

**GENERAL AGREEMENT  
ON TARIFFS AND TRADE**

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**Committee on Anti-Dumping Practices**

**MINUTES OF THE MEETING HELD**  
**ON 26-27 APRIL 1994**

Chairman: Mr. J. Graça-Lima (Brazil)

1. The Committee on Anti-Dumping Practices ("the Committee") held a regular meeting on 26-27 April 1994. The following agenda was adopted:
  - A. Election of officers
  - B. Acceptance of the Agreement  
- Argentina (Let/1877)
  - C. Examination of anti-dumping duty laws and/or regulations of Parties to the Agreement (ADP/1 and addenda)
    - (i) Australia (ADP/1/Add.18/Rev.1/Suppl.6, ADP/W/358)
    - (ii) Romania (ADP/1/Add.9/Rev.1, ADP/W/357, 359 and 361)
    - (iii) Mexico (ADP/1/Add.27/Rev.1 and Rev.1/Suppl.1)
    - (iv) Laws and regulations of other Parties to the Agreement
  - D. Semi-annual reports of anti-dumping actions taken by Parties to the Agreement during the period July to December 1993 (ADP/114 and addenda, ADP/102/Add.12)
  - E. Reports on all preliminary or final anti-dumping duty actions (ADP/W/350, 351, 353, 355 and 360)
  - F. Report by the Chairman of the Committee on Anti-Dumping Practices on informal consultations regarding semi-annual reports (ADP/W/333, ADP/M/41, paragraphs 60-67)
  - G. Report by the Chairman of the Committee on Anti-Dumping Practices on informal consultations regarding reports under Article 14:4 on preliminary or final anti-dumping actions (ADP/W/347, ADP/M/41, paragraphs 68-69)
  - H. United States - Imposition of anti-dumping duties on imports of stainless steel hollow products from Sweden - Report of the Panel (ADP/47)
  - I. United States - Imposition of anti-dumping duties on imports of fresh and chilled Atlantic salmon from Norway - Report of the Panel (ADP/87)
  - J. United States - Anti-dumping duties on imports of stainless steel plate from Sweden - Report of the Panel (ADP/117 and Corr.1)

- K. EC - Imposition of anti-dumping duties on cotton yarn from Brazil - Request by Brazil for the establishment of a panel under Article 15:5 of the Agreement (ADP/121)
  - L. Mexico - Anti-dumping duties on electric power transformers from Brazil (ADP/91, ADP/M/41, paragraphs 125-128)
  - M. United States - Anti-dumping investigations of imports of certain circular welded steel pipes and tubes from Mexico and Brazil (ADP/W/335 and 349, ADP/M/41, paragraphs 129-136)
  - N. EC - Anti-dumping investigation of imports of 3.5 inch magnetic discs from Hong Kong (ADP/97, 99 and 120, ADP/M/41, paragraphs 137-148)
  - O. United States - Delay in administrative review (ADP/M/41, paragraphs 157-162)
  - P. EC - Delay in anti-dumping investigation (ADP/M/41, paragraphs 163-168)
  - Q. Mexico - Anti-dumping action against certain products exported from Hong Kong (ADP/M/41, paragraphs 149-156)
  - R. United States - Anti-dumping measures on man-made fibre sweaters originating in Hong Kong
  - S. Participation of Observers in the work of the Committee
  - T. United States - Anti-dumping duties on gray portland cement and cement clinker from Mexico - Report of the Panel (ADP/82)
  - U. Other business
    - (i) Anti-Dumping Workshops run by the Secretariat
    - (ii) Brazil - Anti-dumping Investigation of Vinyl Acetate from Mexico
    - (iii) Status of Uruguay Round Draft Implementing Legislation
    - (iv) Outstanding Dispute Cases Subsequent to Entry into Force of the WTO
    - (v) EC - Refund of anti-dumping duties
- A. Election of officers
2. The Committee elected Mr. J. Graça-Lima (Brazil) as Chairman and Mr. John Buckley (Australia) as Vice-Chairman.
- B. Acceptance of the Agreement
3. The Chairman recalled that in April 1991 Argentina signed the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade ("the Agreement"), subject to ratification. Through Let/1877, dated 25 March 1994, the Director-General had informed the CONTRACTING PARTIES that on 14 March 1994, the Government of Argentina deposited with him the Instrument of Ratification of the Agreement on Implementation of Article VI of the GATT. In terms of paragraph 4 of Article 16 of the Agreement, the Agreement entered into force for Argentina on 13 April 1994. On behalf of the Committee, the Chairman welcomed Argentina as a Party to the Agreement and as a member of the Committee.

4. The delegate of Argentina noted that this was an important moment for Argentina, and that Argentina's ratification of the Agreement was a clear indication of its trade policy intentions. He said that it was only through the multilateral system and the strict application of the GATT system that the Parties could move together in a system that was stable and beneficial.

5. The delegate of Brazil welcomed Argentina as a member of the Committee.

6. The Committee took note of the statements made.

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

(i) Australia (ADP/1/Add.18/Rev.1/Suppl.6, ADP/W/358 and 362)

7. The Chairman noted that document ADP/1/Add.18/Rev.1/Suppl.6 contained 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) and the Explanatory Memoranda and Second Reading Speech for the Legislation. He recalled that the Committee had decided to consider these two pieces of legislation together. He noted that Japan had submitted a written question on the Australian legislation and the Secretariat had received a written reply from the delegation of Australia on 25 April 1994 (ADP/W/358 and 362). The Chairman reminded the Committee that in document ADP/W/354 and Corr.1 Australia had answered questions from Hong Kong (ADP/W/348) relating to its legislation contained in document ADP/1/Add.18/Rev.1/Suppl.7.

