

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

ADP/M/40

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Special Distribution

Committee on Anti-Dumping Practices

MINUTES OF THE MEETING HELD ON 26-27 AND 29 APRIL 1993

Chairman: Mr. David Walker (New Zealand)

1. The Committee on Anti-Dumping Practices ("the Committee") held a regular meeting on 26, 27 and 29 April 1993.
2. The Committee adopted the following agenda:
 - A. Election of Officers
 - B. Acceptance of the Agreement (ADP/M/39, paragraphs 5-6)
 - C. Examination of Anti-Dumping Duty Laws and/or Regulations of Parties to the Agreement (ADP/1 and addenda)
 - (i) Korea (ADP/1/Add.13/Rev.1/Suppl.2)
 - (ii) Brazil (ADP/1/Add.26/Suppl.3 and 4)
 - (iii) Australia (ADP/1/Add.18/Rev.1/Suppl.6 and 7)
 - (iv) Romania (ADP/1/Add.9/Rev.1)
 - (v) Laws and/or Regulations of other Parties to the Agreement (ADP/M/39, paragraphs 43-46)
 - D. Report by the Chairman of the Committee on Anti-Dumping Practices on Informal Consultations regarding the Semi-Annual Reports (ADP/M/39, paragraphs 89 and 218)
 - E. Semi-annual reports of Parties to the Agreement on anti-dumping actions taken by Parties to the Agreement during the period 1 January-30 June 1992 (ADP/81/Add.10, 11, 12, and Add.13/Corr.1), and 1 July-31 December 1992 (ADP/88 and addenda)
 - F. Reports on all preliminary or final anti-dumping duty actions (ADP/W/327, 328, 330, 331 and 332)
 - G. 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/39, paragraphs 92-99)

- H. United States - Imposition of Anti-Dumping Duties on Imports of Fresh and Chilled Atlantic Salmon from Norway - Report of the Panel (ADP/87)
- I. Korea - Anti-Dumping Duties on Imports of Polyacetal Resins from the United States - Report of the Panel (ADP/92 and Corr.1)
- J. Mexico - Anti-Dumping Duties on Electric Power Transformers from Brazil - Request by Brazil for conciliation under Article 15:3 of the Agreement (ADP/91)
- K. Mexico - Anti-Dumping Proceedings on Imports of Regenerated Cellulose Casing from Spain (ADP/M/39, paragraphs 150, 155-156)
- L. United States - Anti-Dumping Investigations of Imports of Certain Circular Welded Steel Pipes and Tubes from Mexico and Brazil (ADP/M/39, paragraphs 165-176)
- M. United States - Anti-Dumping Investigation of Imports of Steel Wire Rope from Mexico (ADP/M/39, paragraphs 177-179)
- N. Mexico - Anti-Dumping Proceedings on Imports of Fabrics of Cotton and Cotton Blends with Man-Made Fibres from Hong Kong, Argentina, Brazil, Pakistan and other countries (ADP/M/39, paragraphs 49-70)
- O. Canada - Anti-Dumping Action on Carbon Steel Welded Pipes from Brazil (ADP/M/39, paragraphs 72-75)
- P. EC - Anti-Dumping Investigation of Imports of 3.5" Magnetic Disks from Hong Kong (ADP/M/39, paragraphs 205-212)
- Q. United States - Anti-dumping Duties on Gray Portland Cement and Cement Clinker from Mexico - Report of the Panel (ADP/82 and ADP/M/39, paragraphs 100-107)
- R. Other Business
 - (i) Acceptance of the Agreement by the Czech Republic and the Slovak Republic (ADP/95 and 96).
 - (ii) Communication from the Delegation of the European Communities regarding terms of reference of the Panel on "EC - Anti-Dumping Proceedings on Imports of Audio Tapes in Cassettes from Japan" (ADP/94).
 - (iii) Training Workshop for developing countries on Anti-Dumping Investigations
 - (iv) United States - Delays in Administrative Reviews and Revocations

- (v) The European Community - Initiation of an anti-dumping proceeding concerning imports of certain television camera systems originating in Japan
- (vi) Mexico - Anti-Dumping action against certain products exported from Hong Kong
- (vii) Comments by the EC on provisional and definitive measures taken by the United States on certain steel products from a number of member States of the EC
- (viii) United States - Anti-circumvention action on Canadian exports of brass plates
- (ix) United States - Changes to the practice of collection of anti-dumping duties for the provisional period
- (x) United States - Proposed changes to the regulations on exclusion of companies from anti-dumping investigations

A. Election of Officers

3. The Committee elected Dr. David Walker (New Zealand) as Chairman and Mr. Mohan Kumar (India) as Vice-Chairman.

B. Acceptance of the Agreement

4. The Chairman recalled that in April 1991, Argentina signed the Agreement subject to ratification. At the meeting in October 1992, the observer from Argentina had indicated that the ratification process would be completed in the near future. He asked the observer from Argentina to provide some information on the current status of this process.

5. The observer from Argentina informed the Committee that the Constitutional process had been concluded and the country's Congress had ratified the Agreement. The process of internal legislation was being concluded, and Argentina intended to officially notify the ratification in the next 60 days.

6. The Chairman welcomed the news from the observer from Argentina. The Committee took note of the statements made, and decided to delete this matter from the agenda of its next meeting.

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

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

7. The Chairman recalled that at the meeting in October 1992 the representative of Korea had explained the amendments to the Korean Customs Act (ADP/1/Add.13/Rev.1/Suppl.2). Recently, the

Committee had received written questions from the delegation of Hong Kong on the participation of experts in investigations under the amended Korean legislation (ADP/W/332). The Chairman asked the representative of Korea to provide oral answers to the questions for Hong Kong, to be followed by a written text to be circulated later to the Committee.

8. The representative of Korea explained that pertinent experts such as certified public accountants, engineering technicians and computer programmers were used in anti-dumping investigation in Korea to utilize their highly specialized professional knowledge and skills. The experts were not allowed to get involved in the judgement process, preliminary or final, following the investigation. To preserve impartiality, the experts, selected on the basis of criteria such as experience, professional education and qualifications, would not come from the industries filing the complaints. The experts were allowed to use information necessary to conduct the investigation at hand, but not any information exceeding the area of their activities. The experts were under oath not to disclose the information acquired by them during the investigation, and not to use it for any objectives other than the investigation at hand. Thus there was no difference between government officials and these experts in the way in which they handled the information provided to them. If exporters subject to the investigation insisted that certain information not be disclosed to the experts, the investigating authorities may in certain circumstances disregard the information, provided that the provisions of Article 6:4 of the Agreement were met.

9. The representative of Hong Kong said that he would relay the answers to his capital and was looking forward to receive the answers in writing.

10. The representative of Canada enquired whether there was any sanction or penalty that could be applied to these experts if the oath taken by them was not honoured. He then referred to the statement in paragraph 13 of Article 4.5 of the revised legislation that even if an investigation was suspended or terminated, the Customs and Tariff Deliberations Committee shall report the results and the necessity of anti-dumping measures within three months, and wondered why such a report was necessary in the case of investigations which had been terminated.

11. The representative of Korea stated that answers to the questions from Canada would be provided after receiving a written text of the questions.

12. The Chairman suggested that the delegation of Canada provide its questions in writing to the delegation of Korea, and that the delegation of Korea put its responses to questions from Hong Kong and Canada in writing for circulation to the Committee. Delegations wishing to raise further questions on this legislation were requested to provide their questions well in advance of the next regular meeting of the Committee in order that the delegation of Korea could provide written responses prior to that meeting.

13. The Committee took note of the statements made, and decided to revert to this matter at its next regular meeting.

(ii) Brazil (ADP/1/Add.26/Suppl.3 and 4)

14. The Chairman drew the Committee's attention to document ADP/1/Add.26/Suppl.3, which notified the recent amendments to the Brazilian anti-dumping legislation. He recalled that the representative of Brazil had commented on these amendments at the meeting in October 1992, and asked whether he had any further information to provide to the Committee.

15. The representative of Brazil said that he did not have any additional information on the recent amendments to the Brazilian anti-dumping legislation.

16. The Committee took note of the statements made, and decided to revert to the amendments to the Brazilian legislation notified in ADP/1/Add.26/Suppl.3 at a future meeting if requested by any delegation.

17. The Chairman then drew the Committee's attention to document ADP/1/Add.26/Suppl.4 which notified the establishment by Brazil of a Working Group on safeguarding the domestic market against unfair practices in international trade.

18. The representative of Brazil said that document ADP/1/Add.26/Suppl.4 had been circulated for maintaining transparency. In this regard, he also mentioned that the authorities responsible for anti-dumping practices in the MERCOSUR countries had been meeting in order to assess the possibility of concluding the project on harmonizing legislation.

19. The Committee took note of the statements made.

(iii) Australia (ADP/1/Add.18/Rev.1/Suppl.6 and 7)

20. The Chairman recalled that the delegation of Australia had informed the Committee in document ADP/W/326 on the recent changes to the Australian anti-dumping law. The representative of Australia had addressed these changes at the regular meeting in October 1992, and the changes were subsequently circulated in document ADP/1/Add.18/Rev.1/Suppl.6, dated 6 January 1993, which reproduced (1) the Customs Legislation (Tariff concessions and Anti-Dumping) Amendment Act 1992 (No. 89 of 1992) and, (2) the Customs Tariff (Anti-Dumping) Amendment Act 1992 (No. 90 of 1992), together with the Explanatory Memoranda for the introduction of this legislation and the Second Reading Speech by the Minister.

(a) The Customs Legislation (Tariff concessions and Anti-Dumping) Amendment Act 1992 (No. 89 of 1992) , and the Customs Tariff (Anti-Dumping) Amendment Act 1992 (No. 90 of 1992) (ADP/1/Add.18/Rev.1/Suppl.6)

21. The representative of Australia explained that two pieces of legislation were involved in the changes because under the Australian Constitution, duties were imposed under the taxing Act which did not include the administrative procedures. Thus, it would be appropriate to handle both amendments together. He recalled that a detailed outline of what the changes involved was provided at the last meeting, and said that he would consider any questions raised by the members of the Committee.

22. The Chairman agreed with the suggestion to handle the two pieces of legislations together.

23. The representative of Finland referred to the comments by the Nordic countries at the last meeting (ADP/M/39, paragraph 33), and said that (a) the shortened time-frame for the decision to undertake the anti-dumping or countervailing investigations may result in unsubstantiated decisions due to time pressure; (b) provisions regarding cumulation across allegedly dumped and subsidized imports might result in unfounded determinations of injury, which would not be consistent with Article VI and the Agreement; (c) definition of industry to cover vertical integration of agricultural and horticultural industries expanded the definition of domestic industry over its present scope; (d) the extension of the sunset clause from three to five years was more restrictive; and, (e) asked for information on the effect, particularly on exporters, of Australia's changed methodology for imposition of anti-dumping duties.

24. The representative of Canada said that the amendments regarding the collection of duties would make the Australian system more complex to administer and less administratively efficient. He noted that the current system was similar to the Canadian system where the payment of anti-dumping duty was generally settled as the goods cleared customs. This system had the advantage of allowing exporters to avoid the assessment of anti-dumping duties by pricing up to the normal value. Under the new system, however, Canada's understanding was that the final anti-dumping duties would not be determined until after clearance through the customs, thus adding to uncertainty and imposing cost penalties on exporters. The lengthy time taken to determine duties would affect an exporter's financial position, and in the event that it was determined that the interim duty was higher than the final duty, the exporter would have to wait months to have the situation rectified and could conceivably risk losing market share. Canada had much experience and many problems with other jurisdictions, notably the United States, where systems for levying anti-dumping duties of this sort effectively acted as an undue barrier to trade. Thus, the Canadian view was that the change in the Australian system made it less transparent and took it in the direction of unduly impeding trade.

25. The representative of Japan expressed lack of satisfaction with the Australian response regarding cumulation in the October 1992 meeting of the Committee. He said that Article 3:4 of the Agreement stated that "the injury caused by other factors must not be attributed to the dumped imports", and Article 6:4 of the Subsidies Agreement stated that "the injury caused by other factors must not be attributed to the subsidized imports". Therefore, the effect of dumped imports and of subsidized imports should be analyzed separately. Japan requested that the Australian Government give further consideration to this issue.

26. The representative of Hong Kong referred to paragraph 35 of the minutes of the previous meeting of the Committee (ADP/M/39), and expressed concerns similar to those raised by the Nordic delegation. Some other questions on the Australian legislation might be provided shortly by Hong Kong.

27. The representative of Singapore said that her authorities were carefully examining the Australian legislation, and would like to refer to this matter at a future meeting.

28. The representative of Australia said that some of the points made related to document ADP/1/Add.18/Rev.1/Suppl.7 which had not been dealt with as yet, and he would deal with those points subsequently. He recalled that many of the concerns had been expressed at the previous meeting of the Committee. He took note of the comments made at the present meeting, and said that these would

enable the Australian authorities to adequately address the problems that existed in making a finding where dumping and subsidy both occurred. The change in the legislation reflected the difficulty in many cases to identify the extent to which a subsidy was reflected in the price. Unlike the case of dumping a subsidy was not always reflected in the price, and it was not possible to distinguish between injury caused by dumping and that caused by subsidy when both existed. The changes made by Australia made it clear that anti-dumping and countervailing duties would not be imposed in respect of the same situation, as outlined in GATT Article VI:5. Under the previous legislation, there was at least a potential that the authorities would be forced to double-count in this context. He also noted that the members of the Committee had not raised any specific questions on the legislation, and stated that Australia would answer any questions on this matter if these questions were provided in writing.

29. The Chairman said that delegations wishing to raise further questions on this legislation should do so well in advance of the next regular meeting of the Committee in order that the delegation of Australia can provide written responses prior to that meeting. The Committee took note of the statements made, and decided to revert to this matter in the regular meeting.

(b) Customs Legislation (Anti-Dumping Amendments) Act 1992 (No. 207 of 1992), and Customs Tariff (Anti-Dumping) Amendment Act 1992 (No. 206 of 1992) (ADP/1/Add.18/Rev.1/Suppl.7)

30. The Chairman said that Australia had also notified its (a) Customs Legislation (Anti-Dumping Amendments) Act 1992 (No. 207 of 1992), together with the Second Reading speech by the Minister and the Explanatory Memorandum for the introduction of the above legislation, and (b) Customs Tariff (Anti-Dumping) Amendment Act 1992 (No. 206 of 1992), together with the Second Reading speech by the Minister and the Explanatory Memorandum for the introduction of the above legislation. These laws had been circulated to the Committee in document ADP/1/Add.18/Rev.1/Suppl.7, which was available in the room in English only. Making a general comment not directed to this legislation in particular, the Chairman drew the Committee's attention to the need to get the documents to the Secretariat well in advance of the meeting in order that they may be translated and circulated to delegations in sufficient time so that they could be considered prior to the meeting.

31. The representative of Australia noted that the legislation referred to had received Royal assent on the 21 December 1992, but was foreshadowed by an announcement about twelve months previous to that by the Minister for Industry, Technology and Commerce. The new system for the collection of dumping duties had come into operation on 1 January 1993 and applied to the actions introduced from that date. This system had essentially three elements: (a) a concept where an interim duty will be imposed and collected on each consignment of goods subject to anti-dumping duties; (b) a provision where an importer could claim reimbursement of any excess interim duty paid where it could be shown that the actual duty payable was less than the total interim duty paid in a six-month period; and, (c) a provision for review of the interim duty level after the duty had been in place for one year and on a yearly basis thereafter.

32. The representative of Australia said that for interim duties, there was a requirement to publish in the formal notice of the positive finding the details of the ascertained normal values, export prices and non-injurious prices for the goods which would be subject to provisional or definitive duties, unless the release of such details contained information regarded by an interested party as confidential. The

interim duty was then collected as the difference between the ascertained value (or the ascertained non-injurious price if that was lower) and the ascertained export price of the goods, irrespective of the invoiced export price of the particular export consignment. The interim duty may be levied on an ad valorem basis, as a price per unit quantity, or a combination of the two. This "up front" payment of an interim duty was one of the key reforms to ensure that Australian industry obtained adequate relief from injurious dumping. The legislation also recognized that exporters might react to the imposition of measures by a further reduction in the export price to offset, or partly offset the dumping duties. In such a situation, the interim duty payable would include an amount equal to the difference between the actual export price of the goods and the ascertained export price.

33. Following a positive preliminary finding by Customs, securities would be calculated and collected using essentially the same method as for an interim dumping duty. However, any security collected would be based on the difference between the normal value and the export price of the goods as ascertained by Customs during the preliminary finding inquiry. Non-injurious price would not be considered in calculating the level of security during a period of provisional measures. The interim normal values and export prices ascertained by Customs would be re-examined in the final finding inquiry, and in that inquiry consideration would be given to a non-injurious price or to a lesser duty sufficient to remove injury. If the re-examination would establish that the interim duty liability for the period of the final finding was less than the amount of securities collected, the additional securities would be promptly refunded. After a final finding, if any importer establishes that the actual duty liability during the preliminary finding stage was less than the securities collected, a further refund would be made to ensure that only the actual duty liability during that period would be collected.

34. The new legislation allowed importers, exporters and the local industry to apply for a review of the interim duty rate one year after it had been set and at yearly intervals thereafter. Exporters of goods subject to anti-dumping measures, which were not included in the initial inquiry, or subsequent review, may also apply for a review of duty rates after the expiry of one year. The Minister had the discretion to initiate a review of duty rates at any time during the period when the measures were in place. The review process had to be completed by Customs within 120 days.

35. Regarding refunds, the representative of Australia said that after a period of six months, and at six monthly intervals during which measures applied, an importer may apply to Customs for a duty assessment, with sufficient details for a full assessment. The Customs would process the application within 180 days and calculate the actual duty liability by ascertaining the normal value and export price pertaining to each consignment of the goods in the relevant importation period. If the interim duty collected exceeded the actual duty paid for a particular importation period, the difference would be refunded in full. However, if the liability exceeded the interim duty, the additional amount would not be collected. The decisions of the Customs would be appealable to the Anti-Dumping Authority.

36. The representative of Australia said that this new system of collecting anti-dumping duty represented a positive step in maintaining consistency of Australia's anti-dumping legislation with the Agreement, in particular it provided for a more equitable collection of anti-dumping duty consistent with Article 8:3 of the Agreement. Under the old system, duties were collected as the difference between a normal value or non-injurious price determined on prospective basis at the time of the inquiry and the export price of each specific consignment. This method might have precluded the importer from

any refund of duty which might have been overpaid as a result of changes in the normal value during the period in which the prospective normal value applied. Also, earlier there was a long and difficult process for a normal value to be reviewed whereas under the new procedure the review process was an automatic one. The new procedure overcame the previous deficiencies in the normal value and export price arrangements as part of the refund procedure. This approach ensured that any interim duty collected which was later found to be in excess of the actual duty liability would be refunded in a reasonable period of time.

37. Further, the representative of Australia pointed out that the lesser duty rule applied throughout the process and that process was also subject to review during the review of the duty liability procedure which occurred annually. Although non-injurious prices were not considered in calculating the amount of security during the period of final finding, the procedure did ensure that any securities that were in excess of a lesser duty rule subsequently established during the final finding did result in a refund of duties or securities in excess of the actual duty liabilities. Therefore, it was Australia's view that the legislation was consistent with its GATT commitments and provided a reasonable basis to strike a balance between the need as perceived by Australia to ensure that anti-dumping duties be effective in providing relief to domestic industry subject to injurious dumping, and for a reasonable and expeditious means to refund any excess duties collected.

38. The representative of Canada recalled that the Minister introducing this legislation in the House had commented that "the Government considers it a more effective way to apply duties and strengthen the overall operation of the anti-dumping and countervailing systems can be achieved with an approach similar to that used by the United States and the European Community." While on paper those systems might seem good, Canada's experience had been that they had got caught up in various administrative delays and problems. He said that the object of the Agreement on anti-dumping investigations was not to impose anti-dumping duties. Rather, the object was to ensure that the exporters cease dumping and the previous system in Australia, which reflected more the Canadian system, achieved that end quite admirably. He also asked the Australian representative to give some indication on how often the lesser duty rule was applied.

