting of 29 October 1990 and therefore appeared on the agenda of the present meeting.

73. No statements were made on these two reports.

F. Semi-annual reports of anti-dumping actions taken during the period 1 July-31 December 1990 (ADP/53 and addenda)

74. The Committee had before it in documents ADP/53/Adds.2-11 notifications of anti-dumping actions taken during the period 1 July-31 December 1990 by Korea, New Zealand, Finland, Mexico, Australia, Brazil, the EEC, Sweden, Canada and the United States. Document ADP/53/Add.1 provided a list of Parties which had informed the Committee that during this period they had taken no anti-dumping measures: Austria, Hong Kong, Hungary, India, Japan, Norway, Pakistan, Poland, Romania, Singapore, Switzerland and Yugoslavia. The Chairman said that, while no semi-annual reports had been submitted by the delegations of Czechoslovakia and Egypt, earlier at the meeting the representatives of these countries had informed him that their authorities had not taken any anti-dumping actions during the second half of 1990. He also noted that the semi-annual report submitted by the United States had been received only very recently.

75. The Committee examined the semi-annual reports submitted by the Parties which had taken anti-dumping measures during the second half of 1990 in the order in which these reports had been circulated:

Korea (ADP/53/Add.2)

76. No comments were made on this report.

New Zealand (ADP/53/Add.3)

77. No comments were made on this report.

Finland (ADP/53/Add.4)

78. No comments were made on this report.

Mexico (ADP/53/Add.5/Rev.1)

79. The representative of the EEC asked whether the representative of Mexico could provide information on the current status of the anti-dumping proceedings initiated in September 1988 with respect to imports of steel products from the EEC (ADP/53/Add.5/Rev.1, p.11).

80. The representative of Mexico said that the semi-annual report by his country should be modified to indicate that these proceedings had been terminated. His delegation would provide the delegation of the EEC with a copy of the official decision terminating the proceedings on this matter.

81. The representative of the United States noted on page 5 of document ADP/53/Add.5/Rev.1 in column 14 the notation "LDC" appeared in connection with proceedings involving imports of kraft board from the United States. He asked why this notion appeared in this context and what its precise meaning was.

82. The representative of Mexico replied that the investigation of kraft board from the United States had been concluded six weeks ago.

83. The Committee took note of the statements made.

Australia (ADP/53/Add.6)

84. No comments were made on this report.

Brazil (ADP/53/Add.7)

85. No comments were made on this report.

EEC (ADP/54/Add.8)

86. No comments were made on this report.

Sweden (ADP/53/Add.9)

87. No comments were made on this report.

Canada (ADP/53/Add.10)

88. The representative of Canada noted that since 1984 the Canadian anti-dumping legislation had contained a "sunset" clause. Since 1989, twenty-four outstanding anti-dumping measures had been affected by the operation of this clause. Ten measures had been terminated as a result of reviews undertaken pursuant to the "sunset" clause, while nine measures had lapsed because of the fact that domestic producers had not requested a review of the measures in question. Only in five cases had anti-dumping measures been extended. These figures showed that the "sunset" clause provision had had a positive effect on the administration of the Canadian anti-dumping legislation.

89. The Committee took note of the statement made by the representative of Canada.

United States (ADP/53/Add.11)

90. The representative of Pakistan noted that in the semi-annual report submitted by the United States there were a number of cases in which in column 5 zero margins, or margins of dumping close to zero, were reported. In these cases it was reported that information on trade volume and on dumped imports as percentage of domestic consumption was not available. He asked how the United States observed the provisions of Article 13 of the Agreement and requested the delegation of the United States to provide more precise information in its future reports on the precise volume of trade subject to anti-dumping proceedings. He noted that the question of treatment of de minimis margins of dumping and of negligible import volumes was an important subject of discussion in the Uruguay Round negotiations on anti-dumping.

91. The representative of Mexico said that, as illustrated by the semi-annual report submitted by the United States, the information provided by a number of Parties on dumped imports as percentage of domestic consumption was often incomplete. Thus, in the case of the report of the United States, in the vast majority of cases it was reported in column 12 that this information was not available. Information provided in column 13 of this report on the percentage of volume of exports of the exporting country investigated was also often incomplete. He hoped that, in the interest of transparency, in future cases more specific information would be provided on the items appearing in columns 12 and 13 by Parties submitting semi-annual reports.

92. The representative of the EEC reserved his delegation's right to revert at the next regular meeting to the semi-annual report submitted by the United States.

93. The representative of the United States said that the cases referred to in the comments made by the representatives of Pakistan and Mexico regarding the lack of data in columns 11, 12 and 13 of ADP/53/Add.11 concerned administrative reviews of outstanding anti-dumping orders. In accordance with a decision taken by the Committee in October 1986, the United States notified such administrative review proceedings in addition to initial investigations. In the United States, administrative reviews in many cases were reviews of the amount of dumping on a company specific basis. Information on the volume of trade, or market share on a company specific basis was often unavailable or, if available, such information was business proprietary and could not be divulged in a public document. With respect to the comments made by the representative of Pakistan on cases with very small margins, he explained that those cases were also administrative review proceedings. A finding of a zero or de minimis margin in the context of an administrative review did not result in the immediate termination of the anti-dumping duty order, but if in a number of successive administrative reviews zero or de minimis margins were found to exist, this could be a basis for the revocation of the anti-dumping duty order.

94. The Committee took note of the statements made and agreed to revert at its next regular meeting to the semi-annual report of the United States in document ADP/53/Add.11.

G. Reports on preliminary or final anti-dumping duty actions (documents ADP/W/279, 280, 281, 283 and 285)

95. The Chairman said that copies of notices of preliminary or final anti-dumping actions had been received from the delegations of Australia, Canada, the EEC and the United States.

96. The representative of Norway, referring to a determination by the United States on fresh and chilled Atlantic salmon from Norway (ADP/W/285, page 2), informed the Committee that her authorities had requested

consultations with the United States on this matter under the provisions of Article XXIII:1 of the General Agreement. She noted that this case also involved a countervailing duty action.