8. The delegate of Australia recalled that at the last two meetings of this Committee, his delegation had answered in detail a number of questions from delegations. The last one was to a question from Japan which was available in the room as ADP/W/362, a copy of which was earlier provided to Japan. Japan's question was in relation to section 269 TJA inserted in the Australian Customs Legislation (Tariff Concessions and Anti-Dumping Amendment) Act 1992. Japan had claimed that the provision provided for "cross-cumulation". As Australia understood the expression "cumulation across the Codes", it referred to the situation where undumped subsidized imports from one source and dumped unsubsidized imports from another source were considered together for the purpose of injury determinations under one or both of the Anti-Dumping and Subsidies Agreements. Section 269 TJA referred to a quite different situation. It was added to the legislation for domestic legal reasons to allow for the situation where imports from the one source were both dumped and subsidized. Nothing in the two Agreements could be construed to prevent goods that were both dumped and subsidized from being subject to an anti-dumping investigation and a countervailing investigation concurrently. Also, nothing in the two Agreements could be construed to prevent goods from being subject to both anti-dumping and countervailing measures concurrently. For an affirmative determination of injury to be made under section 269 TJA, the goods in question must be both dumped and subsidized and be causing injury in the sense of both Agreements. This was fully consistent with Australia's obligation under both Agreements. He recalled that his delegation had now answered a number of questions on this legislation. As no further written questions had been received in relation to this legislation, he asked the Committee to agree that it had concluded consideration of the legislation.

9. The representative of Japan regretted that the written answer from Australia had only just been received. As previously expressed in the Committee in April and October last year and in document ADP/W/358, Japan continued to have concerns on cross-cumulation of allegedly dumped imports and allegedly subsidized imports when determining injury. Cross-cumulation could cause an absurd situation, in that dumped unsubsidized imports and subsidized undumped imports may be cumulated together. In an extreme case it was possible that if country X was dumping and country Y subsidizing, imports may be cumulated. Article 3:4 of the Agreement stipulated that the injuries caused by other factors

must not be attributed to the dumped imports. Japan still had concerns on the issue, and would closely examine the implementation of the Australian legislation. If necessary, Japan could revert to the issue in the future.

10. The Committee took note of the statements made and decided to revert to the matter at its next regular meeting if requested by any delegation. 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 so that the delegation of Australia could provide written responses prior to that meeting.

(ii) Romania (ADP/1/Add.9/Rev.1, ADP/W/357, 359 and 361)

11. The Chairman recalled that at the regular meetings in April and October 1993, the Committee considered document ADP/1/Add.9/Rev.1 which contained an unofficial translation of Romania's 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 prices, Order No. 127 of 20 August 1992 of the Minister of Trade and Tourism on the Working Rules for the Commission for Anti-Dumping, Countervailing and Safeguard Measures, and a Joint Order No. 128 of 24 August 1992 of the Minister for Trade and Tourism and the Minister for Economy and Finance which set out the Rules of Application and Procedures for the Establishment of Anti-Dumping Duties, Countervailing Duties and Safeguard Measures. At the regular meeting in October 1993, the Committee had decided to revert to the matter at its next regular meeting. Written questions on the Romanian legislation had been received from Canada and Japan in documents ADP/W/357 and 359. Written replies from Romania had been received to the Canadian questions (ADP/W/361). The delegation of Romania had not yet provided written answers to the questions submitted by the delegation of Japan.

12. The delegate of Romania said that following the questions raised by the Japanese delegation, bilateral consultations had been held in which Romania had provided detailed information concerning the legislation and these answers would be circulated to the Committee. He asked that the Committee terminate its discussion of the legislation.

13. The delegate of Japan recalled that Japan had expressed concerns regarding certain provisions of Article 2 including the possibility for asymmetrical comparison and because of Article 2.8 of the legislation treating duty as a cost (document ADP/W/359). Although the Romanian Government had provided a written explanation of the legislation, Japan was not satisfied with the answers. Japan requested that Romania observe all its obligations under the Agreement. As it appeared that the legislation was inconsistent with the Agreement, Japan would continue consultations with the Government of Romania on the matter and Japan may wish to revert to the issue at a future meeting.

14. The Committee took note of the statements made and agreed to revert to the matter at the next regular meeting, if so requested by any delegation. The Committee also noted that the delegation of Romania would provide a written response to the questions posed to it by the delegation of Japan. The Chairman said that delegations wishing to raise further questions on this legislation were invited to do so well in advance of the next regular meeting of the Committee so that the delegation of Romania could provide written responses prior to that meeting.

(iii) Mexico (ADP/1/Add.27/Rev.1 and Rev.1/Suppl.1)

15. The Chairman recalled that at the regular meeting in October 1993 the delegation of Mexico had explained the legislation contained in ADP/1/Add.27/Rev.1. The Committee had decided to revert to this matter at the next regular meeting. Further information on the Mexican legislation had been circulated in ADP/1/Add.27/Rev.2 dated 14 February 1994. The Chairman informed the Committee



that the document number in ADP/1/Add.27/Rev.2 was incorrect and its correct number should be ADP/1/Add.27/Rev.1/Suppl.1. A document indicating this correction would be circulated soon.

16. The Committee agreed to discuss the information in ADP/1/Add.27/Rev.1 and ADP/1/Add.27/Rev.1/Suppl.1 separately.

(a) ADP/1/Add.27/Rev.1

17. The delegate of Canada said that Canada was not clear about differences in the version of the Foreign Trade Act of 1993 they had received from Mexico and the version that was officially notified to the GATT. He asked that the matter be clarified.

18. The delegate of Mexico said that the Foreign Trade Law of Mexico was the one notified to this Committee and which had been translated and distributed by the GATT Secretariat. The legislation had been extensively discussed in the past meeting of the Committee. He was willing to further discuss the matter with the Canadian delegate.

19. The Committee took note of the statements made and decided to revert to the matter at a later meeting if so requested by any delegation. 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 so that the delegation of Mexico could provide written responses prior to that meeting.