39. The representative of Australia agreed that the previous procedures in Australia were simpler from the exporters point of view in that they established the price at which the exporters could export to Australia and not pay any duty. The problem, however, was that the process of re-establishing normal values was often tedious and difficult, particularly where an upward revision was necessary. The Australian experience was that in many cases the procedure did not provide Australian industries with any relief where injurious dumping continued. Nevertheless, he took note of the comments made about the administrative complexity and the fact that countries had reservations about similar systems operated by other authorities. He assured the Committee that his authorities would implement the new system to the best of their abilities to ensure that it did not present in any way an inhibition to trade. Regarding the specific details on the application of the lesser duty rule, he stated that the lesser duty rule was commonly applied. He would provide a response on how often the lesser duty was applied and if possible, the extent to which it differed from the normal value.

40. The Chairman said that delegations wishing to raise further questions on this legislation should do so well in advance of the next regular meeting of the Committee in order that the delegation of

Australia can provide written responses prior to that meeting. The Committee took note of the statements made, and decided to revert to this matter in the next regular meeting.

(iv) Romania (ADP/1/Add.9/Rev.1)

41. The Chairman recalled that at the regular meeting in October 1992, the representative of Romania had informed the Committee that Romania had adopted a new anti-dumping regulation in Decision 228 of 7 May 1992, and that on the basis of this decision, Romania's Ministries of Trade, Economy, Tourism and Finance had adopted in Joint Order 128 rules of procedures applying to an Anti-Dumping Commission to draft the regulations. The Committee had before it document ADP/1/Add.9/Rev.1 which provided an unofficial English translation of (a) Government Decision No. 228 of 7 May 1992 on the protection of domestic producers against unfair competition resulting from the import of certain goods at dumped or subsidized prices, as well as against the export at prices lower than those in the domestic market; (b) Order No. 127 of 20 August 1992 of the Minister of Trade and Tourism on working rules of the Commission for anti-dumping, countervailing duties and safeguard measures; and, (c) Joint Order No. 128 of 24 August 1992 of the Minister of Trade and Tourism and the Minister of Economy and Finance on the rules of application and procedures for the establishment of anti-dumping duties, countervailing duties and safeguard measures.

42. The representative of Romania recalled that Romania was a party to the Agreement since 1980. The Agreement was ratified by Decree No. 183, dated 11 June 1980, and consequently it became part of the national legislation. No specific internal rules and procedures were in force before 1992. Since 1990, in the process of transition to a market economy in Romania, trade policy instruments and mechanisms based on the GATT principles and rules started to be enforced and implemented. Within this general legal framework specific regulations on anti-dumping principles, rules and disciplines had also been adopted. First, the Government Decision No. 228, dated 7 May 1992, established the general legal framework intended to protect domestic producers against unfair competition, including the possibility to take anti-dumping measures. By this Government Decision, the Minister of Trade was called to elaborate working rules of the Commission for anti-dumping, and rules of application and procedures for establishment of anti-dumping duties. In this context, on 20 August 1992, the Minister of Trade issued Order No. 127 on working rules for the Commission for anti-dumping, countervailing duties and safeguard measures. On 24 August 1992, the Minister of Trade and the Minister of Finance issued the Joint Order No. 128 on the rules of application and procedures for the establishment of anti-dumping duties, countervailing duties and safeguard measures. These regulations formed the full package and had to be analyzed together. In the elaboration of the national anti-dumping rules, due consideration had been given to the provisions of Articles VI of the General Agreement and of the Agreement. No investigations had been opened since these regulations had been in force. The Romanian authorities intended to apply these regulations in the spirit and letter of the General Agreement and of the Agreement. They were confident that in examining these regulations, the members of the Committee would take into consideration the efforts made by the Romanian Government in the reform process. The delegation of Romania was prepared to answer questions and provide clarifications on the legislation.

43. The representative of Canada requested that the three different parts of the Romanian legislation be retained on the agenda of the next meeting.

44. The representative of Brazil said that the legislation of Romania had to be examined as a whole, and suggested that the Committee revert to it as a whole at another meeting.

45. The Chairman opened the floor for comments on the entirety of the legislation, i.e. all the three parts.

46. The representative of Japan noted that Article C.8.b.ii in the Joint Order No. 128 stated that in constructing export prices anti-dumping duties shall normally be included for adjustment. So, anti-dumping duty paid was deducted from the export price and therefore caused dumping margins even if actual dumping margins did not exist. Japan was strongly concerned about this provision, and would like to give further consideration to this legislation.

47. The Committee took note of the statements made, and decided to revert to the entirety of the legislation of Romania (ADP/1/Add.9/Rev.1) at its next regular meeting. The Chairman said that delegations wishing to raise further questions on this legislation should do so well in advance of the next regular meeting of the Committee in order that the delegation of Romania can provide written responses prior to that meeting.

(v) Laws and/or Regulations of other Parties to the Agreement.

(a) Hungary

48. The Chairman recalled that at the regular meeting held in October 1991, the Committee had heard a statement of the representative of the EC regarding an Anti-Dumping Decree recently enacted by Hungary (ADP/M/35, paragraphs 133-134). Written questions on this decree had subsequently been submitted by the EC in document ADP/W/306. At the regular meeting of the Committee in October 1992, the representative of Hungary stated that a full internal review of the text was being carried out by the competent authorities to amend it or if necessary to replace it. The review was to be completed soon so that new regulations could be introduced in the beginning of 1993, and Hungary was to notify the Committee of the regulations arising out of this review as soon as possible.

49. The representative of Hungary recalled that the Agreement was incorporated in the Hungarian legislation in 1980. In December 1990 some further rules were added in another government Decree. As informed earlier, a total revision of that Decree was underway. This revision did not concern the rules of the Agreement, which would remain part of the Hungarian domestic law. During the total revision, it became clear that the various Government Ministries and other bodies wished to prepare more detailed material and procedural regulations on anti-dumping and countervailing duty procedures. This required more time than was initially envisaged. Besides, this draft was being prepared with the involvement of independent international experts. The work had still not been accomplished, and the new regulation would be notified as soon as possible. He added that the transitional situation did not cause any harm to the members of the Committee because Hungary had not taken any anti-dumping action up to now.

50. The Committee took note of the statements made, and agreed to revert to this item at its next regular meeting.

(b) Anti-Dumping Legislation/Regulations of countries which are not Parties to the Agreement

51. The Chairman recalled that at the regular meeting of the Committee in October 1992, the Secretariat had been requested to prepare a list of countries, including countries not Parties to the Agreement, which had adopted anti-dumping legislation (ADP/M/39, paragraph 47). The legislation of the Parties to the Agreement was given in documents ADP/1 series. The Secretariat had information that among those not Party to the Agreement, Argentina, Bolivia, China, Colombia, Indonesia, Israel, Malaysia, Morocco, Peru, South Africa, Thailand had either adopted or were considering adopting anti-dumping regulations. The Secretariat had sought further information on this aspect in the process of updating its record of the anti-dumping legislation of contracting parties (Let/1806 of 8 March 1993). Of the 75 parties to which Let/1806 was sent, eleven replied. These replies showed that a number of contracting parties which were not Parties to the Agreement had either adopted legislation on anti-dumping or were in the process of doing so. These were Chile, Iceland, Jamaica, the Philippines, Turkey, Trinidad and Tobago, and Venezuela. Though the contracting parties were asked to provide the relevant information by 31 March 1993, the Secretariat was still receiving some replies in April, and some additional information might be further provided. The Secretariat would circulate an initial list of contracting parties with anti-dumping legislation prior to the next regular meeting.

D. Report by the Chairman of the Committee on Anti-Dumping Practices on Informal Consultations Regarding Semi-Annual Reports

52. The Chairman recalled that Mr. Armando Ortega, as Chairman of the Committee had conducted informal consultations regarding the semi-annual reports. He invited Mr. Ortega to report to the Committee the results of his consultations.

53. Mr. Ortega, the former Chairman, said that in March 1993, he held informal consultations on the possible improvements in the semi-annual reports under Article 14:4 of the Agreement. A number of views were expressed including that the information in the reports needed to be better organized, and in some cases additional explanation of the data was required for certain categories. It was suggested that additional information (for example, on refunds) should be included in the report.

54. Some Parties explained that certain data could not be provided because it was confidential, particularly if the data was company-specific. It was suggested that there might be other technical reasons for the data not being provided in the reports, and it was recognized that there was a need to make greater efforts to identify those cases where the data had not been provided for such technical reasons or for reasons of confidentiality.

55. The format of the reports was considered acceptable and in principle there was no need to change the format. Rather, the attempt should be to clarify the information provided in the report. Some delegations had expressed the view that the rôle of the semi-annual reports was not to provide all the information on anti-dumping actions, but to be a source of information which could be complemented with the public announcement or notice of any action which was, or should be, published in the official journal of the country taking the action. In this regard, it was pointed out that though the Agreement obliged the Parties to submit information on their notices, many Parties did not comply with the

requirement. It was also indicated that in view of the current availability of resources in some countries, they would find it difficult to submit the public notices in GATT official languages.

56. Some delegates had recalled that many of the current issues of concern had been discussed earlier, but several data were still not available, and experience suggested that problems in the reports were due to the data in these reports not being adequately provided by the capitals. In this context, it was recognized that there was a need for the members of the Committee to monitor the semi-annual reports more closely so as to make a better contribution to improving the information content provided by the capitals.

57. The former Chairman said that as acting Chairman at the time of the consultations, he had drawn up a note which had been distributed to the Committee in document ADP/W/333. This was prepared in his own capacity, and was an effort in good faith. It was up to the members of the Committee themselves, and up to the delegations from the capitals to indicate their practical problems and their comments regarding document ADP/W/333.

58. The representative of Japan stressed the importance of reporting accurate information at the appropriate time, and welcomed the suggestions by the former Chairman in ADP/W/333, in particular with regard to paragraph 15 of that document. Japan emphasized the importance of providing the list of outstanding measures at the end of the reporting period and of the measures revoked during the reporting period. Japan had some concern on this matter because some countries submitted this list in a confusing manner, for example, by mixing anti-dumping measures with countervail measures, or mixing price undertakings with anti-dumping findings. Also, Japan's view was that to ensure transparency, the refund investigations should also be included in the reports. The former Chairman had referred to the difficulty in getting refund data because of confidentiality, but Japan's view was that ways could be found to manage the provision of such data.

59. The representative of Australia recalled that a number of delegations had commented in the past meetings on the lack of details provided by some users of the Agreement, particularly with respect to columns 11 to 14 of the standard returns that were provided, and a propensity of some delegations to put "N/A" or "not available" in those columns. This criticism was fairly directed at Australia, which had examined the possibility of providing more information but the data was commercially sensitive (and hence confidential) in virtually all cases taken by Australia because there were only one or two suppliers from the countries against whom action was taken.

60. The representative of Hong Kong said that the examination of semi-annual reports was one of the important obligations of this Committee as required under the Agreement, and the Committee was the only multilateral forum where the question of conformity and consistency of the anti-dumping measures could be addressed from the beginning to the end of the proceedings. It was therefore necessary to ensure that the requisite information was available with the Committee in order to fulfil such obligations. The suggestions in ADP/W/333 pointed in this right direction, and the delegation of Hong Kong fully supported all the suggestions made in that document. However, two clarifications were sought. First, regarding suggestion number 3, Hong Kong wished to confirm whether the order referred to the dates of initiation, and for suggestion number 19 whether the cases pending included both the investigation and the review.

61. The representative of Brazil said that Brazil also attributed a lot of importance to the reports. There were some technical problems, however, in the suggestions made by the former Chairman. For example, regarding the suggestions for providing the information in alphabetical order, there would be some difficulty in deciding which language would be used for the alphabetical order. Nonetheless, Brazil recognized that the former Chairman's idea was a constructive one and this step had to be taken.

62. The representative of the United States endorsed the move in the direction of greater transparency and stated that his delegation would continue to study the note provided by the former Chairman and may have further comments.

63. The representative of Canada said that many of these suggestions were very useful. Canada would study these in more detail to give a definitive response. A balance could be achieved between transparency without unduly burdening the members of the Committee.

64. The Committee took note of the statements made, and agreed to revert to the suggestions in document ADP/W/333 at its next regular meeting. The Chairman noted that these suggestions provided the basis for further study as indicated by the members of the Committee. Further, it was clear that the gap in the information on anti-dumping actions arising due to non-provision of public notice was a serious one and should be discussed by the Committee. The Chairman said that in view of the difficulty for certain countries to submit the notices in the language required, it seemed that there was perhaps a need to provide a standard format for submitting information on notices by countries whose notices of anti-dumping actions were not in one of the GATT languages. The Chairman proposed to hold consultations on that matter.

E. Semi-annual reports of Parties to the Agreement on anti-dumping actions taken by Parties to the Agreement during the period 1 January-30 June 1992 (ADP/81/Add.10 to 13/Corr.1) and 1 July-31 December 1992 (ADP/88 and addenda)

65. The Chairman recalled that the Committee had agreed that the agenda item under which the semi-annual reports for the period 1 July to 31 December 1992 were to be examined would also include an examination of those reports for the previous period which had not been examined by the Committee due to late submission of those reports. Thus, under this agenda item, the reports to be examined were ADP/88 and addenda, ADP/81/Add.10 to 13/Corr.1, and ADP/70/Add.11.

66. The following Parties had informed the Committee that they had not taken any anti-dumping actions during the second half of 1992. They were the Former Czech and Slovak Republic, Egypt, Finland, Hong Kong, Norway, Pakistan, Poland, Romania, Singapore and Yugoslavia. No reports had been received from Hungary and Switzerland. The reports of the Parties which had taken actions in the second half of 1992 were examined in the order in which they had been received, along with the reports for the previous year which had not been examined earlier.

67. The representative of Hungary informed the Committee that due to a clerical error, the report by Hungary was not forwarded in time. He confirmed that Hungary had not taken any anti-dumping action in the second half of 1992.

New Zealand (ADP/88/Add.2)

68. No comments were made on this report.

Austria (ADP/88/Add.3 and ADP/81/Add.11)

69. The Chairman noted that the Committee had before it two documents from Austria. Document ADP/81/Add.11 provided Austria's semi-annual report for the first half of 1992, and document ADP/88/Add.3 provided Austria's semi-annual report for the second half of 1992. Both these reports showed the same four cases which were initiated on 22-4-1992. The only difference was that in the previous report, the actions were reported against imports from the Czech and Slovak Federal Republic, and in the latter report the actions were reported against the Czech Republic.

70. No comments were made on this report.

Brazil (ADP/88/Add.4)

71. The representative of India noted that a definitive duty was imposed by Brazil on 2 October 1992 on sacks and bags of jute from India. India was in contact with Brazil to seek a better understanding of the justification of the definitive duty, and was confident about getting the required information.

72. The Committee took note of the statements made.

Japan (ADP/88/Add.5 and ADP/81/Add.13/Corr.1)

73. The Chairman noted that both the reports from Japan, i.e. ADP/88/Add.5 and ADP/81/Add.13/Corr.1, provided the same information, namely the initiation of three cases on 29 November 1991.

74. No comments were made on this report.

Korea (ADP/88/Add.6)

75. The Chairman recalled that at the regular meeting in October 1992, it was noted that Korea had not submitted its report for the first half of 1992. Subsequently Korea had informed that it had not taken any anti-dumping actions during that period. Korea's report for the second half of 1992 was in ADP/88/Add.6.

76. No comments were made on this report.

India (ADP/88/Add.7 and ADP/81/Add.12)

77. The Chairman noted that document ADP/88/Add.7 provided India's semi-annual report for the second half of 1992, and document ADP/81/Add.12 provided the report for the first half of 1992.

78. The representative of Brazil referred to the investigation mentioned in document ADP/81/Add.12 relating to PVC resin from Brazil. This investigation was not mentioned in the following report, but Brazil had been informed that the investigation had followed its course and was still going on. Though Brazil had some doubts about some aspects of the determination in this case, it had been informed that the Indian authorities were endeavouring to conduct the investigation fairly. The Indian Government and the Brazilian Embassy in New Delhi were in contact on the matter, and the representative of Brazil was confident that both Governments will find a satisfactory understanding on this matter.

79. The Committee took note of the statements made and agreed to revert to this matter if requested by any delegation.

Mexico (ADP/88/Add.8)

80. The representative of Hong Kong recalled that at the last meeting the delegation of Hong Kong had mentioned that his Government had sent a letter to the Mexican Government on 23 April 1992, with two subsequent letters on 12 June 1992 and 25 November 1992, regarding the anti-dumping action on denim from Hong Kong (reported on page 4 of Mexico's report). Though the representative of Mexico had mentioned at the last meeting that he would provide copies of Mexico's response to these letters, Hong Kong had not received any such copies for either of these letters. Hong Kong would appreciate getting some response (or copies of the responding letter) at an early opportunity.

81. The representative of Brazil pointed out that on page 1 of the Mexican report, there was a reference to an investigation on Brazilian ceramic wall tiles. In column 3, the report mentioned that the initiation of the investigation was on 3 January 1990, and in column 4 the date for provisional measures is given as 27 November 1992. The footnote to this last date indicated that the case dealt with an initiation of an investigation or the initiation of a revision of the final decision, but there was no indication of definitive measures.

82. The representative of Mexico said that Hong Kong's letter had been answered, and he hoped to confirm that further in the course of the week. Regarding Brazil's point, possibly the translation of the word "compensatory quotas" from Spanish into English was literal and had been translated as countervailing duty which might give the impression that the report was on countervailing measures. This was not the case. On page 6 of ADP/88/Add.8, in column 3 the heading was countervailing duty, it should be anti-dumping duty. Regarding the case mentioned by Brazil also, the term should be "anti-dumping duty". All the relevant information would be provided to the delegation of Brazil, giving the exact date when the final decision was published. In accordance with the Mexican legislation and practice, final anti-dumping decisions were revised every year.

83. The representative of Brazil said that Brazil was recently informed that the Mexican authorities did have a definitive decision in this case. The Mexican authorities had undertaken a review on their own initiative. Although such initiative by the authorities might be welcome under some circumstances, the official Mexican law had a very brief and cryptic reference to justification of the review when the interested parties did not request the review and the duty was very low. This was a matter for concern for Brazil. Brazil might return to this issue after re-examining it.

84. The representative of Mexico clarified that the revision of the final decisions was for the sole purpose of giving due consideration to the rights of all parties involved, and for providing justification, including economic justification, of the existence of a final decision. He was surprised at the problem expressed by Brazil due to Mexico or any other country revising their final decisions, which Mexico did according to the recent amendments referred to earlier.

85. The Committee took note of the statements made and agreed to revert to this item at a future meeting if requested by any delegation.

Sweden (ADP/88/Add.9)

86. No comments were made on this report.

United States (ADP/88/Add.10)

87. The Chairman noted that the delegations might wish to comment on various aspects of ongoing and recent investigations by the United States on steel products, and in that context there would be an opportunity to provide comments under the next agenda item, i.e. preliminary or final anti-dumping actions.

88. The representative of Brazil noted that the United States' report was submitted at a rather late stage in the process of preparation for this meeting, and the Committee did not have access to this report till late last week. If the report by the United States had been received in advance the Committee's task of examining the situation resulting from the many actions could have been facilitated. On the basis of the information gathered about the relevant period, and without prejudice to further examination of the report itself, the delegation of Brazil addressed several aspects of the United States' anti-dumping actions in the second half of 1992, with specific focus on actions against steel products.

89. The representative of Brazil said that Brazil had been a target in every single anti-dumping case initiated by the United States' steel industry since the termination of the so-called VRAs in March last year. Brazil had requested consultations with the United States under Article 15:2 (document ADP/89 of 16 February 1993). Consultations were held on 26 February 1993. Brazil was concerned over the manner in which the United States' authorities had been conducting these investigations. For example, the United States Government seemed to be taking the position that steel cases were different and therefore the United States would not follow its own regulations and long-standing practices in these cases. There was no legal justification for this position.

90. In the case of Brazil, there were some additional factors to be considered. Authorities in the United States had subjected Brazilian companies to an upside-down special and differential treatment, not applied to any other respondent from any other country. Rather than getting better treatment, it would be now already an improvement for Brazil if its companies were not treated differently. The United States had entirely neglected Article 13 of the Agreement which was an integral part of an international Agreement duly accepted by the United States Government. For example, one supplier from Brazil to the United States had been included in the investigation despite the fact that it had no sales to the United States (the Brazilian delegation was not aware of any other supplier who had been

so treated). Also, the Brazilian economy had been labelled a "high-inflation area", and therefore the Brazilian exporters were liable to harsher treatment.