97. The Committee took note of the statement made by the representative of Norway.

H. Ad-Hoc Group on the Implementation of the Anti-Dumping Code (document ADP/W/138/Rev.5)

98. The Committee had before it in document ADP/W/138/Rev.5 a draft Recommendation on the use of price undertakings in anti-dumping proceedings involving imports from developing countries. The Chairman said that this draft recommendation had been submitted to the Committee by the Ad-Hoc Group in April 1989 and had been on the agenda of each regular meeting of the Committee since that time. So far the Committee had not been able to adopt the draft recommendation.

99. The representative of the United States recalled that on a number of occasions his delegation had indicated that it was concerned about specific aspects of the draft Recommendation appearing in document ADP/W/138/Rev.5. Questions relating to the acceptance of price undertakings were under discussion in the Uruguay Round and were best dealt with in that framework. With respect to the rôle of undertakings in anti-dumping proceedings, he said that, as reflected by the limited number of cases in which the United States had accepted undertakings, the United States generally considered that it was preferable for anti-dumping investigations to proceed to a conclusion, rather than for such investigations to be terminated at an early stage upon the acceptance of undertakings. United States exporters had in a number of cases been encouraged to give undertakings in situations where it had not been obvious that the conditions for imposition of anti-dumping duties were present. As reflected in the current discussions taking place in the Uruguay Round, the United States also considered that in any event there should be full transparency both regarding the contents of undertakings and regarding the circumstances in which undertakings were accepted. He concluded by reiterating that his delegation had a number of concerns regarding certain elements of the draft Recommendation and requested that the Committee defer further consideration of this matter until the Uruguay Round negotiations on anti-dumping had been completed.

100. The representative of the EEC said that the EEC had accepted more undertakings than any other Party to the Agreement, in particular in cases involving developing countries. His delegation had also played an active rôle in the drafting of the draft Recommendation which was now before the Committee. Nevertheless, questions relating to the acceptance of price undertakings were being discussed in the Uruguay Round negotiations and his delegation preferred to deal with this matter in that context. He therefore proposed that the Committee revert to this issue at a later stage.

101. The Committee took note of the statements made. The Chairman said that the Committee would revert to this matter at its next regular meeting.

I. 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/29 and 30)

102. The Chairman recalled that in August 1990 the Panel established in January 1989 in a dispute between Sweden and the United States concerning anti-dumping duties imposed by the United States on imports of certain stainless steel products from Sweden had submitted its Report to the Committee (document ADP/47). The Committee had discussed this Report at special meetings held in September and November 1990 (ADP/M/29 and 30, respectively) but had so far not been in a position to adopt the Report. Following the special meeting held on this matter in November 1990, his predecessor in the Chair had consulted with the delegations of Sweden and the United States. He understood that there had also been intensive bilateral consultations between Sweden and the United States on this matter. Unfortunately, it appeared that neither in the consultations carried out by the former Chairman of the Committee nor in the bilateral discussions between the two parties to the dispute sufficient progress had been made to enable the Committee to adopt the Report of the Panel. The Chairman recalled that in the discussions during the special meeting held on this matter in November 1990 an important question had been the nature of the remedy suggested by the Panel in paragraph 5.24 of its Report.

103. The representative of Sweden said that this was the fourth time that the Committee was examining the Report of the Panel on the dispute between Sweden and the United States concerning the imposition by the United States of anti-dumping duties on imports of seamless stainless steel hollow products from Sweden. This was already three times too many. Her authorities had expected that the United States, being one of the prime defenders of efficient trading rules and of strong and swift dispute settlement procedures, would have been in a position to adopt this Panel Report already on the first occasion, i.e. at the special meeting of the Committee held in September 1990. After all, the case was urgent and the Panel had concluded unambiguously that the imposition of the anti-dumping duties by the United States was inconsistent with the Agreement. Her authorities had felt that rapid adoption and implementation of the Panel's Report was the least that could be expected from a country which was favouring free trade, strict multilateral trading rules and a well-functioning international dispute settlement system. That this had not occurred was a cause of disappointment for Sweden. She pointed out that the Swedish company hit by the GATT-illegal anti-dumping duties, Sandvik Steel AB, had suffered from the application of the GATT-inconsistent measure since May 1987. Its exports of seamless stainless steel pipes and tubes to the United States had been severely affected and the company had had to pay more than US$8 million in anti-dumping duties. It also had spent vast amounts of money and time on the lengthy and trying legal process encountered in the United States and the judicial process in the United States seemed to be never ending.

Sandvik was presently spending money and efforts to have the case reviewed by the United States authorities. All this was occurring in spite of a GATT ruling to the effect that the measure in question had from the outset been inconsistent with the obligations of the United States under Article 5:1 of the Agreement and that the anti-dumping duties imposed were not in conformity with Article 1 of the Agreement.

104. The representative of Sweden further stated that her authorities had tried to be flexible and patient in this matter. In consultations held by the previous Chairman of the Committee Sweden had attempted to find practical solutions which would fully respect the recommendations made by the Panel. However, the message which her authorities, reluctantly, had had to deduct from the response by the United States was that the dispute settlement rules did not apply to the United States unless the United States wanted these rules to apply to the United States. Her authorities hoped that they were wrong about the intentions of the United States. They still wanted to believe that the United States was willing and capable of abiding by a GATT dispute settlement ruling, that it was willing to comply in a way intended and in a way which her authorities believed was supported by the United States. It was not only in Sweden's or in Sandvik's interest that it was necessary for the Committee to adopt this first Panel Report. The Report needed to be adopted in order to confirm the credibility of the GATT dispute settlement mechanism. Sweden was waiting with growing impatience for the Committee to adopt the Panel Report and she urged the Committee to do so at the present meeting.