(b) ADP/1/Add.27/Rev.1/Suppl.1

20. The delegate of Mexico noted that the regulations implementing the Foreign Trade Act were published in the Official Diary of the Federation on 30 December 1993. Those provisions governed the Foreign Trade Act published on 26 July 1993. The main purpose of the regulations was to implement the different provisions of the Foreign Trade Act. Articles 4, 6 and 7 of the regulations were relevant to the work of the Committee. Article 4 set out the different methods for establishing normal value, and the export price, third country values and the reconstituted export price. Criteria for determining when operations were not representative were also set out. A definition was provided for a centrally-planned economy. The methodology to be followed in determining normal value was also set out. The Regulations set out the admissible adjustments to be made in comparing export prices and normal value, and established criteria for carrying out such calculations. The investigating authorities would examine whether there was a relationship between the exporters and producers and determine which producers had standing to request an investigation. Criteria were provided to determine if producers represented an industry and for information regarding like goods. The Regulations also set out the matters to be considered by the investigating authority in evaluating injury or threat thereof. Article 6 provided the procedures for enquiries. It also listed the procedure for initiation of investigations. In the Regulations, the technical aspects were set out in greater detail as well as the procedures for interested parties to make representations and to be informed of the methodology adopted in determining dumping margins, injury or threat of injury and the reasons therefor. Interested parties had the right to request a conciliation meeting with the Secretariat (i.e. the investigating authority), or such a meeting could be convened by the Secretariat of its own volition. A detailed account of the meeting would have to be published. Procedure for the review of final anti-dumping duties was also provided for. The Regulation provided that a review can be requested by the petitioner or interested parties. The result of the review must be published in the Official Diary and a conclusion must be reached within 260 days from the date after the publication of the initiation of the review. In a request for review, the exporter concerned may ask the Secretariat for an examination of their individual dumping margin and for the modification or elimination altogether of the anti-dumping duty. Procedures to enable the Secretariat to determine whether certain goods were subject to anti-dumping duties were also prescribed. The Regulations also created an anti-circumvention mechanism. There was also an obligation to notify

all the resolutions in writing to interested parties, and the reasoning used in the decisions. Definitions were provided for concepts such as public information, confidentiality, and confidential government information. The requirements for the classification of, and access to, confidential information provided by the interested parties were also set out. The Regulations specified the procedures for interested parties to participate in the enquiry. The formalities for the public hearings were also set out. Procedures for verification included at least 10 days notice before a verification visit, and preparation of a visit. The Regulations also contained certain provisions for ensuring greater transparency, security of confidential information and diminished discretion on the part of the administrative authorities. Thus Mexico had complied with its obligations under the Agreement.

21. The Chairman noted that the United States had some questions on these Regulations.<sup>1</sup>
22. The delegate of the United States noted that as the questions had only just been provided to Mexico, a response could be provided either now or later at a future meeting.
23. The delegate of Canada said that his delegation may also have some questions concerning Mexico's Regulations.
24. The delegate of Mexico said that his delegation would provide answers to the United States' questions shortly. He noted that the delegate of Canada had indicated that his delegation would consult with Mexico and may provide questions to Mexico.
25. The Committee took note of the statements made and decided to revert to this matter 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 so that the delegation of Mexico could provide written responses prior to that meeting.

(iv) Laws and regulations of other Parties to the Agreement

(a) Hungary

26. The Chairman recalled that at the regular meeting of the Committee in October 1993, the representative of Hungary had stated that the revision of the anti-dumping legislation of Hungary was yet to be completed and that the Committee would be notified of any new legislation. The Committee had decided to revert to this matter at its next regular meeting (ADP/M/41, paragraphs 44-48).
27. The delegate of Hungary noted that the Hungarian delegation had periodically reported on a Decree on Anti-Dumping which was adopted in late 1990 in Hungary. The Decree had been the subject of a full review by the Hungarian authorities. The review needed more time than originally foreseen. Although the Decree in question had been in force since early 1992, it had not been approved. Thus, the only legislative instrument which could have been applied would have been the Agreement, which was an integral part of Hungarian legislation since enacted in 1980. The review was now complete and had resulted in a draft Regulation which was due to be submitted for adoption by the Government. The proposed new regulation governed anti-dumping actions until the Uruguay Round Agreement enters into force for Hungary. The present Decree, which was a source of preoccupation in this Committee, would automatically be abolished at the entry into force of the new regulations. This was expected to take place in the coming weeks and the text will promptly be notified thereafter.

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<sup>1</sup>These questions were circulated later in ADP/W/363, 9 May 1994.

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

29. The Chairman asked if there was any matter relating to the laws and/or regulations of other Parties to the Agreement.

(b) Recent changes in EC's legislation

30. The delegate of Japan noted that on 10 March 1994 the EC had published in the Official Journal (Council Regulation No. 521/94 and 522/94) that there were modifications to its decision-making procedure regarding anti-dumping. Japan asked when the EC would notify these modifications to this Committee according to Article XVI.6(v) of the Agreement. Japan also asked for an explanation of the reason for the changes.

31. The delegate of the European Communities acknowledged that the Community had modified regulations applicable to decisions on anti-dumping investigations. There were two important changes. The first related to decision-making processes in the Council of Ministers. It was a purely internal procedure establishing new rules for voting. That regulation had therefore not been notified yet. The other regulation set out deadlines for procedures. This was of material importance to the Parties of the Agreement and would be notified. As it would come in force on 1 April 1995, it had not yet been notified to the GATT. The changes to the rules for voting were made because of the increasing complication in decision-making. Previously the voting procedure required a 70 per cent majority based on weighted votes. Now an absolute majority was necessary and the weight of the votes of member States had also been changed so that one member State had one vote. The deadlines on anti-dumping procedures were partly motivated by discussions in the Committee concerning the duration of the EC procedures. There will now be maximum time-limits on procedures, with a maximum of nine months between initiation and provisional duty imposition, and a maximum time-limit of one month between receipt of a complaint and the initiation of the proceeding. Those changes could be discussed by the Committee once the legislation came into force.