91. The representative of Brazil recalled that the Department of Commerce's preliminary anti-dumping determination on "certain hot rolled lead and bismuth carbon steel products" (or "lead bar") was published on 17 December 1992, and resulted in very high duties, i.e. 148.12 per cent. Brazil claimed that the cost of responding to all the steps of the investigations had eliminated the possibility of profitable participation in the United States' market, and illustrated this by referring to the Federal Register notice relating to lead bars which showed that a Brazilian firm had decided that the ongoing burden of repeatedly providing information for the investigation outweighed its commercial interests. Although the Brazilian respondents had provided information on the different sections of the United States' questionnaire, the Department of Commerce's determination was made on the basis of "BIA" or "best information available", and the petitioner's highest adjusted margin of 148.12 per cent was used as BIA. Brazil reserved its rights to revert to this case later. Brazil then focused on the case relating to "certain special quality hot rolled and semi-finished carbon and alloy steel products" (or "SBQ bar"), and said that several objectionable decisions and actions were taken by the United States' authorities in this case. For example, the petitioners had identified four Brazilian producers, but the Department of Commerce decided on its own to include another producer on the basis of an over-broad definition of the product. Also, the Department invoked a strange concept of inflation benefiting Brazilian exporters. These exporters were denied the difference in merchandise adjustment on the basis of the allegation that Brazil had a hyperinflationary economy. Besides the fact that the concept of hyperinflationary economy was a dubious one, the United States authorities never explained how denying an adjustment allowed in their own statute would help compensate for the possible distorting effects of what was considered "hyperinflation". Further, the Department of Commerce requested that the Brazilian companies provide cost information on a replacement cost basis even though the Department was fully aware that under Brazilian law records according to such a methodology were not maintained. Brazil then argued that the United States' authorities were evidently applying the upside-down special and differential treatment to Brazil in the case of "certain flat rolled steel products", for which there were four separate anti-dumping investigations and Brazilian exporters were subjected to investigations under all these cases. After determining that a Brazilian company would not be required to respond to questionnaires, the United States' authorities changed their mind and created a special investigation period just for that firm. Brazil said that it would provide further comments under the next agenda item. Brazil requested that the present report of the United States, which had been provided to the Committee only today, be kept on the agenda for the next meeting so that it could be examined more thoroughly.

92. The representative of the United States said that many of the remarks of the delegate of Brazil were connected with very specific issues of particular cases, and noted that the degree of detail which were extracted from the Federal Register notices indicated the importance placed by the United States on full transparency and explanation of the issues at stake. In all the cases which had reached a preliminary determination, it was the procedure to give a full disclosure including the calculations relating to the companies. The United States would respond in detail to each of the issues brought up by the companies in the course of the investigation, as well as any particular questions that Brazil wished to direct to them in the context of consultations or at the Committee meetings. Without knowing the particular details, it would be difficult to respond in more than a general fashion. He said that the issue of hyperinflation posed difficult problems for both the respondents and the authorities. Brazil was the

only country which the United States considered to have hyperinflation, i.e. generally more than 5 per cent per month. This required special methodologies. It was often possible that adjustments were claimed which would affect the cost, but would also result in a double counting.

93. The representative of the United States said that the notice reflected a detailed history on the use of BIA in the lead bars case. If the Brazilian company decided on its own that the necessary administrative expense of co-operating with the authorities was excessive, the authorities of the United States respected the decision. However, the authorities were left with little option but to use BIA in the assessment of the anti-dumping duty margin. Also, what the Brazilian delegate had characterized as special and differential negative treatment, particularly in the area of hyperinflation, was not seen that way by the United States' authorities which believed that hyperinflation was a fact of life and some adjustments had to be made for that. Regarding the replacement cost methodology, he said that this was a generally accepted method followed by the United States' authorities. This was not particularly burdensome because the only real adjustment to the normal accounts kept in Brazil was to state the value of materials to eliminate the change in the value of money over time between the date when the materials were purchased and held in inventory and actually used in the process. To fail to make adjustments like these would give distorted results which would not satisfy the requirements of the Agreement.

94. The representative of the United States said that their report had been submitted almost a month ago. It was returned some time later for clarification, and they had responded within twenty-four hours so that the report could be circulated.

95. The Chairman noted that the report was a particularly long one and caused some complications for the Secretariat in translating it into the appropriate form. He said that the delays in the information submitted to the Committee were regrettable, and urged all Parties to make every effort to provide reports as soon as possible. He emphasized that he was making this point in the context of several reports and not any particular report.

96. The representative of Brazil noted that the United States had a tradition of informing the Committee well through its preliminary reports. It had not been doing that for the steel cases. He suggested that even if the Secretariat had problems with the first version of the report, it should nonetheless provide the information.

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

Canada (ADP/88/Add.11)

98. No comments were made on this report.

EC (ADP/88/Add.12)

99. The representative of the Japan pointed that though five Japanese items were listed on the bottom of page 3 of this report, information on six Japanese cases was missing from this record though these

cases were under investigation. These cases were 3.5" magnetic discs, parts for gas-fuelled non-refillable pocket flint lighters, review for tapered roller bearings, review for compact disk players, review for electronic typewriters, and review for electronic weighing scales.

100. The representative of Japan said that both the new and review investigations by the EC had been delayed. For example, among the cases mentioned in the EC's semi-annual report, it took more than three years to reach definitive determination in the review investigation of ball bearings over 30 mm. diameter, and more than two years had passed since initiation but no definitive determination had been made in the case of outer rings of tapered roller bearings. There was a delay also in the cases pertaining to 3.5" magnetic disks (initiated in July 1991), parts for gas-fuelled non-refillable pocket flint lighters (initiated in August 1991), tapered roller bearings (initiated in May 1989), compact disc players (initiated December 1991), electronic typewriters (initiated December 1990), and electronic weighing scales (initiated February 1991). No definitive determination had been made for these cases, and the EC had not yet made a preliminary determination four years after initiation in the review case for tapered roller bearings. Japan referred to Article 5:5 of the Agreement which stated that "[i]nvestigations shall, except in special circumstances, be concluded within one year after their initiation", and requested the EC to finish the investigations as quickly as possible. Japan requested that the EC submit in the semi-annual reports to the Committee all the relevant information in a precise manner.

101. The representative of the EC said that the six cases mentioned by Japan were not mentioned in the report because there was no publication by the EC pertaining to these cases during the period for which the report was provided. Most, if not all, of these cases were nearing completion. Refunding the anti-dumping duties that had been collected in the tapered roller bearing case was being considered. In the compact disk player case, a further notice had been published in the course of 1992 indicating that the case concerning Japan was relevant in a new investigation undertaken concerning Malaysia, Singapore and Taiwan, and effectively these cases had been combined. In the mean time, however, Phillips which was the main the EC producer had announced that it intended to cease producing compact disk players in the Community, and the Commission was considering whether the measure should be continued in this case. The cases on electronic typewriter and on weighing scales were about to be published.

102. The representative of Japan said that even if there was no publication about an investigation, it should be listed in the semi-annual report to increase transparency and because the report was the beginning point regarding information on the status of the investigation. Japan might send questionnaires to the EC relating to the individual cases.

103. The Committee took note of the statements made and decided to revert to this item at a future meeting if requested by any delegation. The Chairman observed that the EC had only recently provided its report, and recalled that the Secretariat had requested in ADP/88 that the semi-annual reports for this meeting be submitted by 26 February 1993. He urged the Parties to make every effort to respect the deadlines in the future.

Australia (ADP/81/Add.10 and ADP/70/Add.11)

104. The Chairman noted that Australia's semi-annual report for the period 1 July to 31 December 1992 was provided to the Secretariat only last week and would be distributed to the Committee sometime this week. Australia's two previous reports were also submitted with a delay, and in the case for its report for the period 1 July to 31 December 1991 (ADP/70/Add.11), the delay was of almost one year. It was very important that the semi-annual reports be submitted on time so that the Committee could examine the anti-dumping actions of the Parties to the Agreement without undue delay. This was the purpose of seeking the reports under Article 14:4, and Article 14:4 clearly stated that "[t]he Parties shall also submit, on a semi-annual basis, reports of any anti-dumping actions taken within the preceding six months". The term "preceding six months" in this statement showed that these reports be submitted without delay. He urged Australia to take all necessary steps to ensure that the reports be submitted on time in the future. He then asked for comments on the two unexamined reports by Australia that were before the Committee in documents ADP/81/Add.10 and ADP/70/Add.11.

105. No comments were made on these reports.

F. Reports on All Preliminary or Final Anti-Dumping Duty Actions (ADP/W/327, 328, 330, 331 and 334)

106. The Chairman noted that the reference documents for this agenda item were ADP/W/327, 328, 330 and 331. Copies of official notices of preliminary or final anti-dumping actions had been received from Australia, Canada, Japan, New Zealand and the United States. Australia, Korea, Mexico and the United States had notified some definitive duty actions taken recently. An advance copy of the document notifying these actions, i.e. ADP/W/334, was in the meeting room for consideration by the members of the Committee.

107. The representative of the EC said that on the assumption that there was a reference in document ADP/W/334 to either the definitive measures (entering into force on 19 January 1993) concerning lead bars from France, Germany and the United Kingdom, and/or the provisional measures concerning Belgium, France, Germany, Italy, the Netherlands, Spain and the United Kingdom concerning four other steel products entering into force on 26 January 1993, he would make some comments on certain aspects of the investigation which had led to these measures. He asked whether these comments would be admissible.

108. The Chairman ruled that these comments would be in order.

109. The representative of the EC shared Brazil's views regarding the steel investigation by the United States. A number of major aspects were involved. Regarding best information available (BIA), he noted that very few companies were able to satisfy the Department of Commerce in these cases, which was surprising given the nature of the resources of some of these companies. The EC wondered whether the United States' authorities had paid sufficient attention to the ability of the parties to provide the type of information requested within the very narrow deadlines which were given. Also, confusion had been caused in some companies on account of lack of (or late) information from the Department of Commerce that the replies were in some ways considered to be incomplete or otherwise unacceptable. Some of the information which was not received apparently also concerned products which were outside the scope of the proceedings, and the EC wondered to what extent the lack of such information could

impede the enquiry. Lastly on BIA, the EC wondered whether using information from the petition was the most reasonable or most appropriate. Other information was clearly available, and the question remained open whether or not the appropriate balancing operation was undertaken to establish whether the petition did supply the best and most reasonable evidence.

110. The EC had some concern with the comparison of prices inclusive of value-added tax, because value-added tax was not payable on exports. Regarding retroactive application of duties, the EC said that the Agreement was clear and specific in its wordings and it was not clear to what extent a history of dumping or a knowledge by the importers that dumping took place or evidence of sporadic (massive) dumping was established. For injury, there were some general queries regarding the establishment of a significant rise in the volume, either absolutely or relatively, of imports; the effects on prices of United States producers; and whether the individual volumes from member States or from particular companies were sufficient to allow the cumulation which took place. The EC also wondered to what extent the existence and effects of voluntary restraint arrangements had been or will be taken into account in the conclusions. The EC hoped that these concerns would be taken into account in the further investigation at least in cases which were subject to only provisional measures.

111. The representative of Sweden said that his delegation had not seen the report by the United States. He informed the Committee that Sweden had requested consultations with the United States under Article 15:2 of the Agreement with respect to the preliminary anti-dumping actions on imports of cut-to-length plates from Sweden. The reasons for the request were contained in document ADP/93.

112. The representative of Finland said that the statement by the delegation of Sweden would equally apply to Finland.

113. The representative of Japan also shared the serious concerns of the EC, Sweden and Finland regarding the United States' anti-dumping actions. Japan had expressed its concern on various occasions repeatedly in various fora. Japan's position remains the same and Japan was seriously examining whether the preliminary determinations were consistent with GATT provisions, and was looking into further course of actions to protect its GATT rights.

114. The representative of Brazil recalled that Brazil had already held consultations with the United States, and was still in a process of having further consultations. He noted that in ADP/W/334, which had been provided only today, there was a reference to one steel product "certain alloy and carbon hot rod bars, etc." It had not been possible to compare the information in the report with the information gathered earlier by Brazil. Nonetheless, Brazil was not satisfied with the way the Agreement was being implemented in relation to specific points. In relation to "lead bars" referred to earlier, the high preliminary duty (148 per cent) was followed by a high duty in the final determination published on January 1993. Although it was costly to provide information, the exporter had co-operated but none of the information provided was taken into account. That was not the spirit of the Agreement. The investigating authority had to consider whatever information it had and not the information in the petition. Regarding injury analysis, Brazil's concern was that during the investigation, the United States' authorities kept changing the definition of like product and thus that of the industry allegedly injured. For a time during the investigation, the concept of like product would have implied that Brazilian participation

in the United States market was de minimis. The final determination nevertheless cumulated exports from Brazil with those from other countries.

115. In relation to "SBQ bar", the representative of Brazil said that the Department of Commerce used best information available for two Brazilian exporters despite not informing these exporters of any deficiency. Besides being abusive of the Agreement, this was also not legal under United States' legislation. Regarding the four separate investigations on "certain flat rolled steel products", the Department of Commerce had made a series of methodological and clerical mistakes. In cases involving other countries, the Department agreed to issue a corrected preliminary investigation, but it refused to do so in Brazil's case. Furthermore, the United States' authorities had refused to take into consideration the legal constraints of Brazil which had a bearing on cost calculations. In one case, a Brazilian firm furnished over a thousand pages of detailed explanation of how the costs could be tied to the accounting records used to prepare the audited financial statements. Despite having accepted such accounts in other investigations, the United States' authorities refused the criteria on the grounds that this firm kept its product-specific costs in dollars and not cruzeiros.

116. The representative of Australia noted that ADP/W/334 did not mention Australia. Australia was concerned about the spate of actions taken by the United States, in particular about the inclusion of an Australian company in the preliminary dumping actions. It was difficult to see how Australian steel exports could injure the United States' industry, given that the relevant Australian company held a minor share of that market. Australia was carefully examining the details of the case against the Australian company before deciding any further steps.

117. The Committee took note of the statements made and decided revert to this matter at a future meeting if requested by any delegation to do so.

118. The Chairman said that the semi-annual reports showed that the reports of the Parties to the Committee on all preliminary or final anti-dumping duty actions did not cover all the actions taken by the Parties to the Agreement. Moreover, these reports showed that Brazil, Mexico, Sweden and the EC had taken some preliminary or final anti-dumping duty actions but had not provided the notices for these actions. He reminded that Article 14:4 of the Agreement stated that "Parties shall report without delay to the Committee all preliminary or final anti-dumping actions taken".

119. The representative of Brazil said he wanted the Committee to know some reasons behind the lack of notification mentioned by the Chairman. Brazil did not want to make sterile communications to the GATT. Communications must have a sense. At present the only information in the preliminary reports as circulated to signatories was the name of the country and the product under investigation. This was helpful when, for example in the case of the United States' reports, they were accompanied by a copy of the public notice, with extensive information, in English and therefore, from a practical point of view, accessible to a larger number of signatories without further elaboration. This was very useful for the Committee. He considered, however, that in the case of several signatories there would be a problem related to additional workload on GATT translators, even if the notifications were made in other GATT languages. He said he had understood the Committee had given the Chairman the powers to conduct informal consultations on the format for the notifications. As representative of Brazil, he had to be specially responsive to the cases of countries, which was the case of Brazil, whose official

notices were in a language that was not a GATT language. He welcomed the Committee's decision that the Chairman would conduct informal consultations so that there would be a workable format for preliminary notifications for all signatories.

120. The Chairman said that the matter raised by the representative of Brazil would be one of the matters which he would be taking up in the consultations to which the representative of Brazil had referred.

G. United States - Imposition of Anti-Dumping Duties on Imports of Seamless Stainless Steel Hollow Products from Sweden (ADP/47 and ADP/M/39, paragraphs 92-99)

121. The Chairman recalled that the panel Report in this dispute was submitted to the Committee in August 1990 (ADP/47). This was the eighth meeting at which this Report was before the Committee, and he hoped that the interventions in this matter would take account of the seriousness of the situation. The Committee had been unable so far to adopt this Report, due mainly to the differing views on the nature of the remedy recommended by the panel in paragraph 5.24 of its Report, and while certain delegations had strong views on this specific aspect of the Report, it was essential that the Committee not lose sight of the immediate commercial implications of a lack of solution to this dispute.

122. The representative of Sweden said that Sweden's position remained unchanged and it continued to urge the Committee to adopt the report, including its recommendations. Sweden had held bilateral consultations with the United States on this matter on numerous occasions, and the issue had even been discussed at the highest possible political level. So far, all attempts had been fruitless.

123. The representative of Sweden noted though the United States seemed willing to accept the substantive findings that the panel had made, it had problems with the so-called "specificity" of the remedy that was causing the problem, i.e. the recommendation that the United States should revoke and reimburse the duty. The United States had argued that this remedy should be replaced by a general recommendation, i.e. that the United States, as a violator of the rules, should bring its measure into conformity with these rules. However, Sweden strongly maintained that the remedy recommended was not only appropriate, but was the only possible one. The imposition of an anti-dumping duty was a specific measure. In this case the duty had been found to be inconsistent with the Agreement. Moreover, the panel had concluded that the United States action had resulted in prima facie nullification or impairment of Sweden's benefits under the Agreement. Since the duty constituted a specific measure in the first place, it followed that the situation could only be rectified through a specific remedy.

124. The representative of Sweden said that this view was supported by precedence. The recommendation in the panel Report under consideration was identical to a recommendation by a panel under Article VI of the GATT between Finland and New Zealand in 1985. That panel Report was adopted by the Council by consensus, i.e. including by the United States. A second precedent was the panel Report on United States' imports of chilled and frozen pork from Canada, adopted by the Council in 1991. It contained a very similar recommendation. The United States did not block its adoption either. Specific recommendations were also contained in several unadopted panel reports before both the Anti-Dumping and Subsidy Committees, inter alia, United States - measures affecting imports of grey portland cement and cement clinker from Mexico (ADP/82) and softwood lumber from Canada

(SCM/162). In Sweden's view, the possibility to use specific remedies was essential to the functioning of the GATT system for dispute settlement, and in particular in the field of anti-dumping.

125. The representative of Sweden argued that general recommendations were appropriate in cases where there were several options available to a signatory to bring itself into conformity with the Agreement. In anti-dumping cases this was frequently not the case, in particular given the wording of Article 1 of the Agreement. In the case before the Committee, no remedy other than revocation would remedy the situation, and in these circumstances the panel had found that only one remedy - revocation and reimbursement of the duties - was at hand.

126. The representative of Sweden stated that since the bilateral process began in 1990, Sweden had discussed with the United States a number of possible solutions with the aim to get a guarantee on revocation of the duty. The United States had turned down all proposals by Sweden, and had been unable to come up with any guarantees that it would revoke the duties. The only real United States' proposal had been an offer to conduct an "administrative review" in which the "standing of the petitioners" would be investigated once again. Such a review would consist of a poll in which the domestic United States companies, i.e. the competitors of the Swedish company, would be asked whether the duty, in their opinion, should remain in force. The outcome of this poll was easy to guess.

127. The representative of Sweden said that the United States' proposal directly contradicted the finding by the panel (in paragraph 5.20) that "... in light of the nature of Article 5:1 as an essential procedural requirement, that there was no basis to consider that an infringement of this provision could be cured retroactively." Also, the United States' position would mean that the procedural provisions of the Agreement would become less important, if not meaningless. Moreover, the United States' position neglected the fact that the case before the panel contained several complaints in addition to the one concerning standing of the petitioner and how that was ascertained by the United States. The panel chose to base its findings on the single issue of standing, since it deemed that to be sufficiently grave to result in prima facie nullification or impairment of Sweden's rights under the Agreement. Thus, the United States' view implied that a panel had to make findings on each and every complaint under consideration.

128. It was Sweden's understanding that the United States would be willing to change its procedure for initiation of anti-dumping investigations in accordance with the findings of the panel. This would only have implications for future cases. The GATT-illegal anti-dumping duty facing the Swedish company would however continue to prevent legitimate Swedish exports to the United States market. Thus, the specific case would not be solved, but a precedent would be created that would risk to render dispute settlement in anti-dumping cases meaningless. Moreover, the problem was not confined to the anti-dumping area alone. For example, in the field of subsidies, the violating country would change its regulations so that future subsidies would be granted in accordance with GATT rules but GATT-illegal subsidies could continue to be granted even if the subsidies were found to be inconsistent with GATT rules. Similar examples could be constructed for other fields covered by GATT rules.