105. The representative of the United States said that his authorities appreciated the intensive bilateral discussions which had taken place between Sweden and the United States since the issuance of the Panel Report in August 1990 and regretted that these consultations had so far not led to a result which would allow the Committee to adopt this Report. He noted that currently communications on this matter were outstanding from the highest trade policy making levels in the United States Government to the Government of Sweden and he expressed the hope that these communications would result in a satisfactory solution. The position of the United States on the Panel Report was straightforward. While the United States did not agree with the interpretation by the Panel of Article 5:1 of the Agreement, it did not consider that this interpretation was unreasonable. The United States was prepared to accept the analysis of Article 5:1 reflected in the Panel Report and to bring its legislation and practice into conformity with this analysis. However, as had been indicated by his delegation on previous occasions, the principal difficulty raised by the Panel Report for the United States related to the nature of the remedy suggested by the Panel. The Panel had taken the somewhat unusual step of recommending a specific and retroactive remedy. This was of concern to his delegation as a matter of principle given its potential implications not only for dispute settlement under the Agreement but for dispute settlement in the GATT system as a whole. The United States agreed with Sweden on the importance of a well-functioning dispute settlement system. However, an important aspect of a well-functioning

dispute settlement mechanism was the nature of the remedies recommended by panels. He urged the Committee to amend the Panel Report in document ADP/47 with respect to the remedy proposed by the Panel so as to enable the United States to resolve its concerns with respect to the Panel Report.

106. The representative of Finland, speaking on behalf of Finland and Norway, expressed strong support for the position of Sweden in this matter. It was regrettable that even though this was the fourth time that the Committee was considering this Report the United States was still not in a position to agree to the adoption of this Report. Four unadopted Panel Reports were at present pending before the Committee on Subsidies and Countervailing Measures and a similar situation should not arise in this Committee. The inability of the Committee to adopt this Panel Report was in this respect a bad omen. Referring to the interest shown by the United States in the negotiations in the Uruguay Round on improvements to the GATT dispute settlement mechanism, he expressed his surprise at the inconsistency between the position of the United States in those negotiations and its position with respect to the Panel Report presently before the Committee. On the views expressed by the representative of the United States on the specificity of the remedy suggested by the Panel in its Report, he stated that the purpose of dispute settlement under the General Agreement or under the Agreement was to resolve specific disputes in order to do justice to the party to the dispute which had suffered from a nullification or impairment of benefits. That purpose could not be fulfilled only by the amendment of legislation and practice of a Party on a prospective basis. Inherent in the purpose of dispute settlement was therefore that panels also addressed the means by which a nullification or impairment of benefits according to a party was to be corrected. In the case before the Committee it was difficult to see how the correction of the nullification or impairment of benefits accruing to Sweden could occur in the absence of annulment of the anti-dumping duties imposed by the United States.

107. The representative of Austria said that his delegation fully shared the concerns expressed by the representative of Sweden regarding the effectiveness of the dispute settlement mechanism. His authorities considered that specific remedies were helpful and were in full support of the adoption of the Panel Report.

108. The representative of India reiterated his delegation's support for the adoption and swift implementation of the Panel Report and regretted that the US had not found it possible to agree to the adoption of the Report.

109. The representative of Canada said that his delegation supported the prompt adoption of the Panel Report.

110. The representative of the EEC said that his delegation had on earlier occasions expressed its reservations with respect to part of this Panel Report. His authorities considered that the remedy suggested by the Panel went too far.

111. The representative of Yugoslavia expressed her delegation's support for the adoption of the Panel Report.

112. The representative of Australia said that his authorities were concerned about the large number of GATT Panel Reports awaiting adoption, of which the Report appearing in document ADP/47 was one. When a panel report was adopted the situation was clear: from the date of the adoption of the report, the party to a dispute found to be in breach had an obligation to remove the offending measure or to provide some other form of compensation if a removal of the measure was delayed for legislative reasons. The need to pass legislation, or the difficulty in doing so, could not be sufficient justification for blocking the adoption of a panel report. In their findings, panel reports should as a matter of principle provide a maximum of flexibility as to how offending measures should best be brought into conformity with a party's obligations within each country's administrative and legal framework.

113. The representative of Australia further stated that Australia had some difficulty in accepting in principle that removal of the offending measure should be backdated to the time it had been introduced. A Party to the Agreement or a contracting party to the General Agreement was generally entitled to assume that it was acting consistently with its international obligations until successfully challenged. If one applied the reasoning behind the suggestion made in the Panel Report presently before this Committee more widely, the implications would be quite considerable. In dumping cases it would require a refund of duties collected prior to adoption of a panel report but he wondered what it would mean if, for example, an export subsidy which had been in operation for twenty years was successfully challenged. He noted that in its Report, the Panel had "suggested" rather than "recommended" that the duties collected be refunded. In the view of his delegation adoption of the Panel Report would therefore not necessarily imply acceptance of this suggestion either in the current case or as a principle to be applied in future cases.

114. The representative of Singapore said that her delegation fully supported the views expressed by Sweden in this matter and regretted that the United States was not prepared to adopt this Panel Report. She believed that there was an inconsistency between the position of the United States on this matter and the position of the United States on negotiations in the Uruguay Round on improvements to the GATT dispute settlement mechanism.

115. The representative of Hong Kong said that on previous occasions her delegation had already indicated its support for the prompt adoption of this Panel Report and expressed concerns about the negative impact of the non-adoption of this Report on the functioning of the dispute settlement mechanism of the Agreement.

116. The representative of Japan said that the Panel Report appearing in document ADP/47 was quite important and should be adopted as soon as possible. He noted that the question of the standing of petitioners to file anti-dumping duty petitions was an important subject of discussion in the Uruguay Round.

117. The representative of Egypt said that the Panel Report should be adopted and implemented as soon as possible.

118. The representative of the United States emphasized that his delegation was ready to agree to an immediate adoption of the Panel Report appearing in document ADP/47; as indicated in his previous statement, this would entail a commitment by his authorities to implement the substantive findings made by the Panel in its Report by taking any necessary steps to change the legislation or practice of the United States. The concerns of his authorities regarding the Panel Report related to an additional aspect of the Report, i.e. the specific remedy suggested by the Panel. He suggested that the Committee distinguish between the substantive findings of the Panel, which his authorities were prepared to accept, and the remedy suggested by the Panel. He expressed disagreement with the views of the representative of Finland on the meaning of the concept of nullification or impairment of benefits in the context of this case. Under the General Agreement and under the Agreement this concept related to benefits accruing to a contracting party to the General Agreement or to a Party to the Agreement, but not to rights of private parties which might in one way or another be affected by dispute settlement proceedings under the General Agreement or under the Agreement. The dispute presently before the Committee had raised an unusual issue, i.e. the question of how a nullification or impairment of benefits accruing to a Party to the Agreement could be considered to affect private parties. This aspect of the case had been the subject of intensive discussions between his Government and the Government of Sweden. He concluded his statement by reiterating that, if the Committee put aside the specific and retroactive remedy suggested by the Panel, his authorities could accept the adoption of the Panel Report.