32. The Chairman noted that the EC was not under an obligation to submit its legislation before it was adopted and set in force.

33. The delegate of the EC noted that if the legislation was set in force, the EC would notify the Committee in due course. If Japan wished to discuss this at any Committee meeting then Japan should have it put on the agenda.

34. The delegate of Japan asked that the matter be put on the agenda of the next meeting of the Committee.

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

D. Semi-annual reports of anti-dumping actions taken by Parties to the Agreement during the period July to December 1993 (ADP/114 and addenda; ADP/102/Add.12)

36. The Chairman noted that the following Parties had informed the Committee that they had not taken any anti-dumping actions during the second half of 1993: Austria, Czech Republic, Egypt, Finland, Hong Kong, Hungary, India, Norway, Pakistan, Poland, Romania, Singapore, Slovak Republic, Sweden and Switzerland. No report had been received from Mexico.

37. The delegate of Mexico said that the Mexican delegation had not provided its report as the relevant information had not arrived. The report would be submitted as soon as the information arrived.

Korea (ADP/114/Add.2)

38. No comments were made on this report.

New Zealand (ADP/114/Add.3)

39. No comments were made on this report.

European Communities (ADP/114/Add.4)

40. No comments were made on this report.

Brazil (ADP/114/Add.5 and ADP/102/Add.12)

41. The Chairman noted that the delegation of Brazil had not submitted its semi-annual report for the first half of 1993 in time. That report was before the Committee in document ADP/102/Add.12. The report from Brazil for the second half of 1993 was in document ADP/114/Add.5.

42. No comments were made on both these reports.

Australia (ADP/114/Add.6)

43. No comments were made on this report.

Japan (ADP/114/Add.7)

44. No comments were made on this report.

United States (ADP/114/Add.8)

45. No comments were made on this report.

Canada (ADP/114/Add.9)

46. No comments were made on this report.

E. Reports on all preliminary or final anti-dumping duty actions (ADP/W/350, 351, 353, 355 and 360)

47. The Chairman said that copies of official notices of preliminary or final anti-dumping actions had been received from the delegations of Australia, Brazil, Canada, the EC, Korea, Mexico, New Zealand and the United States.

48. No comments were made on these reports.

F. Report by the Chairman of the Committee on Anti-Dumping Practices on informal consultations regarding semi-annual reports (ADP/W/333 and ADP/M/41, paragraphs 60-67)

49. The Chairman noted that the previous Chairman of the Committee, Mr. Armando Ortega, had made certain suggestions regarding the semi-annual reports (ADP/W/333). The Committee had considered those suggestions in the regular meetings in April and October 1993 (ADP/M/41, paragraphs 60-67). At the regular meeting of October 1993 the Committee had decided to revert to this matter at its next regular meeting, and the Chairman of the Committee at that time, Mr. David Walker, had said that he would pursue the matter in informal consultations. Mr. Walker had informed the Chairman that his consultations on this matter showed that while there was support for the suggestions contained in document ADP/W/333, some delegations indicated that they would need to reflect further on particular suggestions that in document. During the consultations one delegation had asked that it be made explicit that confidential information will not have to be provided. It had been clarified by Mr. Walker that the suggestions in ADP/W/333 did not envisage that confidential information would have to be provided, and there was therefore no requirement that confidential information be provided. The Chairman also noted that some delegations had pointed out that information sought under some items in ADP/W/333 would not be meaningful in the context of certain situations.

50. The delegate of Japan welcomed the suggestions in the document ADP/W/333.

51. The delegate of the United States supported the initiative started under Mr. Ortega to clarify what should be provided under a uniform format for the semi-annual report, but he had some concerns. He said that suggestion No. 7 required the provision of the dumping margins and dates of determinations, but in cases involving numerous participants his delegation could provide a range of the dumping margins and not each individual margin. With respect to suggestions 9 and 10, he queried whether it was necessary to include administrative reviews. Also, in the course of an administrative review the information requested in suggestions 11, 12 or 13 may not be developed for the reason that the review may not be of all the firms affected, or the specific information may not be particularly relevant to that review. Partial information may be misleading, and an additional question of confidentiality may arise. He said that while in some cases the United States would be able to provide the information, it would be useful that in addition to the symbols agreed to represent an inability to provide information on the basis of confidentiality, there should be another symbol in cases where the information had not been developed because of an administrative review, such as "AR". In relation to suggestion No. 18, he said that the first part was acceptable but the second part was onerous and of doubtful utility. It would be extremely burdensome to list all the reviews that had ever taken place. Reviews were company specific, and there could be numerous reviews taking place over time. It was not clear what particular value there would be in such information. He raised a similar concern with respect to proposal No. 19, regarding reviews pending in the reporting period. There could be several reviews pending simultaneously, and suggestion No. 19 would substantially increase the volume of reporting without increasing the volume of useful information. Reporting requirements that placed a burden on Parties must have a clear purpose.

52. The delegate of Australia noted that Australia would continue to take a very positive attitude towards transparency and notification issues. His concerns were about the need for detailed reporting which could be onerous but of only limited interest. There were two particular concerns, one about confidentiality, and the second regarding paragraph 8. Information required under suggestion 8 could not be provided by Australia and Australia had difficulty with a provision which suggested that something should be provided when it could not be. In general, however, Australia was supportive of the suggestions.

53. The delegate of Brazil sought clarification on paragraph 9 of document ADP/W/333. There were different notions of trade volume and it was unclear what was intended.

54. The Chairman clarified that in point 9 the different possible statistics for trade volume that were mentioned were (a) the total imports of the subject product from the country under investigation,



(b) the total volume of imports determined to be dumped from the country under investigation, or (c) any other notion of trade volume.

55. The delegate of Brazil asked for an example of "any other notion of trade volume"?

56. The Chairman asked that the delegate of Brazil explore informally with other delegations the possibility of having clarification of that point. He asked that the Committee agree to adopt the particular suggestions which could be accepted by the Committee as a whole.