129. The representative of Sweden said that the United States' position was not consistent also in sense that when it suited its own interests, the United States was promoting very specific remedies in other areas of the GATT in which negotiations were going on. Thus, the United States seemed to only

serve its own interest in the field of anti-dumping when it was taking the stand that it did in relation to the panel Report before the Committee. He suggested that the Chairman of the Committee might informally pursue the issue of recommendations in anti-dumping panel Reports, so that all Parties to the Agreement were given an opportunity to carefully consider the implications of the various positions before them.

130. The representative of Sweden once again urged the Committee to adopt the panel Report before it. Also, in order to clarify the situation, he sought answers to the following questions: if Sweden agreed to a general remedy, what guarantees did it have that the duty will be revoked? And did the United States have any new proposals through which a mutually satisfactory solution could be reached?

131. The representative of the United States said the United States Government would like to be able to adopt and permit the adoption of this report. Specific steps necessary to permit the United States to do that had been outlined in the past, but that did not seem acceptable to the Government of Sweden, and possibly to other members of the Committee. The United States Government did not take the step of blocking the adoption of this Report lightly. It had a strong commitment to the dispute settlement process in this Committee, in other Committees and in the GATT. It was only the strong nature of its concern, principally the remedy as advocated by the panel in this instance that caused the United States to take the position that it did. An overwhelming majority of panels had rejected any specific and any retroactive remedy, and this should provide a firm indication to the Committee how panels under the GATT system functioned. Specific remedy would undermine the conciliation and conciliatory nature of the dispute settlement process in the GATT, i.e. the objective of allowing Governments to come to a mutually satisfactory resolution of disputes, and when that was not possible then permitting Governments that had been found not to be fulfilling their GATT obligations to change their practices (or to choose the course) to fulfil those obligations.

132. With regard to retroactivity, the representative of the United States said that the legal problem was even more severe. In no other area of GATT jurisprudence had panels recommended specific and retroactive remedies. To provide favourable treatment in the anti-dumping area would raise a host of questions on the nature of remedies available to complainants in numerous other GATT fora. The harm done to the exporters had been no less where, for example, a subsidy or import licensing scheme was being maintained inconsistent with the GATT, or due to a measure that was inconsistent with Article I or Article III of the GATT. It was important that the Committee reflect that this panel had not found that the petitioners did not have standing, but that the authorities had not verified standing. This distinction was important to understand the United States' jurisprudential position in this case. He invited any member of the Committee to discuss further with the delegation of the United States the issues of equity in light of what the panel had found.

133. The representative of the United States disagreed with Sweden's view that the United States Government had taken a self-interested and inconsistent position with respect to remedies. In the context of both anti-dumping and countervail duty cases, the United States had consistently advocated the same remedy, i.e. that the Party found in violation bring its measure into conformity with its GATT obligations. Since the United States was a most frequent complainant as well as defendant, it had an interest on both sides of the issue. Regarding the United States position as part of a negotiation that Parties agree to adopt a retroactive remedy, he said that the situation when Parties agreed on a particular type of

remedy at the outset of an Agreement was different from changing the rules ten years after the adoption of an Agreement. There was no indication when the Agreement was made in 1979 that the Parties contemplated retroactive remedies. This topic required further discussion, either formally or informally, perhaps under the tutelage of the Chairman of the Committee.

134. The representative of Canada stated that, as in the past, Canada supported the adoption of the panel Report. He said that the United States position seemed that specific remedies proposed by panels were undermining the GATT dispute settlement system. He disagreed that specific remedies necessarily were more the exception than the rule. Such remedies were being recommended more frequently in recent cases. When GATT panels arrived at the conclusion to recommend specific remedies they did so because in the circumstances of the particular case, these were appropriate remedies. Where the remedy was not appropriate, the panels did not make those recommendations. The recommendations were not either specific or general, but they were those appropriate to the panel and to the circumstances of the case. Canada considered that a specific remedy applied or recommended by the panel in this case was appropriate, particularly given that it involved the question of whether the case should have been initiated in the first place. It could even be said that in the case of anti-dumping and countervail generally, the Agreements already allowed for summary reimbursement to take place in the context of provisional duty being higher than the final duty. So the concept of reimbursement was not something entirely new.

135. The representative of Canada expressed concern at the United States' comment that a distinction had to be drawn between the fact that this panel did not find that there was no standing by the petitioner, but rather only found that it had not been verified that there was standing. It seemed that the United States placed a lesser importance on procedural obligations as opposed to what it termed as "substantive obligations". Canada could not agree with that view. Regarding the United States' invitation to discuss these matters, Canada said that there had been lengthy discussions on these matters and while Canada was prepared to discuss further, it was not sure whether more discussion of this matter was required. He asked the United States to reconsider its position that somehow adopting the specific remedy in this particular case undermined the dispute settlement system. That was an ill-founded position.

136. The representative of Brazil said that he was not sure that "retroactivity" was the correct word to be employed in this case, because what was null from the beginning would remain null. On the United States' view that the proposal of remedy would undermine the conciliatory nature of dispute settlement, Brazil had the same problem as expressed by Canada. He noted that there was another panel Report in the GATT realm, in which there was no specific remedy and the United States was not sure whether it had to do anything because there was no remedy. The present case under consideration was an important one, which dealt with concepts that had implications for other disputes. He noted the proposal that the Chairman of the Committee hold consultations with regard to this case, and said that the delegation of Brazil would like to be invited to any consultations which might be held.

137. The representative of Finland, speaking on behalf of the Nordic countries, said that the United States' position regarding specificity and retroactive nature of remedies would have serious implications for the GATT dispute settlement system. The purpose of that system was to remedy and to set right specific cases of GATT illegal actions, and only secondarily to indicate for the future the correct interpretation of GATT rules. Accepting the United States' view on specificity and retroactivity

would imply that cases of GATT illegal actions could not be remedied, i.e. exporters and countries whose GATT legal rights had been nullified or impaired could never get any compensation through the GATT dispute settlement system. Such an interpretation would be clearly against the fundamental purpose of the dispute settlement system. Further, on the conciliatory nature of the dispute settlement system, the idea was that conciliation should be tried in the first instance. The GATT system recognized that these conciliation did not always give the desired results, and in that case the panel procedure, which was not conciliatory, was used. The United States' concerns about the conciliatory nature of the dispute settlement system seemed misplaced in the light of the escalating system of dispute settlement. In this case, the stage of conciliation had already passed, and this fact had to be clearly recognized by the Parties concerned and by the Committee.

138. The representative of Australia shared the concern of several other delegations that this matter had been unsettled for a long time. Australia did not want to get involved in the particular issues in this case, and its position would not be to stand in the way of the adoption of the panel Report were that the consensus of the meeting. Australia believed that it was appropriate to express concern at the increasing tendency of panel Reports to recommend specific remedies. This was not the appropriate course of actions for panels, and it was not available under the Agreement that specific remedies be applied and be an essential feature of a panel finding. The essential activity of the Panels was to secure withdrawal of the measures. The fact that specific remedy had been a stumbling block in this Report and was raised in others, was a matter of ongoing concern to Australia which questioned whether or not it might be appropriate that the Committee look closely at that as an issue in itself so that there would be standing guidance to future panels on this particular issue.

139. Regarding the conciliatory nature of the dispute settlement process, the representative of the United States said that for both the current process and the way the United States believed that the process would be designed to exist in the Uruguay Round, even after the panel Report had been issued, the report was given only to the Parties involved in the dispute, providing them an opportunity to reach a mutually satisfactory resolution before the report was issued.

140. The representative of Sweden said that Sweden's aim was to secure the withdrawal of the duty; it was not about specificity or generality of recommendations. He welcomed the United States' willingness to enter into a dialogue with Committee members on the issues involved here under the tutelage of the Chairman. Normally there should not be a need for the Committee to have a discussion of that type about panel reports. However, the far-reaching implications of this specific case were of interest to several participants here, and the comments from many delegations tended to support the view for a need to discuss these issues. Sweden was ready to discuss these issues as soon as the Chairman issued an invitation.

141. The Committee took note of the statements made and agreed to revert to this Panel report at a future meeting, which may be either a special or a regular meeting. The Chairman said that he would make his good offices available in order to hold informal consultations to seek a mutually satisfactory solution.

H. United States - Imposition of Anti-Dumping Duties on Imports of Fresh and Chilled Atlantic Salmon from Norway - Report of the Panel (ADP/87)

142. The Chairman recalled that at its meeting on 21 October 1991, the Committee had established a panel in this dispute. The report of this panel was circulated to the Committee on 30 November 1992. He thanked the members of the panel for their work done in this dispute, and gave the floor to Mr. J. Kaczurba, Chairman of the panel, to make a statement on the panel Report.

143. The Chairman of the panel said that the panel met with the parties on three occasions. The issues before the panel involved a broad range of legal and factual questions. In examining these issues, the panel carefully considered the submissions of the parties and information regarding the factual basis upon which the United States' authorities had made their determinations. The Panel also considered the submission and the statement of the EC, which was a third party in this case. The panel submitted its findings and conclusions to the parties on 23 October 1992, and its full report to the Committee on 30 November 1992, after having been informed that the parties had not arrived at a mutually satisfactory solution.

144. Before turning to the panel's findings on the substantive arguments, he drew the Committee's attention to the fact that the panel was presented with a number of important questions of a preliminary nature regarding the admissibility of certain claims. The panel's conclusions on these preliminary questions were summarized in paragraph 590 of the Report.

145. The panel's conclusions on the merits of the issues raised before it were summarized in paragraphs 591-595 of its Report. The panel found that the imposition by the United States on 12 April 1991 of definitive anti-dumping duties on imports of fresh and chilled Atlantic salmon from Norway was inconsistent with the obligations of the United States insofar as several aspects of the final determination of dumping which had led to these duties were inconsistent with Articles 2:4 and 2:6 of the Agreement.

146. The panel's recommendation to the Committee in paragraph 597 of its Report was as follows: "The Panel therefore recommends that the Committee request that the United States bring its measures with respect to the imposition on 12 April 1991 of an anti-dumping duty order on imports of fresh and chilled Atlantic salmon from Norway into conformity with its obligations under the Agreement and that, to this end, the United States reconsider the affirmative final determination of dumping, consistent with the Panel's findings under Article 2:4 and 2:6, and take such measures with respect to this anti-dumping duty order, as imposed on 12 April 1991, as may be warranted in the light of that reconsideration."

147. Following the submission of the panel's findings and conclusions to the parties, the panel received letters from the parties with comments on specific aspects of its findings. Norway requested the panel to reconsider its findings on these points. The letters from the parties, and the panel's response, appeared in an Annex to the panel's Report (ADP/87, page 223). These letters were included in the Report only in the interest of transparency.

148. The panel considered that with the circulation of its Report on 30 November 1992 to the Committee, it had fulfilled its mandate as defined in document ADP/69 of 6 November 1991.

149. The representative of Norway said that Norway was not in a position to adopt the panel Report at this meeting. The case before the Committee was complex and concerned a large number of intertwined issues. The representative of Norway limited his comments to a summary, and said that the more detailed reaction to the Report would be circulated to the Committee as a note from the Norwegian delegation.

150. The representative of Norway noted that the panel had found certain aspects of the United States' investigation methodology to be inconsistent with the Agreement's requirement. Illustrating the importance of methodology, he recalled that the United States based its investigation in the salmon case on a constructed cost of production for a small sample of Norwegian salmon producers. The estimated cost of production was significantly higher than the actual average cost of production for Norwegian salmon found in a comprehensive survey. It was also significantly higher than the cost of production found in a 1989 EC survey on Norwegian salmon which was based on a considerably bigger and representative sample than that used by the United States. If the United States, instead of basing its investigation on the cost of production, had based it on the acquisition prices of the exporters, no dumping margin would have been found.

151. He then noted that the panel had found that the United States had acted inconsistently with relevant obligations under the Agreement with regard to the cost of production in the country of origin. In Norway's view, a reconsideration by the United States of its dumping determination consistent with the panel's findings should result in removal or substantial reduction in the anti-dumping duties which were imposed on the Norwegian salmon. It was approximately half a year after the release of the panel Report, and he asked the United States whether it had come to any conclusions with respect to its follow-up on the panel's recommendation.

152. He then turned to the main Norwegian concerns with the Report. He stated that although Norway had partly won the anti-dumping case, it was of the opinion that the panel had erred in its conclusions with respect to a number of issues that were raised in this case. The panel had based itself on a somewhat loose interpretation of the requirements expressed in the General Agreement's Article VI concerning the obligations incumbent upon the party invoking exceptions from the general GATT obligation instead of the narrow interpretation accepted in conformity with the practice followed by contracting parties and in a number of previous panel Reports. Since 1955, i.e. in the panel Report on Swedish anti-dumping duties, GATT panels had repeatedly found that since the application of anti-dumping or countervailing duties under Article VI was an exception to the basic GATT principles of most favoured nation treatment and bound tariffs, the burden was on the party claiming action under Article VI to demonstrate that it was acting in conformity with that Article. The present panel Report would severely limit the ability of exporting countries to challenge anti-dumping decisions because instead of the investigating authorities having to justify their calculations, the burden of showing that the calculations were wrong was shifted to the exporting countries. The panel's interpretations could easily weaken the GATT restraints on application of the anti-dumping instrument.

153. The representative of Norway said that the panel Report had significantly weakened the Agreement's standard for initiation of anti-dumping investigation, and had contradicted previous panel findings. The Report allowed the authorities to initiate investigations merely based on a statement by the petitioner's lawyer claiming support from the domestic industry, instead of the authorities having

to take affirmative steps to ascertain that a sufficient proportion of the domestic industry supported the request for an investigation. Norway's view was that the Agreement required investigating authorities to take affirmative steps on their own initiative to ascertain that a sufficient proportion of the domestic industry requested an investigation.

154. The treatment of injury and causation in the panel Report also substantially weakened the Agreement's requirements. The panel interpreted the Agreement in a manner which permitted the investigating authorities to assume causation as long as injury was found, thus enabling investigating authorities to disregard the "through the effect" requirement of the Agreement and to attribute injury to allegedly dumped imports which was in fact caused to the domestic industry by other factors. Norway's position was that the first sentence of Article 3:4 required the administering authorities to determine that the injury within the meaning of the Agreement was being caused through the effects of the dumping. Norway's view was that the panel's interpretation of the first sentence of Article 3:4 effectively deleted that sentence from the Agreement, thereby making the Agreement's causality requirements considerably more lax. According to the panel, the Agreement's negotiators, having inserted the first sentence of Article 3:4, changed their minds but rather than delete the sentence decided to add a footnote which after intricate analysis led the panel to the conclusion that the sentence in the text was meaningless. This was speculation, and merely the panel's position. The panel had raised the footnote to the pre-eminent position in Article 3:4's causation requirement and ignored the rest of the language in the text of this paragraph. On the role of "other factors" in the causation determination, Norway's view was that the panel's interpretation of the second sentence of Article 3:4 of the Agreement was legally incorrect. The panel had rendered the second sentence of the Article 3:4 superfluous in violation of the fundamental principles of treaty interpretation. The panel's view made it easier for the investigating authorities to attribute to the allegedly dumped imports the injury to the domestic industry caused by other factors. Further, on the present injury requirement, the panel had not addressed how the determination that there was past injury satisfied the Agreement's requirement that the administering authorities had to find present injury. Norway regarded the Agreement as containing the requirement for the investigating authorities to consider whether the domestic industry was being injured by the present effects of the dumping at the time of the injury determination.

155. On the use of simple versus weighted average, the representative of Norway noted that the panel found that the United States' sampling methodology for calculation of the normal sales value for salmon was flawed. However, in Norway's opinion the panel erred in accepting the United States' use of a simple instead of a weighted average for sampling. Furthermore, the Department of Commerce had erroneously used the so-called best information available to the detriment of the Norwegian exporters, resulting in an overstatement of the average cost and in punishing the respondents who fully answered the burdensome questionnaires as well. In the present case this was particularly unfair as the respondents in the investigation were the salmon farmers not the exporters (most of whom were not farmers). The exporters had accordingly to accept the outcome of the investigation without real possibility to influence it. Also, the panel's analysis of the United States' comparison of estimated average normal value to individual export prices improperly placed the burden of proof on Norway to demonstrate that the comparison resulted in an overstated margin, rather than requiring the United States to demonstrate that the method selected by the administering authority resulted in a fair comparison and thus was consistent with the United States' obligations under the Agreement.

156. The Chairman noted that Norway, on its own responsibility, will be circulating a note to the members of the Committee outlining its concerns in more detail.

157. The United States said that the panel had examined all of Norway's claims in detail, and had chosen its own path, generally rejecting both Norwegian and United States' arguments on the fundamental issues. The panel Report contained reasoned analysis, but the United States agreed with some of its results and disagreed with some others, and was of the view that there were a number of places where the panel Report was flawed in important respects. For example, regarding exhaustion of administrative remedies (paragraphs 340-350), the United States Government felt strongly that the proper balance between international law and national administrative law on these questions was that claims not raised before national administrative authorities should not be raised before a panel in this forum. The panel however had rejected this position. On standing, the panel had rejected the approaches of both Norway and the United States. It undertook an exhaustive examination, and relied upon the language "authorization or approval of the industry" to reach its conclusion on standing (paragraph 360). This language was nowhere to be found in the Agreement. In paragraph 369, the panel came to the conclusion that the Agreement's preamble formed part of the context for the purpose of the interpretation of the treaty. The panel based itself on Vienna Convention and other citations and well established interpretations of treaty law, to reach a position different from what the United States or Norway had urged. The United States' view was that the preamble by itself did not constitute a legal obligation of the parties to the Agreement. Notwithstanding these concerns, the United States was willing to permit the adoption of this Report, and was dismayed that Norway was not also in the same position.

158. The representative of the United States then made some general comments regarding the question of dispute settlement that was raised by this and other reports. He said that though dispute settlement had a political element it was not just a political issue. At the core there was an important and new question of jurisprudence that confronted this Committee, i.e. how will panels established by this Committee apply the international law of the GATT and the Subsidies Code to complex proceedings governed by the national administrative law of the importing country? In answering this question, it must be borne in mind that the Agreement established both rights and responsibilities - the rights of the exporting and the importing countries had to be respected, including the rights specifically and expressly reserved by the Agreement to the administering authorities of the importing country. A renewed effort was required to look at the difficult and important questions, and to seek some common ground so that an effective and sustainable dispute settlement mechanism could be established. Members were going to be both defendants and complainants in disputes. In the case of the United States, its exporters were the primary target of anti-dumping actions around the world, and thus the United States wanted fair rules for its exporters as well as for domestic industries. Anti-dumping rules on dispute settlement were too important to be determined by a particular report. These rules, which were expressly sanctioned by the GATT, must be used properly. He renewed the invitation to members of the Committee join together to evaluate this Report and other Reports, to establish a dialogue so that the United States could explain its position and get the views of others on an issue which was too important for divisiveness, well beyond winning or losing a single case. He wished to extend the dialogue to include as broad a cross section of the Committee as was interested, and was pleased to see that several delegations were willing to enter into a dialogue on this question.

159. The representative of Finland, speaking also on behalf of the delegation of Sweden, questioned the Panel's reasoning regarding the scope of its mandate (paragraph 335). He did not consider it appropriate for a panel, in each case, to restrict its mandate to the matters referred to in the request for conciliation only. Further, while he welcomed and shared the panel's conclusions in paragraph 349 that the scope of the dispute settlement was not limited to the matters raised in the domestic procedures, he found it difficult to understand the reasoning in paragraph 494. In this regard, he said that in order to perform its rôle in the settlement of disputes, the panel had to have the power to conduct its own independent review of the factual evidence on the issues. This did not mean that the panel had to make a 'de-novo' investigation, but that it had to examine whether the Party to the Agreement had fulfilled the Agreement's mandatory obligations.

160. He expressed concern on the United States' arbitrary reliance on "best information available" in the calculations of costs of production. With regard to initiation, he did not share the panel's view that there were no inconsistencies in the United States' methodology, and recalled that the position taken in some earlier panel Reports was that the investigating authority had to take positive action to ascertain the standing of the petitioner. Similarly, he said that the panel had not sufficiently recognized that Article 3 required that it must be proven that the dumped imports were a cause of injury, and in particular that Article 3:4 required the investigating authority to actively satisfy itself that the alleged injury was not caused by factors other than the dumped imports, and it could not be sufficient to state that other factors had been examined.