119. The representative of Sweden said that, as indicated on previous occasions, her authorities' views differed from the views of the United States regarding the question of the nature of the remedy suggested in the Panel Report. While it might be that in general in GATT dispute settlement cases it was appropriate for panels to suggest generally worded remedies, the case presently under discussion concerned a dispute under the provisions of the Agreement and differed in important respects from the type of issues usually addressed by panels in dispute settlement proceedings pursuant to the relevant provisions of the General Agreement. Since an anti-dumping duty was a specific measure, often aimed at a particular company, remedies in case where an anti-dumping duty was imposed in a manner inconsistent with the Agreement had necessarily to be specific in nature. If one read the Agreement carefully, one found no support for the view of the United States that a panel established pursuant to the dispute settlement provisions of the Agreement should refrain from making

suggestions for specific remedies. On the contrary, the provisions of the Agreement implied that a panel was required to make recommendations for remedies such as revocation and reimbursement of anti-dumping duties when it found that such duties had been imposed in a manner inconsistent with the Agreement. Article 1 of the Agreement provided that "The imposition of an anti-dumping duty is a measure to be taken only under the circumstances provided for in Article VI of the General Agreement and pursuant to investigations initiated and conducted in accordance with the provisions of this Code." If this condition was not fulfilled, the obvious remedy was the revocation and reimbursement of anti-dumping duties. The wording of Article 1 implied that the Agreement was meant to govern the application of anti-dumping duties in specific cases. The mandate of the Panel established by the Committee in the dispute between Sweden and the United States had not been to examine whether the anti-dumping legislation or practices of the United States were in conformity with the Agreement but to determine whether the United States had in a particular case observed its obligations under the Agreement. The Panel had found that this was not the case. Consequently, the measure in question had to be revoked. She pointed out in this respect that in a dispute between Finland and New Zealand regarding the imposition by New Zealand of anti-dumping duties on transformers from Finland[1] a Panel established under the General Agreement had recommended precisely the same remedy (i.e. revocation and reimbursement of anti-dumping duties) as the remedy suggested by the Panel in the dispute presently before the Committee. The Report of the Panel on the dispute between Finland and New Zealand had been adopted by the GATT Council by consensus; thus, the United States had already recognized that a panel could recommend specific remedies of this type. She further expressed disagreement with the description by the representative of the United States of the remedy suggested by the Panel in document ADP/47 as a "retroactive" remedy; if an anti-dumping duty was imposed on a basis which, from the outset, was not consistent with the Agreement, there was no retroactivity involved in a recommendation that such a duty be revoked.

120. The representative of the United States said that the General Agreement and the Agreement, taken together, did not provide a basis to consider that panel reports could issue recommendations which directly related to rights of private parties, such as revocation and reimbursement of anti-dumping duties, as distinguished from recommendations which related to rights and obligations of governments parties to the General Agreement or to the Agreement.

121. In reply to the statement made by the representative of the United States under paragraph 118 the representative of Finland said that it was obvious that both the General Agreement and the Agreement governed relations between governments and did not directly confer rights upon private companies. However, in the case addressed in the Panel Report presently under discussion - as in other cases involving considerable export trade - exports having an impact i.a. on the economic growth, the

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employment and the balance of the current account of one Party to the Agreement were affected by a measure found to be inconsistent with the Agreement. Then it was not correct to maintain that there was a distinction between the nullification or impairment of benefits accruing to a Party and the adverse effects on private parties. The interest of the exporting country and of the exporting firms were the same and overlapping.

122. The Committee took note of the statements made. The Chairman said that it was clear that the Committee was not in a position to adopt the Panel Report at this meeting and that he would consult on this matter with interested delegations. The Committee would revert to the Panel Report at a future meeting.

J. United States - Anti-dumping duties on imports of anti-friction bearings from Sweden (ADP/M/31, paragraphs 61-63)

123. The Chairman recalled that the Committee had discussed this matter for the first time in October 1989 and had reverted to it at its regular meetings held in April and October 1990.

124. The representative of Sweden recalled that in Spring 1989 the United States Department of Commerce had issued a determination of dumping on imports of anti-friction bearings after what had perhaps been the most massive and complicated anti-dumping investigation ever conducted. Among the companies affected were the Swedish company SKF and several of its wholly-owned subsidiaries in other countries. In October 1989, his delegation had asked some questions to the United States on this matter at a meeting of the Committee. Firstly, it had asked at what point of time during the investigation the Department of Commerce had determined that the petitioner in this investigation had standing to file a petition, and what share of domestic production was accounted for by domestic producers who supported the petition. The United States had replied that, according to the practice of the United States, the relevant authorities in the United States did not make verification determinations prior to the initiation of investigations. As for the market share of domestic producers supporting the petition, the delegation of the United States had stated that the United States had in this case fulfilled its obligations under the Agreement because the initiation of this investigation had not been opposed by producers accounting for a major proportion of domestic production. The United States had, however, not given an indication of the actual market share of the domestic producers supporting the petition. Secondly, at the meeting in October 1989 the Swedish delegation had asked why Swedish home market prices had not been used by the Department of Commerce as a basis for determining normal values. The United States had responded that the Swedish home market had been less representative than certain third country markets. Finally, the Swedish delegation had asked why the Department of Commerce had used the "best information available" rule even though the Swedish company, SKF had submitted a multitude of information. The United States delegation had replied that the inaccuracies in the information provided by SKF had been too extensive and that the information could therefore not be used.