57. The delegate of Japan supported the suggestions in ADP/W/333, and said that accommodating the United States' comments would cause difficulties, especially on points 18 and 19.

58. The Chairman noted that a footnote could indicate suggestions which were the subject of reservations, for instance suggestion No. 8 for Australia and suggestion No. 19 for the United States.

59. The delegate of Argentina noted that Argentina also had difficulties with the proposal presented in document ADP/W/333. However, the proposal had been the subject of very extensive discussion and he would support its adoption.

60. The Chairman noted that some difficulties had been pointed out and some alternative suggestions made within the spirit of the document. He suggested accommodating the concerns of members that had identified difficulties. If the suggestions could not be accepted, the alternative was to propose that further consultations be carried out by the Chair and that the matter be reverted to the next meeting of the Committee.

61. The delegate of the United States noted that his concerns were only to clarify the interpretation. He hoped that his comments had not been misunderstood because the result of accommodating his concerns would not be that the relevant measures would not be reported. Administrative reviews would be reported as they were initiated in each semi-annual period. The difference with respect to the proposal in ADP/W/333 was that the information would not be cumulated on a separate sheet of paper as the reviews progressed. So if the semi-annual reports were examined, there would be no lack of transparency. The information would all be presented in those reports.

62. The Chairman noted that he would present a revised document to further consider the matter before the end of the meeting of the Committee.

63. Later during the meeting, the Chairman drew the Committee's attention to a slightly revised document which reflected certain changes in view of the discussion on this matter. This document, entitled Draft Guidelines for Information Provided in the Semi-Annual Reports, had the following changes. In both points 7 and 8, a sentence had been added after the first sentence to reflect the possibility of providing a range of the margins and that if certain duty cannot be provided then this should be indicated by a footnote. In point 10, the second sentence had been changed to include a symbol "AR". In point 11, the text provides for provision of recent relevant data. In point 18, the second part of the sentence had been deleted, i.e. the deleted text used to read "in the dates of reviews which have taken place for these measures". In point 19 the word "new" had been added in the second line between the words "on all" and "cases", and a footnote was added to both points 18 and 19. The Chairman asked whether the Committee was in a position to adopt these draft guidelines?

64. The representative of Hong Kong said that it was confirmed at the last meeting that "all cases pending" referred to in point 19 included new cases and review cases, but now the review cases seemed to be excluded. He sought clarification whether this was intended.

65. The representative of Japan said that he had a similar comment as Hong Kong regarding points 18 and 19 but with the objective of working towards a common format at this stage, it may be possible for his delegation to accept the language in the draft guidelines.

66. The representative of Australia referred to point 8 and said that his delegation had difficulty with the word "feasible" and would like to suggest some other words which more closely portrayed the meaning of what they were seeking, i.e. the words "is not feasible" should be replaced by "can not be provided".

67. The Committee agreed to include the suggestion by the representative of Australia.

68. The Chairman requested the Secretariat to clarify the points raised by the delegate of Hong Kong.

69. The Secretariat clarified that under paragraph 19, information had to be provided for new investigations irrespective of whether or not any action had taken place in the reporting period. Thus, if there was some action taken during the reporting period in either a new investigation or a review, that action had to be reported in any case. The orientation of paragraph 19 was that for new cases, even if no action was taken during the reporting period, the fact that the new investigation was pending had to be shown by giving information on that new investigation. The issue of ongoing reviews was addressed by footnote 3, and the parties which had some problems on that matter had consultations and had mutually agreed to the language in that footnote.

70. The representative of Hong Kong said that he was not aware of any consultations. Also, regarding point 19, his delegation had mentioned at the previous two meetings that in point 19, the pending cases should include new investigations and reviews. Thus, he was not sure why the pending review cases should be left out. Both new investigations and review investigations should be included in the information to be provided unless some delegations found it difficult to accept this.

71. The representative of the United States said that on the point of reviews, the consultations being referred to were the consultations the United States offered to the delegation of Japan during the course of the meeting. The United States had some concerns on this point and hoped to more clearly spell them out in the consultations. The discussion was very constructive. His delegation's view was that from a practical stand point there would be some difficulties for them to provide the information on reviews, and the information would result in a long report without adding much useful information. He did not wish to understate the importance of the issue of the administrative reviews and quick completion of those reviews, but said that his comments related to whether and how to report the reviews in the semi-annual reports. As an administrative review was initiated, it would be included in the semi-annual reports but to provide information on pending reviews before action was taken would be a needless administrative burden. However, the delegation of the United States had agreed with the delegation of Japan that consideration of information to be provided on ongoing reviews was a point worth pursuing. Further, the United States supported transparency and the purpose of the footnote was to say that this was a discussion the United States was prepared to continue in good faith.

72. Regarding the coverage on points 18 and 19, the representative of Japan said that his delegation shared the views of the delegation of Hong Kong, but also recognized the present difficulty of the delegation of the United States. On the understanding that there will definitely be discussions in the future on reviews being covered under points 18 and 19, Japan had agreed to the text including footnote 3 because that was the only way for the adoption of the Guidelines which had been discussed for a long time.

73. The representative of Hong Kong said that if there was a consensus to adopt these revised proposals, as it was now, his delegation would not block the consensus, but he would like to make

sure that further consultations would be held in relation to the reviews. He also said that his delegation would like to revert to the particular question about the reporting of the pending review cases at the next meeting.