161. The representative of Finland noted the panel's statement in paragraph 383 that Norway had not indicated what specific information the exporters did not have access to, and said that the panel's interpretation of Article 6 of the Agreement in this regard was too narrow. The Agreement clearly set out the principles of transparency and openness of anti-dumping investigation. This principle was expressed already in the preamble where it said that "considering that it is desirable to provide for equitable and open procedures as a basis for full examination of dumping cases". This principle of transparency and access to the procedure required the possibility for interested parties to present evidence and a deviation from those principles had to be considered exceptional and had to be based on sound legal reasons and provisions in law. Lack of an indication of what specific information had been denied access to would not be sufficient grounds to deny the right to intervene and to present evidence.

162. The representative of Canada was not in complete agreement with the panel Report. He noted that the wording of the panel Report left open a number of questions which could be taken up in the context of further discussions referred to by the United States. He expressed willingness to enter into a dialogue as suggested by the United States, and clarified that in his previous comments in this meeting, he had not rejected a dialogue. His view was that while there were valuable issues to discuss, there was a limit to how much could be achieved through dialogue. Some issues might be properly for negotiation rather than for discussion within this Committee.

163. He expressed concern regarding the panel's interpretation of when a claim was properly before the panel. In this regard he said that the GATT had functioned fairly well by being pragmatic in terms of its processes and not necessarily overly legalistic. He agreed that Parties had to be precise in their definition of specific claims in a request for a panel, but was concerned that a strict interpretation of this panel's finding may not allow the necessary flexibility for an efficient functioning of the dispute

settlement process. He also questioned the panel's treatment of the verification of standing. In this context he asked what would happen if there was information with the administrative authorities to suggest that the lawyer's certification was not legitimate or valid. Under the Canadian system, and as required by the Agreement in his view, a positive verification required some act on the part of the investigative authorities beyond simply accepting the word of the complainant or his lawyer.

164. He said that a number of other concerns related to the question of injury. For example, paragraph 509 stated that it was not in the purview of the panel to give relative weights to different factors. This question was related to the question of standard of review and was not an easy issue to deal with because it was difficult to ascertain at what point a panel entered more actively into the process. He was concerned by this panel's acceptance of the hands-off approach, which was not the normal approach in previous panels. Certainly with respect to assessment of weights in terms of other factors that related to injury, it was undisputed that the weights for "other factors" must be zero and there was some role for a panel if investigating authorities themselves did not properly ascertain that a zero weight was given.

165. He questioned the way in which the panel had applied the standard in Article 3 regarding material injury caused by factors other than dumped imports not being attributed to these imports (paragraph 555). In Canada's long experience with the United States International Trade Commission, Canada had some doubt on the extent to which the United States addressed "other factors" in its determination of injury. Canada had tried to address this question in the multilateral trade negotiations in various fora. He was interested in getting the views of other members and to continue the discussions particularly on the issues where the panel's conclusions had certain ambiguities.

166. The representative of Japan expressed his delegation's willingness to participate in the dialogue proposed by the representatives of the United States and Canada. Japan was deeply dis-satisfied with the Report. Though there were a number of complaints, he focused on four of the most important ones. First, the panel's exclusion of certain matters because they had not been adequately raised at the preliminary proceedings. The principle invoked was good but was applied in an extreme and unjustified manner. The panel had cited Article 15:3 of the Agreement which stated that the Committee may draw attention to those cases in which there was no reasonable basis supporting the allegations made. In the "salmon" case, Norway's explanation to the Committee left no doubt that reasonable basis did exist. Regarding the need to inform other Parties so that they might make the appropriate submissions to a panel, he said that the relevant procedures were inadequate. The respondent party and even the panel itself might introduce arguments of which non-participants might be totally unaware. It was therefore unfair to apply a rigid exclusionary rule to the complainant. The panel's legalistic formalism here was contrary to the GATT's tradition of pragmatism, and could result in the complainants presenting the Committee with documents including every possible wrongdoing. In such a situation, the loser will be the Committee itself.

167. Secondly, the representative of Japan noted that the panel had refused to consider Norway's complaint regarding the United States' system of averaging prices in calculating the dumping margin (sometimes referred to as "zeroing") because Norway could not prove that zeroing had actually occurred. This was a reversal of the well established principle that for exceptions such as Article VI and the Agreement, the burden of proof was on the Parties wishing to invoke these exceptions. Thirdly, and

perhaps most importantly, the panel entirely subverted the rule in Article 3:4 that the dumped imports should, through the effects of dumping, be causing injury. The panel's improbable scenario was that the Agreement's negotiators, having drafted the first scenario of paragraph 4, changed their minds and, rather than delete the sentence, decided to add a footnote which would make the sentence meaningless. The proper interpretation of this provision is that circumstances can arise where the dumped imports, although causing injury, are not causing injury through the effects of dumping, and therefore, do not fall within the permitted scope of national anti-dumping measures. The fourth concern was regarding the treatment of factual issues by the panel. In Japan's view, the panel disregarded both the wording of the Agreement and the conclusions of previous panels, and created a new criterion for judging the findings of national authorities. Article 15:5 of the Agreement stated that the functioning of the panel was to examine the matter referred to them, and this was the approach, for example, of the panel in the New Zealand transformer dispute. However, in the salmon case, the panel developed a doctrine of review with regard to the injury issue which had no basis in the Agreement.

168. The representative of Hong Kong said that the burden of proof should not have been placed on the complaining party, because Article VI of the GATT provided for an exception to the general m.f.n. principle and, as such, should be interpreted restrictively. It was up to the party seeking action under Article VI of the GATT and the Agreement to prove that the conditions justifying the exceptions were fulfilled.

169. Regarding the panel's view on a claim to be properly before a panel (paragraph 338), he said that Parties should be allowed to expand on claims identified in a more general manner in previous procedural stages and should be allowed to raise new claims during the procedure if these were based on facts which only came to light during the consultation or conciliation stage. He argued against the panel's view that the legal certification as to its accuracy and completeness met the requirement for standing (paragraph 362), and said that certification provided by the complainants themselves formed only "part of the written request by the complainants" but not a "verification of sufficient standing by the authorities after receipt of such written request". In Hong Kong's view, the authorities should conduct an independent verification of the complainants' standing.

170. He questioned the panel's view in paragraph 408 that the methodology used by the United States in constructing the normal value was appropriate. In this particular case where there was no production by the exporters, either the methodology of constructing normal value on the basis of cost of production should not be applicable, or even if applied, it should have been based on the relevant cost data for the exporters, namely, their acquisition price. Recalling that in paragraph 483 the panel had placed the burden of proof on Norway regarding the calculation of margins, he said that it should be for the United States, and not Norway, to prove that it had met the requirement of "fair comparison" as stipulated in Article 2:6. This was particularly important when the complaining party does not have the full access to all the information.

171. He disagreed with the panel's interpretation regarding the second sentence of Article 3:4 (paragraph 552), and stated the strong belief of Hong Kong that all other factors should be examined as part of the analysis in order to determine whether injury was caused by the dumped imports and not by other factors. It was incumbent upon the investigating authorities to identify the extent of the injury caused by each factor in order to discharge the responsibility as required under Article 3:4. As

a related point, Hong Kong endorsed the statements made by Norway during the panel proceeding as recorded in paragraphs 564 and 568 of the panel report.

172. The representative of New Zealand noted that the report dealt with a wide range of significant issues, and it was inevitable that while the Panel's conclusions might satisfy some of the Committee all of the time, it will never satisfy all of the Committee all of the time. He then limited his comments to key legal question of the relationship between the term "through the effects of dumping" and the effects of the dumped imports described in Articles 3:2 and 3:3. New Zealand disagreed with the panel's interpretation, and its view was that Article 3:4, in particular the first sentence, provided that in considering the volume and price effects of the dumped imports, and the consequent impact on the industry concerned, the analysis should ensure that the effects and impact concerned arise from the dumping of imports, and are not attributable to other causes. This approach correctly reflected the condemnation of injurious dumping which was the basis of Article VI of the General Agreement, and any alternative approach would diminish the casual linkage between dumping and injury. He supported any efforts aimed at resolving the issues raised, and was prepared to participate in any dialogue on general issues relating to dispute settlement, as well as on any specific issues raised by this report.

173. The representative of Singapore said that Article VI of the General Agreement was an exception to the general GATT obligation, and thus had to be narrowly interpreted. Regarding specific points, Singapore disagreed with the panel's view on admissible claims (paragraph 338), because some issues might surface only in the consultation or conciliation phase. The three-stage process provided for in Article 15 of the Agreement helped to streamline the task at hand, and any requirement that all issues be raised in the first two stages would be tantamount to turning these stages into full-scale litigation. Singapore was also concerned by the panel's endorsement regarding the verification of standing based only on the statement of the petitioner's lawyer. In Singapore's view, the investigating authorities had to independently ascertain standing. Finally, as Article VI was an exception to the general GATT obligation, it was incumbent on the Party applying the anti-dumping duty to demonstrate that its method of calculation of dumping was justifiable. The panel's conclusion in this regard had improperly placed the burden of proof on the exporting country.

174. The representative of the EC agreed with the opening remarks of the delegate of New Zealand that it was impossible for such a panel Report which covered many issues to please everyone. He recalled that in its intervention with the panel, the EC had raised three important issues, namely, the scope of the panel's review, standing, and determination of dumping made by the Department of Commerce. For the latter two issues, the panel's view (sometimes for its own reasons) was in agreement with those of the EC. However, on the scope of the panel's review, the EC not only agreed with the panel's view but went much further in its intervention, namely that for the panel to properly examine an issue it should have been raised during the investigation process. The EC's view was that the many difficult and remaining issues had been reasoned and dealt with in a balanced and pragmatic way by the panel. While some of the issues left room for thought but, for dispute settlement to be a credible mechanism and remembering that within this mechanism members were effectively making law by consensus, the EC adhered to its view that in order to realize this credibility such reports had to be adopted relatively quickly. In the past, the EC had been disappointed with some panel Reports, namely the report which found that the EC's anti-circumvention laws were in violation of its obligations under the GATT, but the EC

had allowed that Report to be adopted relatively quickly. Following this view, the EC supported the adoption of the Report.

175. The representative of Brazil said that previous panel Reports should not be considered as jurisprudence. They had a secondary value as interpretative source but it was in the nature of the conciliatory process in the GATT that the facts considered were those examined in the circumstances specific to the cases. Every panel had the right to examine the facts in the light of the Agreement rather than taking into account a supposed jurisprudence. He reserved his rights to comment on this panel Report when it was discussed later.

176. The representative of Austria stated that this Report raised some problems concerning the interpretation of Article VI of the General Agreement and also the interpretation of the Agreement. An international Agreement had to be considered as a legal text where each word had a precise meaning which had to be given rigorous interpretation. Austria felt that in some instances this principle had not been followed in this Report, for instance with respect to standing, Article 3:4, and Article 2:4 and the finding of the dumping margin as reflected in the conclusions.

177. The representative of Norway agreed with the United States that the Report deserved thorough study and reflection. Matters of principle were involved, the importance of which went beyond losing or winning a specific case. Norway also desired fair rules and consistent and perhaps predictable interpretations. The representative of Norway asked the United States for information on how the recommendation of the panel would be followed.

178. The representative of the United States said that despite misgivings, his authorities intended to fully implement this Report once it was adopted by the Committee.

179. The Committee took note of the statements made and agreed to revert to the report at a future meeting. The Chairman said that he would propose to hold informal consultations with the parties to the dispute in an effort to seek a mutually satisfactory solution to this matter.

I. Korea - Anti-Dumping Duties on Imports of Polyacetal Resins from the United States - Report of the Panel (ADP/92 and Corr.1)

180. The Chairman recalled that at its special meeting on 17 February 1992, the Committee had established a panel in this dispute. The Report of this panel (ADP/92) was circulated to the Committee on 2 April 1993, and ADP/92/Corr.1 was circulated to the Committee on 6 April 1993. He thanked the members of the panel for their work done in this dispute, and gave the floor to Mr. Maamoun Abdel-Fattah, Chairman of the panel, to make a statement on this Report.

181. The Chairman of the panel informed the Committee that the panel had met with the parties to the dispute on two occasions. The matter dealt with the imposition by Korea on 14 September 1991 of an anti-dumping duty on imports of polyacetal resins from the United States and Japan. The issue before the panel was the determination of injury by the Korean Trade Commission (KTC). The panel carefully considered the submissions and the factual information provided by the parties to the dispute, and also took into account the statements made by the third parties to the dispute, Canada, the EC and

Japan. The panel submitted its findings to the parties to the dispute on 10 March 1993, and circulated its report to the Committee on 2 April 1993 (with the Corr.1 circulated on 6 April 1992), as the parties had not reached a mutually satisfactory solution by that date. The panel reached its conclusions in light of a standard of review stated in paragraphs 227 and 228 of the Report. The conclusions of the panel, summarized in paragraph 300 of the Report, were:

- (i) The KTC's determination of injury in respect of imports of polyacetal resins from the United States was inconsistent with Articles 3 and 8:5 of the Agreement because of the absence of specific conclusions in respect of each of the standards of injury discussed in its determination and the lack of explanation of the relationship between the KTC's analyses under these standards;
- (ii) The KTC's finding that there was present material injury to a domestic industry in Korea was inconsistent with the requirement of positive evidence under Article 3:1 of the Agreement with regard to certain criteria used for determining present injury, and was inconsistent with Article 3:4 of the Agreement with respect to another criteria, namely, inventories.
- (iii) Insofar as the KTC's affirmative determination included a finding of a threat of material injury caused by the imports under investigation, that finding was inconsistent with Articles 3:1, 3:3 and 3:6 of the Agreement.
- (iv) Insofar as the KTC's affirmative determination included a finding of material retardation of the establishment of an industry, that finding was inconsistent with Article 3:4 of the Agreement.

182. The panel recommended to the Committee that it request Korea to bring its measure (the imposition of anti-dumping duties on 14 September 1991 on polyacetal resins from the United States) into conformity with its obligations under the Agreement.

183. The representative of Korea said that he was disappointed with the panel's finding and believed that the panel's conclusion resulted from the panel's refusal to take into account an important document submitted by Korea to the panel, namely the transcript of the KTC's voting session of 24 April 1991. This document clearly showed that the KTC's determination was based on positive evidence and involved an objective examination of the factors. In its review, guided by Article 8:5, the panel chose to ignore the transcript and based its examination only on the KTC's written determination on the grounds that the transcript was not publicly notified nor was it included or referred to in the KTC's written determination. Korea's view, however, was that Article 8:5 should not be construed as binding the panel to rely only upon the document publicly notified and thereby, to deny the evidentiary value of the other administrative record. Nothing in the Agreement prevented the panel from considering the transcript. In fact, Article 15:5(b) and 15:6 of the Agreement may have even required it. The panel's decision to utilize some of the material submitted, while ignoring other material, constituted an undesirable precedent that could undermine the effective functioning of the GATT dispute settlement system, because the panel's decision was bound to set a tone for the future interpretation of Article 8:5, 15:5 and other provisions of the Agreement.

184. The representative of Korea said that the transcript was a contemporaneous record of what transpired at the KTC meeting and showed the reasoning for all of the statements made by individual

members of the KTC, including the reasons for their individual votes. Such a transcript was a part of the administrative record, and maintaining it was obligatory under the Korean Anti-Dumping Law. Anyone who needed further explanation of the public statement of the reasons for the injury determination was able to consult the transcript. The transcript was also supposed to be presented to the court as evidence of the determination if a case was brought to litigation. On the other hand, the KTC's written determination, which appeared in a public notice, was only a summary of the KTC's discussion. It did not purport to include all that was discussed by the KTC. Thus, the denial of evidentiary value of a document for the simple reason that it was not notified publicly was not warranted. For an objective examination of the case, the KTC's written determination had to be read together with the transcript. Had the panel accepted the evidentiary value of the transcript, the panel's findings and conclusions would have been otherwise. Korea still believed that the KTC's injury determination was based on positive evidence, and involved an objective examination of the volume, price effect, and impact on the domestic injury of the dumped imports under investigation. There was no doubt that any investigating authority would have arrived at the same conclusions under similar circumstances.

185. The representative of Korea emphasized that though Korea did not share the view of the panel in many parts of the Report, Korea was not going to stand in the way of the adoption of this panel Report, because it believed that the multilateral dispute settlement system provided the best way to solve trade issues, and because it had in the past strongly supported the strengthening of the multilateral dispute settlement system.

186. The representative of the United States regarded the panel as having properly held in paragraph 209 that the examination of whether the KTC examined the factors required by Article 3 falls "within the scope of the requirements in Article 8:5 that authorities articulate in a public notice 'the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities, and the reasons and basis therefore'". In keeping with that conclusion, the panel had also properly concluded that it should examine "whether the factual basis of the findings articulated in the determination was discernible from the text of the [public] determination and reasonably supported those findings." (paragraph 227).

187. The United States considered that the panel treated the Korean determination with both rigor and fairness. For example, it did not hold that there was only one means by which the factual basis of the KTC's articulated findings may be discerned. Thus it did not hold that the KTC must have specifically cited each item of evidence that was relevant to its findings. Rather, the evidence in the record might be sufficient if such consideration had been reflected in the authority's published reasoning. Referring to paragraph 228 of the Report, he noted that the relevant question in reviewing the KTC determination was whether the evidence as referenced and evaluated by the KTC in its determination constituted positive evidence in support of the findings in that determination. The United States urged the Committee to adopt the Report of the panel.

188. The representative of Japan expressed his country's strong interest in this case because the anti-dumping duties were imposed on products from Japan also. Japan had twice held bilateral consultations under the Agreement, and had also presented a submission to the panel as an interested third party. Japan strongly requested the Korean Government to adopt the panel report and to bring its measure

on the products from the United States and Japan into conformity with its obligations under the Agreement.

189. The Committee adopted the report of the panel as found in ADP/92 and Corr.1.

J. Mexico - Anti-Dumping Duties on Electric Power Transformers from Brazil - Request by Brazil for Conciliation under Article 15:3 of the Agreement (ADP/91)

190. The Chairman said that the Committee had before it in document ADP/91 of 26 March 1993 a request by Brazil for conciliation under Article 15:3 in the matter of Mexico's anti-dumping duties on electric power transformers from Brazil. This matter was first discussed in this Committee at the regular meeting held in April 1992, and then again at the regular meeting in October 1992. At the October 1992 regular meeting, Brazil informed the Committee that consultations held in this matter had failed to achieve a mutually satisfactory solution, and that Brazil would, absent unforeseen progress, request conciliation under Article 15:3 of the Agreement.

191. The representative of Brazil said that all the pertinent elements of the request made by Brazil were contained in ADP/91. His delegation was at the disposal of the Committee to answer any questions.

192. The representative of Mexico said that his Government did not approach the issue in a legalistic manner, which would have implied opposition to moving on to this stage because the consultations in this case had not been substantively exhaustive. But on account of good faith and respect for multilateral rules, and because of a wish to respect Brazil's right to continue with the procedural stages in this matter, Mexico would not object to entering the stage of conciliation. However, since consultations had not yet borne the results expected, the Mexican delegation offered to continue a dialogue with the Brazilian delegation regarding this case.

193. The representative of Mexico said that in the complaint, the Mexican producers had estimated the normal value by approximating the reconstituted value of Brazilian transformers, based on their technology and the sales conditions in the Brazilian market. The normal value could not be taken from the country of origin or from exports to third countries because the transformers were being manufactured on request and there was no manufacture of any transformers in Brazil which were identical to those under investigation. He noted that in this case of public tendering, the sui generis characteristics of the electric transformers made it impossible to make a complaint when the actual import of the goods took place and the damage to domestic industry would already be irreparable. However, the Agreement did not imply that the purchase of a product through public tendering could not be considered as a normal transaction in the normal course of normal trading operations. The goods involved were capital goods and the practice involved was a customary practice which applied to tenders. The specific characteristics of the goods to be purchased as well as of those making the offer could not be considered as extraneous to normal conditions in trade.

194. Regarding similar or like products, he recalled that Article 2:6 required adjustments to be made for a fair comparison. However, neither the normal value nor the export price should be adjusted due to physical characteristics or market conditions where the complaint was made. Moreover, in this

particular case there was no need to apply these adjustments because the national product and the imported product were identical.