125. The representative of Sweden noted with satisfaction that the Department of Commerce was now conducting an administrative review of the anti-dumping duty order on anti-friction bearings in which it used Swedish home market prices as a basis for comparison with export prices to the United States. This had resulted in the issuance of a preliminary determination in which the margin of dumping established for the average of the products had been reduced substantially from more than 100 per cent to about 5 per cent. Unfortunately, the United States had not changed its position on the question of the standing of the petitioner. In a recent decision of the United States Court of International Trade (CIT), SKF's appeal on this matter had been rejected. In this case SKF companies from Sweden, Germany, France and the United Kingdom had argued that the petitioner did not have standing to file a petition "on behalf of" the domestic industry because the petitioner did not have the support of producers account for a major proportion of the domestic production of the industry in question. The CIT had held that upon initiation of an investigation the Department of Commerce was entitled to presume that the petition had been filed on behalf of the domestic industry. Furthermore, the CIT had found that, even if producers in opposition against the initiation of an investigation accounted for a major proportion of production of the domestic industry, the Department of Commerce had discretion to continue an investigation. In the view of the Swedish delegation this meant that, despite the findings of the Panel in the dispute on anti-dumping duties on stainless steel from Sweden, the United States still construed silence on the part of domestic producers with respect to a petition as support for that petition and that an investigation could be continued even when there was an opposition to the investigation by domestic producers accounting for a major proportion of domestic production of the industry. His authorities thought that this CIT decision was quite remarkable. The United States was totally ignoring a GATT Panel decision and the CIT had gone even further than the Department of Commerce had traditionally done. This case was thus an example of blatant ignorance of the obligations of the United States under the Agreement. Contrary to Article 5:1 of the Agreement, the United States construed silence as support of a petition and, contrary to Article 4:1 of the Agreement, the United States' authorities could continue an investigation even when there was no support of a petition by producers account for a major proportion of domestic production of the industry. He asked the representative of the United States to explain how this was compatible with the Agreement and said that his delegation would welcome comments on this matter from other delegations.

126. The representative of the United States said that the issues regarding the question of the standing of the petitioner in the anti-friction bearings case were different from those involved in the dispute on stainless steel products. In the anti-friction bearings case, the key issue was the exclusion of certain related parties from the definition of the relevant domestic industry. Such exclusion was clearly provided for in Article 4:1 of the Agreement and the practice of the United States in this respect was in full conformity with this provision and with the Report of the Group of Experts on the definition of the term "related" in Article 4:1.

127. The representative of Sweden thanked the representative of the United States for his reply but felt that this reply did not fully address the points which he had raised. His delegation would therefore like to have the opportunity to revert to this matter at the next regular meeting of the Committee.

128. The Committee took note of the statements made and agreed to revert to this matter at its next regular meeting.

K. United States - Procedures for administrative reviews of anti-dumping duty orders (ADP/M/31, paragraphs 71-74)

129. The Chairman recalled that this matter had been raised by the delegation of Canada at the regular meeting of the Committee held in October 1989 and had been discussed again at the regular meetings held in April and October 1990.

130. The representative of Canada said that there had recently been a remarkable improvement on the completion of administrative reviews by the United States. His delegation therefore did not consider it necessary that this item be kept on the Committee's agenda for its next regular meeting but he reserved his delegation's right to revert to this matter should it be necessary.

131. The Committee took note of the statement made by the representative of Canada.

L. United States - Anti-circumvention enquiry with respect to colour television picture tubes (ADP/M/31, paragraphs 75-86)

132. The representative of the United States said that the anti-circumvention enquiry on colour television picture tubes had been concluded in early March 1991 with negative final determinations. Thus, for more than seven weeks there had no longer been an anti-circumvention enquiry with respect to these products. Under these circumstances, his authorities would have thought that the delegations of Canada and Mexico would have requested that this item be removed from the agenda for this meeting and would have formally terminated the dispute settlement proceedings which they had initiated in respect of this enquiry. Unfortunately, this had not happened. His authorities would have appreciated recognition by these delegations that there was no longer a basis for continued dispute settlement proceedings on this matter.

133. The representative of Canada said that his authorities were happy to see that the anti-circumvention enquiry on colour television picture tubes had been terminated. The position of his authorities continued to be that the very initiation of this enquiry was unjustified and unwarranted and that the relevant provisions of the legislation of the United States, and any proceedings initiated pursuant to these provisions, were inconsistent with the Agreement. However, he agreed that this matter could be removed from the agenda of the Committee.

134. The representative of Mexico welcomed the fact that the anti-circumvention enquiry on colour television picture tubes had been terminated. He shared the view of the Canadian representative that this enquiry should never have been initiated and also agreed that this item could be removed from the Committee's agenda.

135. The representative of Japan expressed his authorities' appreciation of the fact that the United States' authorities had made a negative finding in the anti-circumvention enquiry with respect to colour television picture tubes. However, in the view of his authorities it had already been clear at the time of the initiation of this enquiry that there was no circumvention. The involvement of companies in such an enquiry by itself had a trade disruptive effect. He hoped that in the future such enquiries could be avoided.

136. The representative of the United States thanked the delegations which had spoken for the recognition that the anti-circumvention enquiry in question had been terminated. His delegation could not accept the view that it had been improper for the United States to initiate this enquiry. As was the case for all anti-dumping investigations initiated by the United States, matters were only investigated by the United States if there were sufficient reasons to believe that an investigation was appropriate.