74. The Committee took note of the statements made and adopted the Guidelines for Information Provided in the Semi-Annual Reports. The Chairman said that a document would be circulated to the Committee to formally communicate the adoption of the Guidelines.<sup>2</sup>

G. Report by the Chairman of the Committee on Anti-Dumping Practices on informal consultations regarding reports under Article 14:4 on preliminary or final anti-dumping actions (ADP/W/347, ADP/M/41, paragraphs 68-89)

75. The Chairman noted that the previous Chairman of the Committee, Mr. David Walker, had suggested in ADP/W/347 the minimum information to be provided in the reports under Article 14:4 of the Agreement for all preliminary and final anti-dumping actions. ADP/W/347 also referred to the issue of the time period within which such reports should be provided. Both those issues were discussed at the last regular meeting of the Committee (ADP/M/41, paragraphs 68-89). At that meeting there was broad support for the proposal to set a standard regarding minimum information along the lines suggested in document ADP/W/347. There were, however, concerns about any requirement that information on confidential matters must be provided, and one delegation stressed that there should be a standard form which should be used to provide the reports under Article 14:4 on preliminary and final actions. The previous Chairman had continued his consultations on the matter and his assessment was that there was general support for a minimum standard of information to be provided when reports were made under Article 14:4 regarding all preliminary or final anti-dumping actions. The Chairman emphasized that Article 14:4 required that all preliminary or final anti-dumping actions be reported without delay. He also noted that the previous Chairman had clarified that no confidential information needed to be provided in reports under Article 14:4.

76. The Chairman said that the discussion in the previous meeting of the Committee and the subsequent consultations showed that several members were not in favour of a mandatory form for the reports under Article 14:4 on all preliminary or final actions. As there was some interest in the form and because it could make it easier to provide the reports under Article 14:4, he said that the Committee could agree to a non-mandatory form which could be used to provide the reports under Article 14:4 on all preliminary or final anti-dumping actions. Thus, members would have the option of providing the minimum information required by using this optional form or by any other means. The countries that provided information by using an agreed form should be encouraged to make available a copy of their public notice (even if not in a GATT working language) to the GATT Secretariat. The notification requirement, i.e. the minimum information, however, must be in a GATT working language.

77. The Chairman said that members should be encouraged to provide more information if possible. In this context he noted that some members provided much more information on their actions than that suggested in ADP/W/347. Since the additional information was likely to be of value to members of the Committee, the practice should be encouraged. He recalled that during the consultations of the previous Chairman, one delegation had suggested that those countries which provided additional information, i.e. more information than the minimum required by means other than the optional form, for example through the public notice, also provide a summary of the information using the optional form, so that the essential summary information was available in the response. Some delegations that

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<sup>2</sup>This document is ADP/122, dated 5 May 1994.

provided more detailed information than that suggested in ADP/W/347 were of the opinion that this was not necessary and would be unlikely to be implemented.

78. In view of the strong support in the Committee that there should be some minimum information provided in the reports under Article 14:4 on all preliminary and final anti-dumping actions, the Chairman proposed that the Committee agree to adopt the minimum information proposal in ADP/W/347. That information had to be provided in a GATT official language, by any means, including the optional form. Parties were encouraged to provide more than the minimum information that is suggested in ADP/W/347 and Parties providing the minimum information, using the optional form, were encouraged to provide a copy of their original public notice.

79. The delegate of Brazil said that the discussions in the context of informal consultations and in the Committee were not properly focused on the actual problem which was the lack of notification of preliminary and final anti-dumping actions by some of the Parties to the Agreement. In the discussions on the list of minimum information and on the time-period within which notifications should be provided his delegation had heard no reference to that problem which was at the root of these discussions. The Committee was concentrating on the form and disregarding the substance. His delegation would rather participate in discussions which would address the problem of lack of notification and how to solve that specific problem. For the sake of transparency, Parties which simply provided a copy of their public notices should also present a summary of the minimum information required. He said that there could be Parties who sent copies of their public notices in a GATT official language, which did not contain all the minimum information required but also contained other information not necessarily of importance to the Parties concerned. In that situation, the minimum information lacking in the public notice should also be included in the notification. But could that minimum additional information be presented in any format at the discretion of the Party taking the action? His delegation's view was that one should not lose sight of the fact that even the Parties not subject to anti-dumping actions take an interest in the actions, and it would greatly improve the transparency of notifications if all parties followed the minimum pattern agreed in this Committee.

80. The delegate of Singapore said that Brazil's comments merited consideration. Singapore did not think that there should be a specific format or that minimum information need be provided in a prescribed way. Brazil's point was valid that there could be cases which did not directly have an impact on any country concerned but were of interest to that country. Therefore, if Parties could provide minimum information and a summary of the particular case involved, that would enhance the transparency of the information supplied.

81. The Chairman noted that during consultations the previous Chairman had clarified that Article 14:4 required that reports be submitted. The requirement in the Agreement was not that the public notice be provided but that a minimum information be provided. He asked the delegations of Brazil and Singapore whether they could agree with the general consensus for the idea that minimum information be provided.

82. The delegate of Singapore clarified that her statement was in no way an effort to block the consensus if it had been so established. Her point was that there might be a case for countries to consider giving a very short summary to facilitate the processing of information by the receiving countries. If the Committee decided to adopt the Chairman's suggestion, Singapore would not stand in the way.

83. The delegation of Korea noted that while the Chairman's suggestion would increase transparency, additional work could be created if a country used an unofficial language. He supported the Brazilian suggestion.



84. The Chairman noted that it was not clear whether there was any opposition to the idea of establishing a minimum information requirement for reports.

85. The delegate of Hong Kong recalled that the original intention of the proposal was to provide a means for delegations to submit to the Committee as much information as possible relevant to the cases in question. In that spirit the Secretariat would provide an optional form for those members who would have preferred to have some guidance on what sort of information or notification could be of use. Some delegations may merely provide a copy of their public notice. Hong Kong had no problem with whatever format was selected as long as the minimum information was there. If delegations had provided a comprehensive public notice to this Committee, it was not clear whether under such circumstances the Committee would still require them to provide a summary. This proposal would create problems for some delegations. He suggested adopting what the Chairman had proposed and to leave out additional suggestions concerning further information.