195. Regarding the calculation of cost, the investigating authorities in Mexico validated the accounting methods as long as these were in compliance with the generally accepted principles of accounting and with the relevant effective Mexican legislation. In the case of the electrical transformers from Brazil, there were some differences which were dealt with as follows. For total costs and expenses, pursuant to Article 2:4 of the Agreement, Article 2:2(b) of the relevant Mexican regulation established that the production cost to be included in normal value should refer to the total cost (both fixed and variable) and that these costs must have been determined in the course of normal trading operations. Reasonable amount of administrative and other general expenses are added to the cost estimate. For one of the enterprises, the investigating authority accepted the estimation of a standard cost and any variations of the standard cost drawn up by the company itself. The authorities added to this estimate the cost of unused manpower because this cost was a fixed cost which according to the legislation had to be included in the calculation. Since the same factory (belonging to COEMSA) had three production lines, namely transformers, turbines and generators, the fixed costs and general costs were distributed amongst these three lines based on the proportional share of the production lines in the total sales value. For another company, Trafo, the method proposed by the company was used. The investigating authorities verified on the spot the documentation provided, and meetings with both companies were held to validate the principle that the total of general expenses could be obtained by adding the shares assigned to each production line. In accounting terms, this was total absorption of fixed cost and did not imply adjustments due to differences in Article 2:6 of the Agreement. In the case of Trafo, the investigating authority rejected the prices for material and components purchased from related parties because these transactions were not normal commercial transactions.

196. The representative of Brazil said that a comparison of the Brazilian document with the Mexican explanation showed that guidance from the Committee was required. However, the parties would also continue bilateral efforts to settle this matter without having to proceed to the dispute settlement system.

197. The Committee took note of the statements made. The Chairman urged both parties to the dispute to make further efforts to find a mutually satisfactory solution to this dispute consistent with Article 15:4 of the Agreement.

K. Mexico - Anti-Dumping Proceedings on imports of Regenerated Cellulose Casing from Spain
(ADP/M/39, paragraphs 150, 155-156)

198. The Chairman recalled that this item was first raised at the regular meeting in April 1992, in the context of the Committee's examination of Mexico's semi-annual report for the first half of 1991 (document ADP/70/Add.6). The Committee reverted to this matter in its regular meeting of October 1992 (ADP/M/39, paragraphs 150, 155-156). Earlier, the representative of the EC had asked for an explanation of the manner in which normal value and export prices had been determined. At the October 1992 regular meeting, the EC had asked Mexico to address this issue in writing before the next meeting, and the Chairman had requested that Mexico respond to the EC request for clarification in writing. No response from Mexico had been received on this matter.

199. The representative of Mexico said that the reply had been given to the EC the day before. A note had been prepared to calculate the final dumping margin in this case. Only one Spanish exporter was recognized during the inquiry, who presented incomplete replies to the questionnaire sent by the investigating authority. The first measure was taken at the stage of the provisional resolution, and the information submitted by the company was used. The information was used for the calibre 23/84 which was representative of the universe of calibres exported by that firm to Mexico. The weighted average price of the exports of the company to one of its main clients in Uruguay was used as normal value because the firm had argued that the volume of sales to that firm in Uruguay was similar to its sales to Mexico. The average weighted price of sales of the firm to Mexico was used as the export price. The margin of dumping calculated did not include adjustments for the crude prices because this information was not provided to the Mexican authorities. The Spanish firm had refused to submit itself to verification, and the investigation authorities were thus not sure whether their information was correct. In this situation, the Agreement allowed the conclusions to be drawn on the basis of the facts available. Therefore, the investigating authority set aside the totality of the information submitted by the Spanish firm in the course of the investigation, which was in conformity with international practices. The investigating authorities then took the information from the complainant. The information for calculation of dumping referred to calibre 23/84. As normal value, the prices listed by the Spanish firm were used, and the adjusted sales price of the exclusive distributor in Mexico of the Spanish firm were used as the export price. Article 2:5 of the Agreement allowed this method. The resulting dumping margin was US\$5.76/kilogramme (or 67 per cent). The anti-dumping duty determined according to the criterion of the lesser duty rule, was US\$2.41/kilogramme (or 28 per cent) because this was considered sufficient to address the damages.

200. The representative of the EC acknowledged that the Mexican submission had been received the day before, and some more time was needed to consider that communication. He appreciated Mexico's use of the lesser duty rule, which was also what the EC followed.

201. The Committee took note of the statements made and decided to revert to this item at a future meeting if requested by any delegation.

L. United States - Anti-dumping investigations of imports of certain circular welded steel pipes and tubes from Mexico and Brazil (ADP/M/39, paragraphs 165-176)

202. The Chairman recalled that this matter was first raised by the representative of Mexico at the regular meeting held in October 1991, and was subsequently discussed at the Committee's regular meetings in April and October 1992. At the meeting in October 1992, the representative of Mexico had stated that Mexico would submit some additional written questions relating to the investigation. The representative of Brazil had reserved Brazil's rights to examine and return to the responses to Mexico's questions in future meetings (ADP/M/39, paragraphs 165-176). The Secretariat had just received written questions on this matter from Mexico.

203. The representative of Mexico hoped that the United States would be able to reply to Mexico's questions before the next meeting of the Committee. He said that the first question reflected Mexico's concern that countries with important market share (i.e. Canada and Japan) were not included in the investigation, even though imports from these countries determined the market prices. The second query

was on how the investigating authorities could determine the influence of recession in comparison to dumped imports on the domestic industry. The third question pertained to the product coverage of the anti-dumping duties, in light of a subsequent anti-dumping measure on Mexican line pipe. Another question was how prejudice was found in this case while the steel cables manufactured in Mexico were subject to quantitative restraints governed by the United States itself.

204. The representative of Brazil recalled that this case started in October 1991, i.e. during the period when voluntary restraint arrangements were in place. At the last regular meeting, the United States delegation had stated that once the final injury in this case was made the United States would provide information on it. Although the final injury determination had been made in October 1992, the information had not been provided by the United States. Since the injury determination was affirmative and the duty imposed on the Brazilian exporter was remarkably high (103.38 per cent), Brazil was interested in the information on injury. He requested the United States delegation to provide the information on that determination.

205. Further, the representative of Brazil also stated that the United States' Department of Commerce's final determination was flawed. One of the main points made by the respondents was that the Department of Commerce's investigating authorities did not seem to understand Brazilian accounting principles in spite of the fact that these principles were regularly accepted by American accounting firms and financial institutions as accurate. Not understanding the methodology, the Department of Commerce had refused to accept these principles and imposed its own methods which resulted in excessive burden on the respondents because they had to explain their methodology and to adjust their records according to the investigating authorities' requests. The methodology for cost calculation and comparison which resulted lent itself to indiscriminate use of best information available. In this case, the Federal Register note of 17 September 1991 showed that the Brazilian exporter had responded to many questionnaires and received investigators for on the spot investigation. However, the Department had decided that the information was inadequate basis for estimating dumping margins and concluded that "this lack of complete and reliable information compelled the Department to rely totally on best information available". The Government of Brazil, which was examining all options on how to deal with the matter, was not convinced that the Agreement's provisions had not been violated in this case.

206. The representative of Brazil also expressed concern that according to their information the petitioners in this case were lobbying for anti-circumvention measures so that the standard tubes and other categories will all be covered.

207. The representative of the United States said that his delegation would give due consideration to Mexico's questions and would respond to them in writing. Regarding other countries which were not investigated, the United States had preliminarily responded to this question in the responses to the first set of questions provided by Mexico (ADP/M/39, paragraph 168). For imports not subject to investigation, he said that the market share of these imports declined from 16.8 per cent to 11.1 per cent, while cumulated imports increased from 21.9 to 25.1 per cent. The basic trend, therefore, was very different for those imports. With regard to the scope of the anti-dumping order, he noted that parties present such issues formally to the authorities in the United States and are given a response. Regarding customs classification and its relationship to the classification of the merchandise under the like product category of the Agreement and in United States law, he noted that under United States law the customs

classification was not dispositive and that this was consistent with the like product definitions in the GATT.

208. Addressing Brazil's questions, the representative of the United States said that he would appreciate written questions and the United States would also reply in writing. Regarding accounting practices, he noted that in many cases the Brazilian firms had successfully gone through investigation and verification and had their responses accepted as a basis of calculating the normal values. In this case, there was no information presented by the Brazilians that their particular accountancy statements were otherwise acceptable in the United States. Also, it was a very unsuccessful verification which had raised many problems, including lack of complete sales listings which meant that there was no way to determine whether the responses were complete. More detailed response would be provided when the written questions were provided by Brazil. He also stated that the injury determination would be provided shortly to Brazil.

209. The representative of Brazil said it would be constructive if the Committee examined the information on injury provided by the United States.

210. The Chairman noted the United States commitment to provide the injury determination to Brazil and the invitation to Brazil to put questions in writing. He also recalled the request by Mexico that the United States respond in writing to its questions prior to the next regular meeting. The Committee took note of the statements made and agreed to revert to this item at its next regular meeting.

M. United States - Anti-dumping Investigation of Imports of Steel Wire Rope from Mexico
(ADP/M/39, paragraphs 177-179)

211. The Chairman recalled that this matter was raised by the representative of Mexico at the regular meetings held in April and October 1992. At the October 1992 meeting, the representative of Mexico stated that he would submit some additional questions to the United States delegation (ADP/M/39, paragraphs 177-179). The Secretariat had received a copy of a letter from Mexico to the United States requesting formal consultations under Article 15:2 of the Agreement in this case.

212. The representative of Mexico said that there was a final determination by the United States in this case, which was a matter of concern for Mexico because this Mexican industry had been punished repeatedly over the past eight years. After not finding injury, another investigation, i.e. the one under discussion, was opened less than four months later. Official consultations had been requested by Mexico, and a copy of the request had been provided to the GATT Secretariat. The United States delegation had given a speedy affirmative response to the request for consultations.

213. The representative of the United States said that he looked forward to the opportunity to discuss this case with the Mexican delegation.

214. The Chairman said that it was encouraging that the parties were finding a mutually satisfactory solution to this matter. The Committee took note of the statements made, and agreed to revert to this item at a future meeting if requested by any delegation.

N. Mexico - Anti-dumping proceedings on imports of fabrics of cotton and cotton blends with man-made fibres from Hong Kong, Argentina, Brazil, Pakistan and other countries (ADP/M/39, paragraphs 49-70)

215. The Chairman recalled that at the regular meeting in October 1992 the representatives of Brazil, Pakistan, Hong Kong, Canada and Egypt raised several issues relating to the above-mentioned proceedings in the context of the Committee's examination of Mexico's semi-annual report for the first half of 1992 (document ADP/81/Add.2). In this context, Brazil had drawn the Committee's attention to its communication on this topic (ADP/86), and to Mexico's inability to find a date to consult on the matter referred to in document ADP/86. At the regular meeting in October 1992, the Chairman had requested that Pakistan put its concerns on these matters in writing, and that Mexico respond in kind. Regarding the request for consultations by Brazil, the Chairman had called on Mexico to afford sympathetic consideration to Brazil's written request for consultations (ADP/M/39, paragraphs 49-70).

216. The representative of Mexico said that the Government of Mexico had terminated the proceedings in this case on 10 December 1992.

217. The representative of Hong Kong appreciated the termination of these proceedings on 10 December 1992 due to insufficient evidence. However, on 15 February 1993, Hong Kong received information that the complainant had lodged a complaint in the Mexican court against the actions taken by the Mexican authorities in relation to this case. The Hong Kong Government, among others, was invited to attend a court hearing scheduled for the 24 February 1993, which was eventually postponed. Hong Kong was not sure how the new development would affect the final outcome of this case, and requested the Mexican representative to provide further information.

218. The representative of Mexico said that if Hong Kong had given this information earlier, he would have been able to consult the authorities in the capital on this point. He would provide information to the delegation of Hong Kong on this possible legal appeal that might have been lodged. If this was a judicial procedure then this was beyond the control of the Secretariat in Mexico. For the purposes of the Committee and from the official point of view, there had been no change in the substance of the information that the proceedings had been terminated.

219. The representative of United States said that his authorities were under the impression that appeal rights to fiscal courts were not available to domestic Mexican exporters. He asked for clarification on this point.

220. The representative of Pakistan said that his authorities had not put questions in writing because they received the news that the Mexican authorities were in the process of dropping this investigation. He appreciated the decision of the Mexican authorities in terminating the proceedings, but also noted that the information in the Mexican semi-annual report showed that Pakistan's export volume was very small (i.e. 0.2 tonnes). Thus, Pakistan had hoped that the case would be terminated promptly, but it took ten months after the complaint being lodged for the investigation to be terminated, and the trade chilling effects on exports were obvious. He hoped that the investigating authorities confronted with requests for investigation in similar situations would reach a prompt decision in the spirit of Article 5:3 of the Agreement.

221. The representative of Brazil appreciated the rational and reasonable outcome of this investigation. He noted that judicial action was beyond the powers of the Mexican administration, but expressed concern about the same point as that raised by the delegation of Pakistan. He hoped that the Agreement would be used taking into consideration the purpose of the provisions.

222. The representative of Mexico said that he would obtain information to confirm whether any of the interested parties had effectively presented an appeal before the Mexican judicial Tribunals. Regarding the United States' question, he said that in accordance with Article 24 of Mexico's Foreign Trade Law, the sole parties that had the appealing right against definitive anti-dumping measures were those that paid the duty, i.e. the importers. Mexico was exploring the possibility to amend the legislation so that all the interested parties had the right to appeal. About the statement by Pakistan, he said that it did appear after the investigation that the volume of export from Pakistan was fairly small and the case against Pakistan was terminated. An investigation was required to know the trade flows because the investigating authorities could not ascertain trade flows only on the basis of what information provided by the complainants.

223. The Committee took note of the statements made and agreed to revert to this item at a future meeting if requested by any delegation.

O. Canada - Anti-dumping action on carbon steel welded pipes from Brazil (ADP/M/39, paragraphs 72-75)

224. The Chairman recalled that at the meeting in October 1992 the Brazilian delegate had raised several questions on this action in the context of the Committee's examination of Canada's semi-annual report for the first half of 1992 (document ADP/81/Add.5). The Committee had agreed to revert to this item at its next meeting (ADP/M/39, paragraphs 72-75).

225. The representative of Brazil said that Canada had recently informed Brazil that it was ready to provide the information required by Brazil. As the information was of a technical nature, Brazil was willing to proceed on a bilateral basis and would agree to remove the item from the agenda with the understanding that Brazil could revert to it if necessary.

226. The Committee took note of the statements made and agreed to revert to this item at a future meeting if requested by any delegation.

P. EC - Anti-dumping investigation of Imports of 3.5" Magnetic Disks from Hong Kong (ADP/M/39, paragraphs 205-212)

227. The Chairman recalled that at the regular meeting in October 1992, the representative of Hong Kong had expressed doubts about a number of claims raised in the complaint in this investigation. The EC had replied that the investigation had just opened and the only point that could be made was that the opening of the investigation was not justified. In that regard, he had stated that standing had been verified and existed under GATT rules. Hong Kong had subsequently provided a written submission (ADP/97) which was available in the meeting room.

228. The representative of Hong Kong recalled that at the Committee meeting in October 1992, Hong Kong had expressed concern about the initiation of anti-dumping proceedings in this case because insufficient evidence of dumping, injury and causal link between the two had been put forward in the complaint to justify allegations against Hong Kong. There were also doubts as to whether the complainants represent a major proportion of the domestic industry.

229. Since then, Hong Kong had submitted a representation to the European Commission on 4 February 1993 setting out why the proceeding should not have been initiated and urged that it be terminated. The EC responded on 30 March 1993, but the EC did not explain its position in the light of issues raised in the representation or provide the clarifications sought. Hong Kong will be pursuing the matter further with the EC. In the meantime, the Hong Kong delegation considered pertinent, and without prejudice to other issues raised in the representation, to draw to the Committee's attention a fundamental principle raised by the case.

230. In the complaint, the complainants did not produce any concrete evidence of dumping by Hong Kong companies. The alleged dumping margin in respect of the alleged dumped products from Hong Kong was based on constructing the normal value of Hong Kong products on the basis of the cost of production of parts and components, labour/certification costs and manufacturing overheads in the People's Republic of China (PRC) and Japan, and adding 13 per cent selling, general and administrative expenses and 10 per cent profit. Even putting aside the question of whether the sales, general and administrative expenses and profit level used were reasonable, Hong Kong's view was that constructing the normal value, whether with or without adjustment, on the basis of third country production data was inconsistent with Article 2:4 of the Agreement which stated that the export price shall be compared with "the cost of production in the country of origin plus a reasonable amount for selling and any other cost and for profits". If the costs of parts and components used were production costs of such parts and components in a third country and not arm's length sales or export prices of such parts and components, the inconsistency would be compounded by the fact that in principle such costs were not costs of production to downstream producers. Not only was such methodology impermissible under the Agreement, the use of third country production data was also inappropriate because of the different economic and industry structures in different places. The complainants' claims to have remedied this problem by adjusting the figures to reflect Hong Kong costs were of little value when the base being adjusted was unrealistic. Furthermore, the complainants in this case based their evidence of dumping on a highly selective use of the available data. Such a methodology lends itself to manipulation to achieve the result desired and the scope for abuse was evident. For example, using the same data but varying the selection, one could work out dumping margins between -30 per cent (i.e. no dumping and over pricing) to 30 per cent, and -10 per cent to 86 per cent in respect of 2MB and 1MB discs respectively. Therefore, it was obvious that allegations of dumping justified with normal value determined on the basis of third country production data should not be considered to be "sufficient evidence of dumping within the meaning of Article VI of the GATT as interpreted by the Code" for the purpose of initiation under Article 5:1 of the Agreement.

231. The representative of Hong Kong said that the issue should be of concern to all contracting parties as companies of all countries could just as easily be subject to anti-dumping investigation on the basis of manipulation of third country production data which may have no relevance to them. This

would lead to unnecessary proliferation of anti-dumping actions and the harassment and trade stifling effect of such actions could not be underestimated.

232. The representative of the EC said that the submission from Hong Kong had been recently received, and the EC would respond in writing in due course. He noted that the Hong Kong's submission mentioned the complainants not producing concrete evidence of dumping. Neither the Agreement nor the EC law talked about "concrete evidence" as a criterion; they talked about "sufficient evidence". The criterion used in EC law and practice was that *prima facie* evidence of dumping, injury and a causal link between the two was sufficient to open an investigation. It was therefore the EC's view that the sufficiency test was met in this particular case. Also, the Hong Kong delegate had used the word "alleged" in several instances with regard to dumping margin and dumped products. He said that a complaint was an allegation, and it was for the investigation to establish the veracity or not of these allegations.

233. The representative of the EC said that the standard in Article 2:4 of the Agreement applied to the taking of measures and not to the opening of an investigation. In this particular case, if the Hong Kong companies co-operate in the investigation, the comparison would be made exactly on that basis. If they do not co-operate, best evidence available would be used which may or may not be that contained in the complaint. He drew the Hong Kong Government's attention to a misquote of the Agreement. While Hong Kong had said "sufficient evidence of dumping within the meaning of Article 6 of the GATT as interpreted by the Code", the exact statement in Article 5:1 was "request shall include sufficient evidence of (a) dumping; (b) injury within the meaning of Article VI of the GATT as interpreted by this Code and (c) a causal link" The questions of dumping and injury were completely separate here and the reference to Article VI was specifically and uniquely with respect to injury.

234. The representative of the EC said that it was difficult when investigating authorities received complaints where the complaining companies indicated the impossibility or difficulty of obtaining price information in the domestic market of the exporting country. Clearly, the information available to these companies was limited, and the standard of allegation of dumping had to be somewhat less than the standard for the allegation of injury where the information was more readily available. On this occasion, no price information appeared to be available as regards the Hong Kong market nor could the cost information be obtained. Therefore, the best information to arrive at the *prima facie* criterion was that contained in the complaint and was considered in this case sufficient as provided for in Article 5 of the Agreement and in the EC legislation.

235. The representative of Japan said that products from Japan were also covered in this investigation. He expressed concern at the EC's not having reached definitive determination on this case though one year and nine months had already passed since the date of initiation. Preliminary determination was announced only last week. Referring to Article 5:5, he requested the EC to finish the investigation as quickly as possible. He recalled Japan's comments on this case in the previous meeting of the Committee, and said that the EC producers had increased their production volume and expanded their market share, while the import volume from Japan had decreased. Japan's view was that initiation and the preliminary determinations by the EC were not consistent with the Agreement, in particular Article 5:1 for initiation and Article 10:1 for preliminary determination. Japan continued to watch further proceedings in this case with concern.