137. The Committee took note of the statements made.

L. Other business

(i) Request by Sweden for consultations with the United States under Article 15:2 of the Agreement on an anti-dumping duty order on stainless steel plate from Sweden

138. The representative of Sweden informed the Committee that his delegation had formally requested consultations with the United States regarding a determination that stainless steel plate products imported from Sweden were being dumped and causing injury to the relevant domestic industry in the United States.[1] The anti-dumping duty order in question had been imposed already in 1973 and, as far as his delegation was aware, this was the oldest case still in force in respect of which consultations under the Agreement had been requested. The Swedish company affected by the order, Avesta, had on several occasions attempted to obtain a review of the order by the authorities of the United States. These requests had not been granted. In 1985 and again in 1987, the United States authorities had determined that the information presented by Avesta was not sufficient to warrant a review, let alone to revoke the duty. Avesta had exhausted all available means of appeal including recourse to the United States Court of Appeals for the Federal Circuit and, earlier this year, to the United States Supreme Court. These proceedings had not led to any positive results. The Swedish authorities were of the firm opinion that the information submitted by Avesta to the United States authorities

[1] See document ADP/56

clearly met the requirements of the Agreement. Article 9 of the Agreement provided that a "duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury" and that the "investigating authority 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." In addition, Article 3 of the Agreement provided that a determination of injury "shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and their effect on prices in the domestic market for the like products, and (b) the consequent impact of these imports on domestic producers of such products." The anti-dumping duty order on stainless steel plate from Sweden had now been in force for almost twenty years without there having been any review of the injury determination.

139. In order to support his delegation's view that in this case the requirements of Article 9 had been met by the Swedish company Avesta, the representative of Sweden mentioned the following arguments. There was no actual or potential causal relationship between the exports of Swedish stainless steel plate to the United States and injury to the relevant domestic industry in the United States. Imports of hot rolled-stainless steel plate from Sweden had been and continued to be at de minimis levels; in 1986 imports of hot-rolled stainless steel plate from Sweden represented 0.2 per cent of apparent United States domestic consumption. This de minimis level of imports from Sweden had resulted from the acquisition in 1976 of a plate producing mill in the United States by the predecessor of Avesta. At present, Avesta's mill in the United States was one of the largest producers of hot-rolled stainless steel plate in the United States. He also pointed to the fact that, in sharp contrast to the early seventies, the European Communities now represented an increasingly strong and natural market for Swedish plate. The injury determination made in 1973 by the United States' authorities had been based principally on the fact that there had been a "decline in demand for stainless steel plate ... in Sweden's largest market, Western Europe ..." and that "Sweden maintained its exports to the US market ...". These circumstances had totally changed; in fact, Swedish exports to the EEC had increased by 266 per cent from 1971 to 1985. The stainless steel plate producing industry in Sweden had shrunk from four producers in 1972 to a single producer today, with a consistently decreasing capacity to produce stainless steel products. Certain types of hot-rolled steel plate which did not exist in the early seventies were now being imported from Sweden to the United States and were subject to the outstanding anti-dumping duty order. Such plates were not manufactured by any producer in the United States. Regarding the present impact of the Swedish imports on the industry in the United States, he considered that an investigation which was twenty years old was not relevant since the industry had evolved considerably and the market situation and product mix had changed to a large extent. In addition, at present the domestic producers in the United States were highly protected by voluntary export restraint agreements which limited the absolute quantity of stainless steel plate which could be imported into the United States from the major exporting countries.

140. The representative of Sweden summarized his authorities' views on this matter by saying that the refusal by the United States to revoke the anti-dumping duty order constituted an apparent disregard of GATT rules. The changes which had occurred since the early 1970's clearly showed that the anti-dumping duty order was not necessary to remedy the injury. If the industry in the United States was still injured, which was far from obvious given that the injury determination had been made twenty years ago, such injury was clearly not caused by exports from Sweden. It was also obvious that the new patterns of Swedish exports and the market conditions in the United States were totally unrelated to the original determination of dumping. He pointed out in this respect that at a later stage his delegation might wish to revert to this determination of dumping.

141. The representative of the United States said that his authorities looked forward to having consultations with Sweden on this matter. Without wishing to go into the details of the range of factors mentioned by the representative of Sweden, he considered that the practice of the United States was fully consistent with Article 9 of the Agreement. Under that Article an interested party that wished an anti-dumping duty order to be revoked or reviewed was required to submit positive information substantiating the need for a review. The USITC had considered this matter twice and had on both occasions found that such positive information had not been submitted.

142. The Committee took note of the statements made.

(ii) Anti-dumping investigations by the EEC concerning audio cassettes and audio tape from Japan

143. The representative of Japan said that the EEC Council of Ministers was expected to decide in the very near future on the possible imposition of definitive anti-dumping duties on imports of audio tapes in cassettes from Japan. In November 1990 the EEC Commission had imposed a provisional duty on these imports. His authorities were seriously concerned about the effect of a possible introduction of definitive anti-dumping duties which in their view would for a number of reasons be inconsistent with Article VI of the General Agreement and with the provisions of the Agreement. This could not be ignored at a time when efforts were being made in the context of the Uruguay Round to strengthen the disciplines of the Agreement. He reserved his delegation's right to request consultations with the EEC in case definitive anti-dumping duties were imposed.

144. Referring to the Commission Regulation under which provisional duties had been imposed on audio tapes in cassettes from Japan (Regulation (EEC) No. 3262/90 of 5 November 1990) the representative of Japan argued that there clearly had not been the causal relationship between the dumped imports from the Japanese companies in question and injury to the EEC industry which was required under Article 3:4 of the Agreement. Firstly, the EEC Commission had concluded that the market share of the Community's industry had decreased by 8 per cent, from 27 per cent in 1985 to 19 per

cent in 1988, while the market share of all the companies found to have dumped, including companies of Korea and Hong Kong, had increased by 9 per cent from 72 to 81 per cent during this period. However, the market share of the companies found to have dumped included increased production of affiliates in the Community of Japanese companies. These affiliates had increased their market share from 12 per cent in 1985 to 18 per cent in 1988. In addition, the Commission had included in the market share of the companies found to have dumped non-dumped imports which had increased by 3 per cent. The Commission had thus ignored the fact that there had been almost no change in the market share of the allegedly dumped imports in the period 1985-1988 if both the production of Japanese affiliates in the Community and non-dumped imports were excluded. Secondly, the market share of the allegedly dumped imports from Japan had declined from 42 per cent in 1985 to 35 per cent in 1988. During the same period, the market share of products produced by Japanese affiliates in the Community had increased by 6 per cent. Thirdly, the EEC Commission had admitted that price undercutting by the Japanese imports into the EEC occurred only in respect of certain products in the German market, which constituted only one-third of the EEC market. This alleged price undercutting in Germany could not be considered to cause injury to the entire EEC market of the products concerned.