86. The Chairman noted that it seemed that there was general support for the suggested minimum information for reports under Article 14:4 of the Agreement as contained in ADP/W/347. There was also general agreement that there be an optional form for providing information. He proposed that the Annex in ADP/W/347 be used as a basis for the optional form. Regarding the minimum information suggested in ADP/W/347 he emphasized that this document did not express a view, whether explicit or implicit, regarding the nature or type of information required for public notices as provided in Article 8:5 of the Agreement. That was made clear from page 2 of the document ADP/W/347. He asked whether the Committee agreed to adopt the suggestions in ADP/W/347 as the minimum information that had to be provided in the report submitted under Article 14:4 of the Agreement on all preliminary or final anti-dumping actions and to adopt the option of providing the minimum information using a form based on the Annex of ADP/W/347.

87. The Committee so agreed. The Chairman encouraged the Parties to provide more than the minimum information suggested in ADP/W/347. Those Parties using the optional form to supply the minimum information were encouraged to provide a copy of their original public notice. Regarding the time-period within which reports had to be provided, the previous Chairman had informed him that his consultations showed that most delegations supported that a best endeavour should be made to provide reports under Article 14:4 of the Agreement on all preliminary or final anti-dumping actions within a period of 30 days. One delegation was of the view that it would be difficult for it to provide a report within a period of 30 days. The Chairman noted that the Agreement required that the information should be provided without delay, which normally could mean as soon as a notice is published. However, there could be delays in providing the reports due to various reasons, in particular the possible problems which may arise for countries whose official language was not a GATT official language. Since there seemed to be general support for making a best endeavour to provide the reports within 30 days, he requested members of the Committee to make a best endeavour to provide the reports under Article 14:4 of the Agreement on all preliminary or final anti-dumping actions within a period of 30 days of the publication of the public notice.

88. The delegate of Australia said that the notification of initiation was a public notice as was the public notice of the final decision. At the time of the preliminary and final findings being made, the Committee would be advised about the actions but Australia could not endeavour to report any earlier than that time because a decision will not have been made prior to that time. Therefore, up to the preliminary finding stage the only public notice would be the notification that an enquiry was to be undertaken.

89. The delegate of Brazil said that the best endeavour proposal was of no practical use. It was in fact an interpretation of Article 14:4 which was unlikely to be respected. The Agreement said "without



delay", and the Committee, whether formally or informally, should not modify the Agreement and say either 30 or 60 days or any other time period.

90. The Chairman said that a best endeavour clause was a step in the right direction. He agreed with the comments of the delegate of Australia and said that the notice under Article 14:4 was for preliminary or final anti-dumping action only.

91. The delegate of Brazil noted that his delegation was not against a best endeavour proposition. However, it was unlikely that it would be respected. His delegation's position was that this was not an interpretation of the Agreement. However, his delegation would have no problem in agreeing to a best endeavour clause.

92. The delegate of the United States understood that this was not an interpretation of the Agreement. He said that it would be the United States' intention to modify its practice to meet the suggestion for submitting notices within 30 days.

93. The delegate of Australia noted Brazil's statement and reiterated the view stated in ADP/M/41, paragraph 77, that Australia required at least 60 days. Australia felt that no time limit should be set down. Australia could not provide the information in 30 days.

94. The representative of Hong Kong said that while he supported the proposal for best endeavour to submit the notification within 30 days, the discussion on this matter should be without prejudice to the right of Hong Kong under Article 14:4 to take the matter further within the Committee if it was Hong Kong's view that the obligation "without delay" was being violated.

95. The delegate of Singapore agreed with the views expressed by Hong Kong.

96. The delegate of the EC said that the EC would agree to a general rule of 30 days, conditional on a best endeavour clause. However, for purely administrative reasons there might be difficulties in meeting a 30 day requirement and this should be understood not to be a violation of an obligation under the Agreement.

97. The delegate of Hungary agreed that this should not be seen as an interpretation of the Agreement. A best endeavour clause could not alter the rights and obligations contained in the Agreement.

98. The delegate of Japan supported the proposal for 30 days.

99. The delegate of Argentina noted that the idea of 30 days as a best endeavour clause seemed agreeable for everyone, with the exceptions mentioned by Brazil.

100. The delegate of India noted the concerns of some speakers, but strongly supported the proposals made by the Chairman.

101. The Chairman noted that the 30 day time limit was not an interpretation of the relevant articles of the Agreement. The Committee was only seeking to improve on the procedures without prejudice to the rights and obligations of the Parties. On the basis of the best endeavour mentioned earlier, the Chairman requested the parties to provide their reports under Article 14:4 of the Agreement on all preliminary or final anti-dumping actions within a period of 30 days of the publication of their public notice. It was so agreed.

H. United States - Imposition of anti-dumping duties on imports of seamless stainless steel hollow products from Sweden - Report of the Panel (ADP/47, ADP/M/41, paragraphs 113-116)

102. The Chairman noted that though this was the tenth meeting when this panel Report was before the Committee, it was yet to be adopted. He hoped that delegations recognized the seriousness of the situation.

103. The delegate of the United States said that he was not in a position to report any change with respect to the United States' concerns about the Report and as a result of that, the United States was not in a position to agree to adoption.

104. The delegate of Sweden noted the commercial repercussions for the company in question, and urged the Committee to adopt the Report.

105. The delegate of Argentina said that non-adoption of panel Reports was an unfortunate situation and urged the Parties involved to reconsider the matter.

106. The delegate of Japan encouraged adoption of the Report.

107. The delegate of Norway endorsed the statements by Sweden, Japan and Argentina and supported the adoption of the Report.

108. The Chairman observed that the previous Chairman, Mr. David Walker, had conducted intensive consultations on this matter. As the Committee was not in a position to adopt the Report at this meeting, he would continue the consultations. It was regrettable that a decision could not be made at this point in time, but he encouraged the Parties concerned to try and reach a satisfactory decision on this. The Committee took note of the statements made and decided to revert to this matter at a future (special or regular) meeting.