236. The representative of Finland, speaking on behalf of the Nordic countries, said that the EC was correct that sufficient evidence for initiation was not the same as full evidence, and that prima facie evidence was sufficient to initiate an investigation. However, for sufficient evidence of dumping, one had to use the definition of dumping in Article 2. Although Article 5:1 did not make an explicit reference to Article 2, it was self evident that the relevant concept was dumping as defined in Article 2. In this case, the EC had determined sufficient evidence on the basis of constructed normal value in third countries. Such a construction was not found in Article 2. Something similar could be found for non-market economies in the Subsidies Agreement, but Hong Kong was not a non-market economy. Regarding the EC's comment on the alleged inconsistency with Article 2:4, he noted that his understanding was that the EC representative had maintained that initiation of an investigation was not a measure under the Agreement. He said that the Agreement did not define a measure and it seemed reasonable to interpret that term as understood in ordinary language. The understanding of the representative of Finland was that initiation of an investigation was a measure according to general rules of interpretation, and the provisions of the Agreement would also apply in this respect.

237. The representative of Hong Kong said that he looked forward to receive the response of the EC in writing. Responding to the oral comments of the EC, he said that Articles 5:1 and 5:2 requirements for sufficient evidence for dumping and injury referred to both initiation and thereafter. Hong Kong had not found any provision in the Agreement that could suggest that the standards of evidence could be derogated upon the initiation of an investigation. The same standard for sufficiency of evidence should apply from initiation to the end of the investigation. Even if the EC's argument was hypothetically correct, he said that Hong Kong was not talking about the level of sufficiency of evidence, but about the glaring inconsistency of the data presented to the Commission by the complainants. Using third-country data was a glaring violation of Article 2:4 of the Agreement. In that sense, there was sufficient evidence of non-compliance.

238. The representative of Hong Kong said that the authorities had the responsibility from the beginning to satisfy themselves, as required under Article 5:1, that there was sufficient evidence for initiation. Whatever the allegation, if the authorities found that the allegation was to the negative, they should not initiate the investigation. About lack of co-operation by Hong Kong companies and the use of best information available, he was surprised to hear that the complainants had found it difficult to get the relevant data in an open economy and with the usual co-operative spirit of Hong Kong companies. If the complainants could not find any data in Hong Kong, how could they determine from the very beginning that there was dumping and injury to their market. He also asked the EC to confirm whether the interpretation of Article 5:1 was that the phrase "within the meaning of Article VI of the General Agreement as interpreted by this Code" did not apply to dumping.

239. The representative of Singapore supported Hong Kong's position, and said that this case had raised a fundamental and important point of principle regarding the methodology used in the determination of dumping, i.e. the use of third country data in constructing normal value. Article 2:4 clearly stipulated that the cost of production in the country of origin shall be used when the normal value is to be constructed. This requirement should be observed and followed strictly. Singapore was also concerned about the potential abuse and manipulation as pointed out by the Hong Kong delegation, and shared the concern of Hong Kong that initiation of investigation by the EC did not meet the requirement of Article 5:1 of the Agreement.

240. The representative of Australia said that the statements made by Hong Kong and supported by some others on the sufficiency of evidence of dumping or normal values required for initiation were incorrect and not consistent with a reasonable interpretation of the Agreement. Sufficiency of evidence for initiation was not the same level as that expected when a preliminary or final finding was made. The use of third country data adjusted appropriately could not be ruled out as inconsistent with the Agreement. If evidence of that type was provided in a way that was soundly argued and soundly based, then it would be sufficient in terms of initiation requirements.

241. The representative of the Brazil said that third country data was not unacceptable. But if such data was used, it would have to be used with greatest rigour and only as a secondary tool when all other possibilities were excluded. He shared the concern of those who considered that easy recourse to any methodology in the definition of cost had often had disproportionate and negative result for exporters.

242. The representative of the EC said that if it was meant that only the information mentioned in Article 2:4 of the Agreement be used for calculation of dumping, then this was incorrect because then the use of best information available as a surrogate was not possible. He also disagreed that an initiation was the equivalent to a measure. The initiation was of an investigation, and imposition was of a measure: one did not follow from the other. He disagreed that the same standard should be applied for opening of an investigation and for imposition, because then there would not be any need for an investigation because imposition would take place at the same time as an opening. Regarding co-operation, he clarified that he had not said that Hong Kong companies had not co-operated, but that if there was to be non-co-operation during the investigation then the EC could use as best information available the information supplied in the complaint. About complainants establishing dumping despite no data available to them, he said that the complainants had alleged that there was dumping. The determination of whether there was dumping would depend on the outcome of the investigation. A distinction had to be made between the complaint stage and the investigation stage. He also said that the phrase "within the meaning of Article VI of the General Agreement as interpreted by this Code" in Article 5:1 did not apply to dumping.

243. The representative of the United States said that it should be recognized that the data necessary to support a dumping complaint was often the most sensitive and closely held information that companies had. Therefore, it would be unreasonable to require that the sufficient evidence to cause the authorities to believe that dumping may be taking place, be conclusive at that stage. No good purpose would be served by not allowing reasonably available information to form the basis of a well reasoned and documented complaint.

244. The Chairman noted that Hong Kong had requested written response to its communication ADP/97 and the EC had undertaken to give such a response. The Committee took note of the statements made and agreed to revert to this item at its next regular meeting.

Q. United States - Anti-dumping duties on Gray Portland Cement and Cement Clinker from Mexico - Report of the Panel (ADP/82 and ADP/M/39, paragraphs 100-107)

245. The Chairman recalled that the Report of this panel, which was established on 21 October 1991, was circulated to the Committee on 7 September 1992 (ADP/82). The Committee had considered the

Report of this panel at its regular meeting in October 1992. The United States had stated at that meeting that the parties were seeking a mutually satisfactory resolution of the dispute, and proposed that the Committee re-visit the report at a later meeting. The representative of Mexico agreed with that proposition. GATT/AIR/3415/Add.1 informed the Committee that this item had been added to the agenda of this meeting at the request of the delegation of Mexico.

246. The representative of Mexico recalled that Mexico had requested the adoption of the Report of the panel at the regular meeting of the Committee in October 1992 (ADP/M/39, paragraph 104). He repeated the request for the adoption of the Report.

247. The representative of the United States informed the Committee that the parties were seeking mutually satisfactory resolution of this dispute, and they had made some progress since the last meeting of the Committee. He proposed that the Committee re-visit this Report at a future meeting, hopefully at an early date.

248. The representative of Mexico said that he was aware that the producing sectors in both countries were working intensively with an aim to find a satisfactory solution to this matter. The Government of Mexico's view was that the United States' proposal was adequate and this matter could be re-visited in the future.

249. The Committee took note of the statements made and agreed to revert to this item at a future meeting, either a special or a regular meeting.

R. Other business

(i) Acceptance of the Agreement by the Czech Republic and the Slovak Republic (ADP/95 and 96)

250. The Chairman drew the Committee's attention to the communications from the Czech Republic and the Slovak Republic (ADP/95 and 96), in which they had accepted the Agreement. The transitional arrangements under which the Czech Republic and the Slovak Republic were actually participating in the activities of the Agreement were to expire on 1 May 1993 (document L/7155, dated 16 December 1992). If the 30 day period required for entry into force under Article 16:4 of the Agreement applied, then the Agreement would enter into force for these two republics after 1 May 1993, i.e. after the expiry of their transitional arrangement, and the continuity of their participation in the Agreement would be broken. Given the exceptional circumstances, as mentioned in L/7155, the Secretariat proposed a solution in the last paragraphs of ADP/95 and 96, namely that the Agreement enter into force for the Czech Republic and the Slovak Republic on 1 May 1993, unless any Party to the Agreement notified to the Secretariat by 30 April 1993 that it could not accept such an accelerated procedure.

251. The Committee agreed with this procedure.

(ii) Communication from the Delegation of the European Communities regarding terms of reference of the Panel on "EC - Anti-Dumping Proceedings on Imports of Audio Tapes in Cassettes from Japan" (ADP/94)

252. Before proceeding with this item, the Chairman recalled that at the outset of this meeting, the delegation of Korea had expressed a wish to raise a similar item.

253. The representative of Korea recalled that his country had several times expressed its keen interest in this case, since anti-dumping duties had also been imposed on the same product originating in Korea. He wished to reserve Korea's right to intervene as an interested third party in the proceedings before the Panel.

254. The Chairman said that it was desirable that the request by any Party to reserve its rights to present its views to the Panel be made at the meeting at which the Committee establishes the Panel. The request from Korea had come at a late stage in the process, but there were some exceptional aspects to this particular case which suggested that it may not be inappropriate to accede to Korea's request at this stage.

255. The Committee decided to accept Korea's request to intervene as third party in the proceedings before the Panel.

256. The Chairman recalled that at its last regular meeting in October 1992, the Committee had established a Panel at the request of Japan regarding EC anti-dumping proceedings on imports of audio tapes from Japan (ADP/M/39, paragraph 145). At that meeting, the Committee had authorized the Chairman to continue informal consultations with the parties regarding the terms of reference of the Panel. The Chairman informed the Committee that the Parties had agreed that standard terms of reference will apply to this Panel. Therefore, the terms of reference will be:

"To examine, in light of the relevant provisions of the Agreement on Implementation of Article VI of the General Agreement, the matter referred to the Committee by Japan in documents ADP/85 and Add.1 and to make such findings as will assist the Committee in making recommendations or in giving rulings."

257. The Chairman noted that certain clarifications regarding the scope of the terms of reference will be provided to the Chairman of the Panel in the form of a letter from Japan. It was his understanding that the parties to the dispute considered these clarifications to represent a statement on which the Panel may rely should it need to interpret its terms of reference. In this respect, he drew the Committee's attention to a document from the EC circulated to the Committee on 19 April 1993 (ADP/94). In view of the above, and according to paragraph 6(ii) of the Annex to the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance, the Committee was requested to approve these terms of reference as outlined.

258. The representative of the United States sought a clarification on whether the members of the Committee had seen all the documents that comprised, or will comprise, the terms of reference. He asked whether the letter from the Government of Japan to the Panel will be circulated to the other members of the Committee as part of the process of the Committee confirming the terms of reference of the Panel.

259. The representative of Japan explained that when the Panel was established in the meeting of October 1992, Japan had presented its legal basis clearly in ADP/85 and Add.1, and proposed standard terms of reference. The EC had asked for a clarification of the issues to be examined by the Panel, and did not agree to standard terms of reference at that time. Since then, Japan and the EC had had a series of bilateral consultations with respect to the questions which the Panel would be expected to examine. They had finally agreed on standard terms of reference. Japan considered that this clarification procedure was never legally required for the panel proceedings. Japan had responded to the EC's request in order to facilitate the proceedings. This process should not be taken as constituting precedent for future panel cases. Therefore, this letter would not be circulated. It was clear that both the EC and Japan had agreed that standard terms of reference can be used in this case.

260. The representative of Brazil expressed surprise at the time taken by both Parties to agree on the terms of reference.

261. The representative of the United States asked the delegation of Japan whether they would have any problem in circulating the letter to the Committee. The United States was interested because it had reserved its right to intervene as third party, and as a member of the Committee that participated in approving the terms of reference in this unusual circumstance, the United States was interested to know what the Parties discussed and what the Government of Japan offered as clarification. Therefore, he asked the delegation of Japan to circulate the letter to the Committee.

262. The representative of Japan said that all the legal points were already clear in ADP/85 and Add.1. Further clarification, which was not requested under the Agreement, had been provided to the EC so that the Parties could proceed. The United States would eventually know the contents of the letter because it had reserved its rights as third party.

263. The representative of Canada recalled that his delegation had expressed some concern at the previous meeting on the length of time being taken to agree on terms of reference for this Panel. Canada was prepared to agree to the establishment of this Panel on the basis of the standard terms of reference. He had sympathy with the delegation of Japan, and suggested that since the United States had reserved its third party rights to intervene before the Panel, what documents it would receive in this case be settled in that fora.

264. The representative of the United States shared the concern about the time taken to agree on the terms of reference, and said that his Government felt strongly that standard terms of reference should be applied in every case. He recalled that the EC and Japan were in disagreement earlier about the specificity of the Japanese request for the panel and the nature of its complaint. The extensive discussion on the nature of the Japanese complaint had led the Parties to agree on how the Panel was to proceed. However, the decision was reserved to the Committee to permit the Panel to proceed, and thus the members were in some way implicated by what was a somewhat private understanding between the two parties. Although, the United States endorsed standard terms of reference, he asked again, in view of the way the discussions had proceeded, whether the delegation of Japan had any objection to the letter being shown to the members of the Committee.

265. The representative of Japan responded that his delegation was not in favour of distributing the letter because it did not wish to establish a precedent, i.e. it wished to avoid the Parties considering this paper as being required under the Agreement. The EC's request for clarification had been responded to in order to speed up the process. They still had a serious disagreement with the EC about the necessity of the clarification. Circulation of the letter might be taken as a precedent and delaying tactics might become possible whenever certain countries wished to do so. He emphasized that this procedure was an exception. The EC and Japan had agreed to standard terms of reference in this case, and had agreed on the issues to be discussed in the Panel, and he therefore asked the other members to agree to these conditions.

266. The representative of the United States requested the Chairman to repeat the role that the letter would play in the context of the terms of reference.

267. The Chairman clarified that his statement was that the standard terms of reference would apply, and that certain clarifications regarding the scope of the terms of reference will be provided to the Chairman of the Panel in the form of a letter by the delegation of Japan. It was his understanding that the parties to the dispute considered these clarifications to represent a statement on which the Panel may rely should it need to interpret the standard terms of reference. In this respect he had drawn attention to the document circulated by the EC on 19 April 1993 (ADP/94).

268. The representative of the United States said that his delegation would not stand in the way, but registered some reservations with the length of time taken and the nature of this arrangement. He expressed surprise that other members of the Committee did not wish to see a document that apparently had a significant impact on the Panel's terms of reference, if it in fact was not legally and technically a part of the terms of reference that the members of the Committee were approving without ever seeing.

269. The representative of Brazil asked the Chairman whether it was the Committee's understanding that the Panel could disregard the terms of the letter if it chooses to do so, or was the Panel going to be bound by the contents of the letter.

270. The Chairman stated that his understanding was that the Panel will have to decide what it does.

271. The representative of India said that the Committee was required to approve the standard terms of reference, but the Committee should know what were the considerations and what weighed between the Parties in arriving at their conclusions. To that extent, the Committee should be informed of the considerations that entered into the calculation of the Parties in arriving at their conclusions.

272. The representative of the EC said that reason for the delay, as mentioned in the last paragraph of ADP/94, was that the EC was not convinced that there was clarity in the Japanese request for the Panel. Considerable discussions took place for this reason to clarify the terms of reference. The Community agreed to accept standard terms of reference in a spirit of compromise, but there should be further clarification to the Panel on how they should be interpreted in this particular case.

273. The representative of Brazil said that his delegation's understanding was that the Panel may disregard the contents of the letter from Japan.

274. The Chairman noted the concerns and views that the members of the Committee had expressed about non-precedential value of this procedure, and asked whether the Committee approved the terms of reference outlined at the meeting.

275. The Committee approved the terms of reference.

276. The Chairman noted that the next step in the process was to select panellists for this dispute as promptly as possible. The composition of the Panel was to be proposed and approved in accordance with paragraph 11 of the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance, and he proposed that the Committee authorize him to approve the composition of the Panel.

277. The Committee authorized the Chairman to approve the composition of the Panel.

(iii) Training Workshop on Anti-Dumping Investigations

278. The Chairman noted that the Committee was fully aware that the number of countries making use of anti-dumping investigations was already considerable and was growing fast. This was reflected by the substantial number of Parties to the Agreement that now notified anti-dumping measures in their semi-annual reports under Article 14:4 of the Agreement, and by the number of non-Party developing countries that were enacting anti-dumping legislation, promulgating regulations and/or taking actions. Responses to Let/1806 (referred to earlier in this meeting) had shown that a number of countries were putting in place or revising their legislation in order to use it before long. The same trend had also been observed in the former State-trading countries. There might be a diversity of views among the members of this Committee regarding these developments, but the trend was towards greater reliance on anti-dumping policies by a growing number of countries. Thus, the members of the Committee could agree on how important it was that those countries, whether or not Parties to the Agreement, which were now using or intended to use anti-dumping measures, be fully sensitized to the principles of the GATT and of the Agreement, and that they have the training, experience and expertise to conduct investigations in a fair, professional and transparent manner.

279. The Chairman further noted that the conduct of an anti-dumping investigation was a highly complex matter which taxed the ability of even the most experienced administering authorities. The difficulties for less developed countries and for the former State-trading countries with little experience were thus easy to imagine. There was a risk that investigations might be conducted in a manner not consistent with the principles of the GATT or the Agreement merely as a result of a lack of training and expertise. The Secretariat had recognized this problem and was taking steps to address it. Several months ago, the Secretariat jointly sponsored a workshop on the conduct of anti-dumping and countervailing investigations for the administering authorities of developing countries which had recently begun or expected soon to begin conducting anti-dumping investigations. Sixteen officials from eight countries spent a week at the Secretariat, attending lectures and participating in simulations on such topics as initiation, the calculation of duties, and how to conduct an injury investigation. The participants in this workshop agreed that the exercise was a useful one that would help them to conduct fair and GATT-consistent investigations. Unfortunately, the workshop was greatly oversubscribed, and many countries that wanted to participate were unable to do so. There was, thus, a need for further workshops.

In fact, it might be valuable to conduct such workshops periodically, perhaps twice a year, and make them a permanent feature of the GATT system.

280. The Chairman informed the Committee that the Secretariat's experience with its first workshop indicated that they could be conducted on a very lean budget. Nevertheless, these programmes required a certain amount of time and money, particularly as many of the countries with greater need to participate also had less resources available. One way to support these workshops might be through voluntary contributions by the Parties, either in kind - such as the provision of lecturers - or through modest financial contributions. The first workshop was conducted entirely in this manner, with lecturers furnished by Canada, the EC and the United States, and funds provided by a non-governmental entity in Tokyo called the Fair Trade Center. This approach would be consistent with the decision of 5 May 1980 of the Committee that developed country Parties to the Agreement should endeavour to provide technical assistance to developing country Parties (ADP/2).

281. The Chairman therefore proposed that the Committee express its support for the establishment of a programme of workshops for developing and former State-trading countries on anti-dumping measures, and that it encourage developed country Parties to contribute to the support of such workshops through financial or in-kind contributions. He understood that the contributions made in kind would come mostly from those countries which had good experience in administering anti-dumping duties. However, a resource fund of about SF 60,000 per year was also needed to cover the most indispensable expenses related to the organization of two workshops per year for the duration of one week each. These expenses were mostly related to the cost of participation of some least-developed countries which otherwise would not be able to take advantage of the course but which had already engaged in anti-dumping procedures.

282. The representative of Poland expressed his country's interest in participating in the workshop as the anti-dumping measures represented a very important element, the crucial element, of the multilateral trading system. Poland already had laws which had recently been presented to the Committee, but it did not have a sufficient number of highly qualified officials in order to try to follow the rules and disciplines of the GATT and the Agreement if Poland needed to take action, or to defend Poland against actions of others which were not taken in conformity with the Agreement. He emphasized that it was in the interest of all the Parties to follow these workshops, and there was a need for active effort of the GATT. He invited countries which had expressed readiness to financially support the activities of the GATT Secretariat in this area to make every possible effort in order to succeed in this field.

283. The representative of Egypt said that the Egyptian officials that attended the workshop had found it useful, and there was a need to repeat such a workshop. He supported the idea of the workshop and appealed for financial contribution from the developed countries.

284. The representative of India supported the initiative and stated that India had participated in the previous workshop and had found it extremely useful.

285. The representative of Romania fully supported the workshop.

286. The representative of Mexico expressed support for this idea. He said, however, that when a country was setting up a system then it was not very useful to refer to mega-systems such as those in the United States, EC or Australia. To the extent possible, Mexico was willing to share its own experience in this area because smaller countries setting up their systems would benefit as much from the Mexican system.

287. The representative of Pakistan expressed his country's interest and support for the workshop. He suggested that the Committee may wish to recommend to the GATT Council or to the Budget Committee to make available sufficient funds for the workshop. Otherwise, the Committee might encourage contributions from such Parties as might be able to contribute.

288. The representative of Hong Kong supported any proposal that further enhanced the compatibility and consistency of the national anti-dumping legislation and the measure thereunder with the Agreement. Thus, Hong Kong supported the initiative for the workshop, and would keep an open mind when an actual proposal for financial resources was put for consideration by the Budget Committee in due course.