145. The representative of Japan further pointed out that the problem of the absence of a causal relationship between imports of audio tapes in cassettes from Japanese companies and injury to the industry in the EEC had been compounded by the fact that the EEC Commission had relied on the loss of market share of the Community's industry between 1985 and 1988 to justify a radical departure from the methodology which it had traditionally used to compute injury margins. His authorities firmly believed that there was no causal relationship whatsoever between the reduction of the market share of the EEC industry and the imports from Japan and that, consequently, a negative finding of injury should have been made. His authorities considered in particular that the Commission's finding that both imports from Japan and products made by Japanese affiliates in the EEC contributed to injury was not only in violation of the Agreement but would also have a serious adverse effect on inward investment. Such a finding would lead to controlling the total quantity of imported products and products produced by foreign companies in the EEC. His delegation expected the EEC Commission to give further consideration to this case in order to avoid an inappropriate determination which would be inconsistent with GATT provisions. Finally, he urged the EEC Commission to terminate immediately the proceedings initiated in January 1989 in relation to audio tapes (not in cassettes) from Japan, Hong Kong and Korea, which, as had been pointed out by his delegation at the last regular meeting of the Committee, were inconsistent with the provisions of Articles 5:3 and 5:5 of the Agreement.

146. The representative of the EEC recalled that at the meeting held on 29 October 1990 the delegation of Japan had already made comments on the proceedings involving imports of audio tapes. In November 1990 provisional duties had been introduced on imports of audio tapes in

cassettes by Commission Regulation (EEC) No. 3262/90 of 5 November 1990. This Regulation contained a full explanation of the methodology applied by the Commission in this case with respect to the determinations of dumping and injury and with respect to the establishment of a causal relationship between the dumping and injury. The Regulation also included a detailed discussion of the question of whether it was in the Community's interest that measures be taken. He explained that this Regulation only dealt with audio tapes in cassettes; there was also a pending investigation on imports of audio tapes not in cassettes but this investigation was separate from the investigation on audio tapes in cassettes. Given that the investigation on audio tapes not in cassettes was still in progress, he could not make any comments on this investigation. With respect to the proceedings on audio tapes in cassettes he said that, as explained in Regulation (EEC) No. 3263/90, assemblers in the EEC who were related to Japanese exporters had been excluded from the definition of the Community industry; having excluded these assemblers, the Commission had found that the complainants accounted for more than 80 per cent of the remaining total Community output of the like product and thus accounted for a major proportion of domestic production of the like product. If the EEC Council decided to impose definitive anti-dumping duties this question would of course be considered again.

147. Regarding the issues raised by the representative of Japan with respect to the injury determination made by the EEC Commission, the representative of the EEC noted that, as explained in paragraph 76 of Commission Regulation (EEC) No. 3262/90, imports of audio cassettes from Japan, Korea and Hong Kong had increased at a more rapid rate than the rate of global consumption, from 154 million units in 1985 to 212 million units in 1988, namely by 38 per cent. The market share of the exporters found to have practised dumping had increased by 10 per cent while the market share of the total dumped imports had increased by 3 per cent. With regard to prices, it was noted in paragraph 76 of the Regulation that the complainant producers' selling prices in the Community had suffered a significant erosion between 1985 and 1988. Since the publication of the Regulation imposing provisional duties the Commission had received numerous comments from the exporters concerned and had been reviewing its preliminary determination. It was now for the EEC Council to decide on the imposition of definitive duties. The exporters concerned had been informed of the findings on the basis of which the Commission had made a proposal to the EEC Council.

148. The representative of Japan thanked the representative of the EEC for his replies and expressed the hope that the EEC Council would take the correct decision in this case.

149. The Committee took note of the statement made.

(iii) administrative review by the EEC of anti-dumping duties on electronic typewriters from Japan

150. The representative of Japan said that in December 1990 the EEC had initiated a review pursuant to the "sunset" clause of the EEC anti-dumping legislation of a definitive anti-dumping duty on electronic typewriters

from Japan. This duty had been introduced in July 1985. During the course of this review proceeding, the EEC Commission had requested Japanese companies producing electronic typewriters in the EEC to submit the same data concerning word processors as requested with respect to electronic typewriters. The Commission had explained that such data were necessary to determine whether or not word processors and electronic typewriters were one like product. He pointed out that the function of a word processor was to arrange long sentences to report form, and to make a graph or table or carry out a dictionary function, while an electronic typewriter did not have such capabilities. Thus, a word processor was not like an electronic typewriter in terms of its use and functions. His authorities considered therefore that word processors should not be included in an administrative review to determine whether to continue the anti-dumping duty on electronic typewriters and that a new, separate investigation would be more appropriate. The inclusion of word processors in the review presently conducted by the Commission had an unnecessary trade disruptive effect. He concluded this statement by expressing the hope that the EEC Commission would take appropriate steps to resolve this matter.

151. The representative of the EEC said that there appeared to be some confusion regarding the scope of the recently initiated administrative review proceeding concerning electronic typewriters from Japan. This review proceeding included electronic typewriters and personal or portable word processors. Thus, the review did not cover all word processors. He pointed out that the particular type of word processors covered by this investigation fell within the product definition used when the anti-dumping duty on electronic typewriters had been introduced in July 1985.

152. The representative of Japan thanked the representative of the EEC for his reply. His delegation hoped that, if there was indeed a misunderstanding regarding the product coverage of the administrative review proceeding on electronic typewriters, the EEC would take the necessary steps to clarify this matter.