289. The representative of Brazil recalled that this item was included under "other business" by the Chairman. He said that Brazil had supported the concept of workshops before it had been taken up for consideration by the Committee, and in the context of the Committee meeting also Brazil endorsed the idea. However, Brazil had concerns similar to those of Mexico on this matter. He considered that the systems established in developed countries should not be considered as models.

290. The Chairman noted that while the workshop that had been held so far had lecturers from administering authorities from various developed countries, their task was to teach on fundamental approaches rather than to advocate any particular approach followed by their Government.

291. The representative of Hungary endorsed the statements of support expressed for the workshop.

292. The observer from Argentina said that the funding problem should be solved in some way. He was familiar with the problems faced by his country in this area, and the person from Argentina who participated in the previous workshop had found it extremely useful. Training in this area would be useful for all in the long run.

293. The observer of Venezuela said that his country had only recently adopted the law against unfair practices. Two Venezuelan officials had attended the previous workshop, and they benefited substantially. He gave full support to the initiative and encouraged the Committee to provide the workshop with the necessary resources.

294. The Chairman clarified that the goal of these workshops was not to encourage countries to take actions. That was happening whether or not such training sessions were offered. Rather, it was to ensure that the relevant officials be fully sensitized to the need to conduct fair, efficient and impartial investigations consistent with the letter and spirit of the GATT and the relevant Agreements. Participation in the workshop programme was structured in a manner consistent with this goal. Having heard the views of a large number of the members, the Chairman proposed that the Committee decide to support

the programme of workshops for developing countries and former State-trading countries on anti-dumping measures, and request members of the Committee to participate in financing this programme.

295. The representative of the United States had no difficulty with the proposal. He said that there might be resources within the current budget of the Secretariat such as from the technical co-operation budget, and it might be useful that the Committee relay to that Division the value that Parties to this Agreement attached to that kind of training for their reflection in formulating the use of their funds.

296. The Chairman suggested that the comment by the representative of the United States be reflected in the Minutes of the meeting and that the Committee would follow that course of action.

297. The Committee decided to support the programme of workshops for developing countries and former State-trading countries on anti-dumping measures and requested members of the Committee to participate in the financing of this programme.

298. The Chairman noted that, to date, the workshop had been financed by voluntary contributions from delegations. That was perhaps the best way to continue. However, following up on the United States' suggestion, if these avenues proved to be insufficient, he intended to consult delegations on how to ensure effective implementation of this decision.

299. The representative of Brazil said that he was becoming increasingly concerned with the issue of the courses to investigating authorities in developing countries, especially with the last suggestion by the delegation of the United States. He was not sure what the decision by the Chairman was. He recalled that the Chairman had proposed a wording to the Committee, and after that the United States had made a comment. He was not clear whether the Chairman had incorporated the comment of the United States into the proposal to the Committee. The reason for his query was that Brazil was very much concerned with the implications that developed countries do investigations well (which was not true) and that developing countries do not do investigations well. He said that if the issue of the course to investigating authorities in developing countries had to go to the Budget Committee of the GATT he would ask that it be properly put into the regular agenda of a meeting so that representatives get instructions from their governments on all the implications and then the Committee make recommendations. His view was that the discussions on this item were going too fast. If there were any implications towards what he had just alluded, Brazil would oppose any decision by the Committee in relation to that. He wished to be clear that the decision to suggest anything to the Budget Committee of the GATT be taken totally excluded from this decision.

300. The Chairman clarified that he had not made any reference to the Budget Committee in the decision.

301. The representative of the United States said that he was not referring at all to the question of who would do the training and how it would be done. This was to be left to the Secretariat, which would take into account the comments made at the meeting today. The only question which he was addressing related to resources, and there were funds available within the GATT for training activities. The United States was not proposing any action in the Budget Committee on this, because the Budget Committee did not generally engage in that type of micro-management. All that was suggested was

that perhaps it might be useful to make known to the staff of the Technical Co-operation Division that the Committee members placed value in training in this area.

302. The representative of Brazil said that as in the case of the Budget Committee, he did not wish this Committee either to take up micro-management of the GATT.

303. The Chairman said that in his view any concerns the representative of Brazil would have had would have been fully addressed in the text of the decision that the Committee had taken.

(iv) United States - Delay in Administrative Reviews and Revocations

304. The representative of Japan recalled that Japan had expressed its concerns in the previous meeting of the Committee regarding the delay in administrative reviews and revocations in the United States, and had requested the United States to improve the situation. Japan wanted to know the developments since then, and again urged the United States to speed up the process in a responsible manner.

305. The representative of the United States said that extremely significant progress was made in the fiscal year 1990-91 in reducing the backlog in administrative reviews. There was subsequently an unanticipated increase in workload in investigations that increased the backlog again but the United States attached high priority to completing the reviews. The United States had a commitment to do the administrative reviews within the one year suggested by the statute. Almost all of the large backlog cases had been eliminated and continued progress was expected. He assured delegates that administrative reviews would be conducted as quickly as was possible.

306. The representative of Japan said that he would send questionnaires to the United States delegation specifying products on which Japan had concerns and ask for a response. The questionnaire would also be circulated to the Committee for information.

307. The Committee took note of the statements made.

(v) The European Community - Initiation of an anti-dumping proceeding concerning imports of certain television camera systems originating in Japan

308. The representative of Japan said that the EC had initiated an anti-dumping investigation on broadcast television camera systems from Japan this March. Japan had two concerns with regard to this investigation. Firstly, the EC expanded the scope of products from broadcasting television camera systems to the professional camera systems which were not produced by the EC producers, but supplied to the EC producers as OEM products from Japanese producers. Japan's view was that this was inconsistent with Article 5:1 which required that investigating authorities have sufficient evidence before initiation. Secondly, the EC had asked the Japanese producers to submit a response to the questionnaire within 24 days from the receipt of those questionnaires, though data was for 21 months was asked. This conflicted with the Recommendation adopted in 1983 by the Committee which ensured that respondents to anti-dumping questionnaires should normally be given at least 30 days for reply. Japan asked the EC to comply with this recommended action.

309. The representative of the EC said that since this item was added to the agenda on the previous day, he was not in a position to answer the questions in detail. However, his understanding was that the question about the scope of the investigation was currently being examined. Regarding the time limit set for the questionnaire, he said that the date of receipt was presumed to be seven days after the date of dispatch. The legal representatives of all the Japanese companies concerned received the questionnaires on the date of opening, i.e. 10 March 1993, and the time limit for replying was fixed as 29 April 1993. This was more than reasonable.

310. The Committee took note of the statements made and agreed to revert to this item at a future meeting if requested by any delegation.

(vi) Mexico - Anti-dumping action against certain products exported from Hong Kong

311. The representative of Hong Kong drew the Committee's attention to the anti-dumping actions recently taken by Mexico on a wide range of products originating from China, a substantial volume of which was re-exported from Hong Kong. According to media reports, the investigations were initiated on 16 April and on the same day, provisional duties were applied with immediate effect on these products. The duties applied were extremely high, reaching 1,105% in one case and more than 300% in most other cases. Hong Kong's trade interest had been directly and adversely affected by these anti-dumping actions, which covered 80% (worth about US\$380 million) of all Hong Kong's re-export trade of Chinese products to Mexico. Being a signatory to the Agreement, Hong Kong had a legitimate right to ensure that its benefits as accrued under the Agreement were not directly or indirectly nullified or impaired, and that the achievement of any objective of the Agreement was not being impeded, by another Party.

312. The representative of Hong Kong said that the sudden anti-dumping actions taken by Mexico raised serious procedural problems. Mexico had not notified Hong Kong on both the initiation of the investigations and the imposition of the provisional duties, although Hong Kong's exporters were directly affected by such actions. He said that the imposition of anti-dumping duties on the large range of products with immediate effect and apparently without any investigation was contrary to the principle of open, equitable and transparent anti-dumping procedures required under the Agreement. Hong Kong reserved the rights to pursue this matter further under the Agreement and requested that this item be included in the agenda of the next meeting of the Committee. He also asked the Mexican representative to provide information regarding this case.

313. The observer from China voiced his concerns on the anti-dumping measures recently adopted by Mexico against Chinese products. The extensive anti-dumping measures targeted more than ten types of Chinese products. This affected trade relations between the two countries. Bilateral consultations on this matter had been conducted and he hoped that a mutually satisfactory solution could be reached in line with the spirit of the General Agreement and the Agreement.

314. The representative of Mexico confirmed that Mexico had recently undertaken anti-dumping enquiry with respect to various products which originated from the People's Republic of China. The resolutions were published in the Official Gazette of the Federation on 15 April 1993. From 1990 to 1992, the imports from China had increased by 2,731 per cent. The participation of China in total

Mexican imports increased from 0.4 per cent to about 1 per cent over this period, and the informal trade of Chinese products was much larger. The practice of trans-shipment also resulted a picture that was not clear. Three of the ten cases were initiated through a formal request by domestic producers. Mexico was guaranteeing, as was expressly recognized in each one of the ten resolutions, full rights of defence for all interested parties. Regarding the Chinese remark relating to the application of the Agreement, he recalled that China was not a member of the Agreement.

315. The representative of the United States echoed the concern expressed by Hong Kong with respect to the notification, due process and transparency aspects of these investigations, in particular with respect to possibly arduous requirements for certificates of origin. He said that his authorities would closely follow the proceedings to ensure that no rights of signatories were abridged through the conduct of these investigations.

316. The representative of Hong Kong asked for confirmation whether seven of the ten cases were initiated by the authorities themselves, and three were initiated on the basis of petition by Mexican domestic producers.

317. The representative of Mexico confirmed that three of the ten cases had been initiated through formal petitions presented by Mexican domestic producers. He noted that Article 5:1 of the Agreement allowed, in exceptional circumstances, to self-initiate or to initiate ex officio. He referred to Article 6:9 of the Agreement with regard to the short time involved.

318. The Committee took note of the statements made and decided to revert to this item at its next regular meeting.

(vii) Comments by the EC on provisional and definitive measures taken by the United States on certain steel products from a number of member States of the EC

319. The Chairman noted that the EC had already commented on this matter under agenda item F, and asked the representative of the EC whether he wished to make further comments on the matter.

320. The representative of the EC said that he had nothing to add to his previous comments.

321. The Committee took note of the statements made.

(viii) United States - Anti-circumvention action on Canadian exports of brass plates

322. The representative of Canada expressed concern regarding a recent United States' preliminary determination that imports of certain brass plate from Canada somehow constituted circumvention of the United States' anti-dumping duty on certain brass sheet and strip from Canada. The facts of the case were as follows. On 12 January 1987, the United States Department of Commerce published an anti-dumping order on imports of certain brass sheet and strip from Canada. On 25 October 1991, the United States Department of Commerce published a notice for initiation of a circumvention inquiry pursuant to a petition that was filed on 7 October 1991 by several United States companies and labour unions. This petition was filed pursuant to United States anti-circumvention laws, and alleged that a

Canadian brass producer and an United States importer of brass had circumvented the United States' anti-dumping Order on brass sheet and strip by importing the brass plate into the United States where it was rolled into brass sheet and strip by the United States importer. On 21 January 1993, the Department of Commerce rendered a preliminary determination of circumvention of the anti-dumping Order on brass sheet and strip, and thus authorized the collection of provisional duty on Canadian exports of certain brass plate in the amount of 21.32 per cent. This percentage represented the margin of dumping calculated in the existing anti-dumping duty Order on brass sheet and strip. In effect, the United States had simply extended the anti-dumping duty from brass sheet and strip to brass plate.

323. Canada's concerns arose from the fact that the United States' anti-circumvention law, Section 781 of the US Tariff Act of 1930 as amended by the Omnibus Trade and Competitiveness Act of 1988, applied in this case allowed for the imposition of an existing anti-dumping duty to a product outside the scope of the original anti-dumping Order without the necessity of investigation to determine whether the product, brass plate, was in fact being dumped and causing or threatening injury or materially retarding the establishment of a domestic industry. He recalled that Canada's concerns with the subject were expressed before this Committee in October 1991 and in April 1992. In addition, Canada's concerns were set out in Diplomatic Notes submitted to the United States Department of State on 21 October 1991 and 3 March 1993. The preliminary determination now issued by the United States Department of Commerce warranted that this matter be revisited in this Committee. Canada submitted that the United States' action in this case was blatantly inconsistent with the explicit requirement in the GATT and the Agreement to which both it and Canada subscribed. The Agreement clearly stipulated that the imposition of an anti-dumping duty was a measure to be taken only under the circumstances provided for in Article VI of the General Agreement and pursuant to an investigation initiated and conducted in accordance with the provisions of the Agreement. Article VI of the GATT was unequivocal on the need to establish in an investigation both the dumping of the product in question and the resulting material injury or threat thereof before an anti-dumping duty could be applied. No such investigation was conducted by the United States authorities to determine whether the requirements of Article VI were satisfied in this case. As a result, there was no GATT basis for the United States' anti-dumping duties on brass plate from Canada. Moreover, since the effect of the United States' decision was to apply additional duties to imports of brass plate to the United States, this action was also inconsistent with Article II of the General Agreement. Canada had repeatedly called upon the United States to address its concerns regarding the use of the United States anti-circumvention law in this case, but there had been no satisfactory response. Therefore, Canada requested consultations under Article 15:2 of the Agreement, and a written confirmation of this request would follow shortly.

324. The representative of the United States took note of the Canadian interest in this case. The preliminary determination had been issued and many concerns had been raised by the interested parties in the case. The authorities were actively considering these, and expected to issue the final decision in June. They would give their full attention to the Canadian questions on receiving the request for consultations.

325. The representative of Brazil said that Brazil's view was that the use of the anti-circumvention provisions of the United States' national law in the described circumstances would be a violation of the GATT and the Agreement.

326. The representative of Japan expressed serious concern about the use of anti-circumvention measures in this case. Japan would also consider whether the action in this case was consistent with the Agreement.

327. The representative of Hong Kong echoed the concerns expressed by the Canadian representative. Hong Kong maintained a strong interest in the outcome of this case and would reserve comments for a later stage when there were more details on this case.

328. The Committee took note of the statements made and agreed to revert to this matter at a future meeting if requested by any delegation.

(ix) Changes to the United States' practice of collection of anti-dumping duties for the provisional period

329. The representative of Canada said that following a decision by the United States Court of International Trade, the United States Department of Commerce had issued notice of a change in its policy concerning the maximum amount of definitive duty which may be collected on importations during the provisional period. Under the old policy, assessments of provisional duties could be secured by cash deposits or a bond. If the amount collected as security for the provisional period was lower than that calculated for the final determination, the difference was not collected. Under the new policy, this difference would not be collected only if the provisional duty was secured by cash deposits. This was contrary to the intent and letter of Article 10:2 of the Agreement, and represented a considerable shift away from accepted practice for the assessment and collection of anti-dumping duties. The Agreement did not intend that an arbitrary distinction be made between different forms of securities along the lines introduced by the United States. Such a change in policy represented another measure which added to the harassment already experienced by exporters of goods to the United States, and would act as a significant non-tariff barrier to trade.

330. The representative of the United States agreed that there had been a change as a result of a decision by the United States Court of International Trade, which was carefully reviewed for possibility of appeal. He said that after examining the language of the Agreement and the Subsidies Agreement, it became apparent that there was a difference in the language in the two Agreements. Article 11 of the Agreement referred to the limitation on the anti-dumping duty fixed in the final decision when it was higher than the provisionally paid duty, and Article 10:2 of the Agreement said that "Provisional measures may take the form of a provisional duty or, preferably, a security - by cash deposit or bond ..." In contrast, the language in the Subsidies Agreement was different. Article 5:6 of the Subsidies Agreement said that "If the definitive countervailing duty is higher than the amount guaranteed by the cash deposit or bond, ..." It would be speculation to determine why the difference in wording was there. The different wording in the two Agreements, as was reflected in the United States law, had to be taken to mean something different. Therefore, the United States Department of Commerce was of the view that there was no successful hope of appealing the decision of the Court of International Trade, and accordingly had changed its practice to reflect that decision. This was an useful example why harmonization exercise had to be carefully done in the context of the Uruguay Round.

331. The representative of Finland, speaking on behalf of Nordic countries, said that they yet had to study this case but it seemed that the change in the United States practice was not in conformity with Articles 10:2 and 11:1(i) of the Agreement. Article 10:2 put cash deposits and bonds on an equal footing as far as security was concerned, and Article 11:1(i) stated that "If the anti-dumping duty fixed in the final decision is higher than the provisionally paid duty, the difference shall not be collected. If the duty fixed in the final decision is lower than the provisional paid duty or the amount estimated for the purpose of the security, the difference shall be reimbursed ..." Thus it seemed that retroactive collection of duty in case of bonds instead of cash deposits put up as security seemed at first sight to be incompatible with those provisions. However, this matter merited further study.

332. The representative of Brazil said that it was clear for the reasons pointed out by Canada and Finland that the United States practice was clearly in violation of the spirit and the letter of the Agreement as it had been interpreted for all these years. One could not interpret loosely what was clear, and this practice was a violation of the international obligation of the United States.

333. The Committee took note of the statements made and agreed to revert to this item at a future meeting if requested by any delegation.

(x) United States - Proposed changes to the regulations on exclusion of companies from anti-dumping investigations

334. The representative of Canada said that on 26 March 1993, the United States Department of Commerce had indicated in a notice in the Federal Register regarding an anti-dumping Order against Korean steel wire rope that it was presently drafting proposed regulations which would eliminate exclusions from the anti-dumping order which were presently granted to firms that received a final zero or de minimis margin of dumping. This could considerably increase the burden on exporters that had been found not to be dumping. Canada asked the United States delegation how these regulations would affect the functioning of their anti-dumping investigations and implementation of anti-dumping Orders.

335. The representative of the United States noted that the regulations had not yet been published in the Federal Register. The proposal was that when a company was examined for a period of investigation and not found to have dumping duties above de minimis, then instead of excluding that company from any further examination under the dumping order, to provide for suspension of liquidation of the entries with a cash deposit of zero. This would be subject to administrative reviews, and the firm would have the ability to obtain partial revocation of the Order upon completing three years of reviews with zero margins. This would be published as proposed regulations and would not have any effect on the practice or customs clearance until such time as these regulations or whatever version comes out after consideration of comments from all parties. The representative of the United States enquired about the Canadian practice when one among several firms covered by an anti-dumping investigation was found not to have any dumping margins during the period of investigation.

336. The representative of Canada said that if it was found that the goods were not being dumped during the period of investigation, assuming the exporter was pricing at or above the normal values and would continue to do so, no duties would be assessed.

337. The representative of the United States enquired whether dumping duties would be assessed if the exporter in the future sold at less than the normal values.

338. The representative of Canada agreed that this was the case.

339. The representative of the EC shared Canada's concern about the proposed change in the United States' regulations. The EC practice was that if an exporter was found to be not dumping, he was released from the procedure without any obligations to report or other similar obligations.

340. The representative of Brazil said that the United States delegation had tried to assure the Committee that the measures taken in the steel case were not of a political nature. However, Brazil found it difficult to give any other meaning to a long series of changes in methodology and interpretation of the Agreement that had taken place in the United States in such a short time. This was either an enormous historical co-incidence or it was with a political view of using the anti-dumping laws for the purpose that they were not meant to be used.

341. The representative of Hong Kong expressed concern on the proposed change, but reserved his comments for a later stage when the draft legislation becomes actual legislation.

342. The representative of Finland, speaking on behalf of the Nordic countries, asked the United States to explain whether the exporter found to be not dumping or dumping below de minimis margin would be subject to a "best information available" rate if that exporter did not co-operate in an administrative review.

343. The representative of the United States, noting the caveat that the regulations were prospective at this point, said that the normal practice would be followed, i.e. there would be no other option for the administrative authorities but to apply the facts available to an exporter that did not co-operate in an administrative review.

344. The representative of Canada recognized that this was a proposed regulation, and wanted to confirm that until these regulations were issued or published as final regulations they will not affect the United States' practice.

345. The representative of the United States confirmed that the regulations will have an effect on the practice only after they were adopted in final form after a period to get comments on the proposed regulations.

346. The representative of Japan said that his delegation would also study the implications of the proposed change in the United States' regulations and come back at a later stage, if necessary.

347. The Committee took note of the statements made and agreed to revert to this item at a future meeting if requested by any delegation.

Date of the next regular meeting of the Committee

In accordance with the Committee's decision taken in April 1981, the next regular meeting of the Committee will take place in the week of 25 October 1993.