153. The Committee took note of the statements made.

(iv) anti-circumvention investigation by the United States concerning typewriters from Japan

154. The representative of Japan drew the Committee's attention to a recent request made by Smith Corona Co. that the United States Department of Commerce initiate an investigation to determine whether Brother Co. in the United States had begun to produce electric typewriters (including portable automatic typewriters and portable word processors) to circumvent a definitive anti-dumping duty. Information available to the Japanese authorities indicated, however, that Brother had started production operations in the United States to provide a better service to its customers and in response to the rapid appreciation of the Japanese Yen following the Plaza Agreement in 1985, rather than to avoid payment of anti-dumping duties. Furthermore, in the case of portable automatic typewriters and portable word processors, non-Japanese components of the

products made in the United States accounted for more than 50 per cent of the value of the products. In the case of portable electric typewriters, the value of non-Japanese components was more than 60-70 per cent of the value of the products produced in the United States. Consequently, the difference between the value of the finished product assembled in the United States and the value of imported components from Japan was not "small" within the meaning of Section 781(a) of the United States Tariff Act of 1930, as amended. He further pointed out that since Brother America was the largest manufacturer of portable electric typewriters in the United States and Smith Corona did not produce such typewriters (it was actually the major importer of such typewriters) there were no grounds for the complaint lodged by Smith Corona. He recalled that at the meeting of the Committee held in October 1990 his delegation had expressed the view that the initiation of an anti-circumvention investigation by the United States concerning colour picture tubes imported from Japan was not justified because television sets imported from Mexico into the United States and colour television picture tubes imported into the United States from Mexico were not of the same class or kind of products. In the case of the anti-circumvention investigation regarding portable electric typewriters, the Department of Commerce had proceeded to initiate an investigation in spite of the fact that, for the reasons mentioned, there was no circumvention of anti-dumping duties. His authorities considered that the initiation of an investigation in the absence of a close examination of the validity of the complaint was inconsistent with Article 5:2 of the Agreement and placed an excessive burden on the companies concerned and that the possibility that anti-dumping duties might be imposed tended to disrupt normal market conditions. This was also contrary to the Preamble of the Agreement which stated that "anti-dumping practices should not constitute an unjustifiable impediment to international trade". His delegation believed that the anti-circumvention investigation on portable electric typewriters should be terminated immediately and that in future cases such investigations should be initiated only after a sufficient preliminary examination of the matter. He concluded by reserving his delegation's right to invoke Article 15 of the Agreement and to take other action in this matter, if necessary.

155. The representative of the United States said that the United States had only just begun its enquiry with respect to the possible circumvention of the anti-dumping duty order on portable electric typewriters. His authorities felt that there had been sufficient evidence to warrant the initiation of such an enquiry. All relevant facts, including those mentioned by the representative of Japan, would be considered, subject to comments by interested parties and the Department of Commerce would disclose to interested parties the methodology used in its enquiry. However, at this point a detailed discussion of the facts of this case would be premature.

156. The Committee took note of the statements made.

(v) Anti-dumping investigation by Korea of polyacetal resins from the United States

157. The representative of the United States noted that on 24 April 1991 the Korean International Trade Commission had announced an affirmative decision with respect to polyacetal resins from the United States and Japan. While anti-dumping proceedings were inherently complex and involved facts which, in particular with respect to the injury determination, were often susceptible to differing interpretations, the facts of this particular case (to the extent that they had been disclosed) were so obvious as to raise serious concerns as to whether the Korean authorities had acted in conformity with Article 3 and other provisions of the Agreement. Firstly, with respect to the analysis of prices, it appeared that the prices of the imported product were on average 10 per cent higher than prices of the domestically produced product; thus, there had been no basis for a finding of price undercutting. Secondly, the market share of the Korean domestic producers had risen from 1.7 per cent in 1988 to 45 per cent in 1989, 57 per cent in 1990, and to 80 per cent in the first quarter of 1991. It was therefore difficult to see how any injury finding could be based on the evolution of the volume of imports. Thirdly, although no information had been provided by the Korean authorities on the health of the domestic industry, his authorities were aware that a production facility had been established in 1988 and that this facility had doubled its capacity in 1990. It appeared that the business strategy of the Korean domestic industry was to undercut prices of imports and gain market share, which obviously was not a basis for application of anti-dumping measures. He requested the representative of Korea to comment on these aspects of the injury determination and noted that his authorities were also concerned about certain procedural aspects of this case. Firstly, neither the United States authorities nor the exporters from the United States involved in this proceeding had been provided with any data concerning the injury analysis and it was unclear whether data had been provided concerning the dumping analysis. Secondly, provisional measures had been imposed in the absence of preliminary affirmative determinations required by Article 10 of the Agreement and it seemed that the duration of these measures had exceeded the length of time permitted by that Article. Thirdly, he asked if and when the Korean authorities intended to provide information to the private parties involved in this proceeding and whether they would provide information on this case to the Committee. He concluded by saying that, while the Korean authorities had in the context of the Uruguay Round negotiations advocated reform of the Agreement, it remained to be seen whether the current provisions of the Agreement were fully reflected in the Korean anti-dumping legislation at this time.

158. The representative of Japan said that, although his authorities had not yet received full information on this case, they shared the concerns expressed by the representative of the United States. He reserved his delegation's right to revert to this matter at a later date.

159. The representative of Korea said that on 25 August 1990 the Korean authorities had opened an anti-dumping investigation with respect to imports of polyacetal resins. On 24 April 1991 the Korean Trade Commission had determined that imports of this product had caused injury to the Korean domestic industry. This determination had not yet been officially published. As provided for in the Korean legislation, the Customs and Tariffs Committee would now have to take a decision on the imposition of definitive anti-dumping duties. In this context, consideration would be given to the volume and prices of dumped imports and to their effects on the domestic industry. This decision had to be taken within three months after the date of the determination of the Korean Trade Commission. Given that his determination had not yet been published his delegation was at this stage not in a position to provide detailed answers to the points raised by the delegation of the United States but it was prepared to provide more specific information at a later date.

160. The representative of the United States asked on what date provisional measures had been imposed on this proceeding.

161. The representative of Korea said that so far no decision on the imposition of provisional measures had been taken in this case.

162. The Committee took note of the statements made.

Date of the next regular meeting

163. The Chairman said that, in accordance with the decision taken by the Committee in April 1981, the next regular meeting of the Committee would take place in the week of 21 October 1991.