I. United States - Imposition of anti-dumping duties on imports of fresh and chilled Atlantic salmon from Norway - Report of the Panel (ADP/87, ADP/M/41, paragraphs 123-124)

109. The Chairman said that this Report was first discussed by the Committee at its meeting of April 1993. He recalled that at the meeting in October 1993, the parties to the dispute had informed the Committee that they would be conducting bilateral consultations on the matter and the item was not included in the agenda of that meeting. The previous Chairman had had intensive consultations on this matter with the parties to the dispute and both parties had reiterated the reservations they had with interpretation of some issues by the panel. However, the parties shared the Chairman's view that if there was not a difference of opinion on interpretation of the Agreement, there would not be a need for a panel in the first place. Therefore, both parties considered that it was important for the functioning of the dispute settlement system that panel Reports be adopted. Both Norway and the United States had asked that this Report be included in this meeting's agenda. The previous Chairman's conclusion from his consultations was that Norway and the United States were prepared to seek adoption of the panel Report at this meeting. He recalled that when the Report of the panel was discussed at the regular meeting in April 1993, not only Norway and the United States, but also several other Parties to the Agreement expressed their disagreement or reservations on certain interpretations by the panel. These statements were recorded in the Minutes of that meeting, i.e. in ADP/M/40, paragraphs 142-179. He stressed that the purpose of a panel Report was to resolve a specific dispute between the parties to the dispute, and it did not create obligations on parties that were not parties to the specific dispute addressed by the panel Report, nor did it represent binding legal precedent applicable to other disputes.

110. The delegate of Norway recalled that the first substantive exchange of views on the panel Report took place in this Committee in April 1993. The Norwegian views on the panel Report were clearly stated in the panel Report itself, and in the Minutes of the Committee's meeting. The meeting of the Committee on Subsidies and Countervailing Measures of April 1994 discussed more fully the Norwegian views on issues common to the two cases, for instance injury and standing (SCM/M/65). Norway had a number of concerns with the panel Report. Some of the concerns had been fully or partly met through the new Agreement on Anti-Dumping resulting from the Uruguay Round. Other concerns remained, in particular with regard to injury. In Norway's view, the panel had interpreted the Agreement in a manner that permitted the investigating authorities to assume causation as long as injury was found and also to attribute injury caused by other factors to allegedly dumped imports. Another important issue was the different standards used by various panels when examining anti-dumping measures. In this respect the Committee could compare the standard inherent in the Salmon panel's conclusions with the standard applied by another panel, i.e. the panel on Korea's anti-dumping duties on imports of polyacetal resins from the United States. Both panels decided not to substitute their own judgement for that of the investigating authorities but to review the determination for consistency with the Agreement. The panel on Korea's action applied a stringent standard, for instance by arriving at the conclusion that the finding by the Korean authorities over loss of sales revenues as a result of lower prices and increased sales volumes could not be considered to have been adequately substantiated by positive evidence. The Salmon panel, on the other hand, did not require the USITC to substantiate the injury finding. This constituted a different standard to the one applied by the other panel, and application of inconsistent standards by panels should be avoided. The Salmon panel Report covered a wide range of issues, which may explain why there were disagreements on the part of several countries on a number of questions. In his delegation's consideration of whether to adopt the Report - and given the fact that the Salmon report dealt with many issues in the field of anti-dumping - he stressed the importance of elements mentioned by the Chairman in his introductory remarks i.a. the questions of precedents set by panels and whether panel Reports should only relate to the underlying specific case.

111. The delegate of Korea noted that the panel's views appearing in paragraph 338 provided that for a claim to be properly before the panel, it had to be identified during prior stages of the dispute settlement process. This was slightly different from the problem in the panel on Korea's action, which was that argument and evidence were not contained in the public notice. In his view it should be possible to provide arguments or evidence even after consultation or conciliation, and a party should be able to present new evidence during the panel process. He said that in paragraph 334, the Salmon Panel had noted that paragraph 4 of the Understanding Regarding Notification, Consultation, and Dispute Settlement of 1979 required that any request for consultations should include the reasons therefor. He felt that paragraph F of the more recent (i.e. 1989) Decision on improvement to the GATT dispute settlement rules and procedures was inconsistent with that paragraph, and thus the Panel's view in paragraph 334 of the Report was difficult to accept. He also reiterated Korea's previous concerns on this Report.

112. The delegate of Japan noted that his delegation had a number of problems with the Report, in particular three issues which deserved a thorough examination by the Committee. The first concern related to the panel's exclusion of certain matters from its consideration because they had not been adequately raised at the consultation and conciliation stages. Japan was of the view that the preclusion of certain matters based on procedural requirements would undermine the dispute settlement mechanism, might prevent prompt dispute settlement, and impose an excessive burden on the complaining party. If panel procedure followed such a legalistic approach, the result will be that complainants would present the Committee with documents which were comprehensive catalogues listing every imaginable wrongdoing. The losers in this process would be the Committee and developing countries. Japan's second concern was on the reversal of the burden of proof regarding the DOC's system of averaging prices in calculating the dumping margin, sometimes known as zeroing. Although the United States admitted zeroing, the panel had referred to an extreme case where export prices were uniformly below the average

normal value and concluded that Norway had not provided evidence to the panel that this method had been inconsistent with the concept of a fair comparison. In doing so the panel had completely reversed the burden of proof which arose from GATT exceptions such as Article VI and the Agreement. The Report of panel on Swedish anti-dumping duties, adopted in 1955, observed the status of anti-dumping measures as exceptions and put the burden of proof on the party imposing anti-dumping duties. Many subsequent panels, such as the New Zealand transformer panel, followed this principle. A reversal of the burden of proof would make it difficult for complaining parties to bring a case to a panel. Thirdly, the panel had entirely ignored Article 3:4 of the Agreement that the dumped imports should, through the effects of dumping, be causing injury. The panel had concluded that the effects of dumping in the first sentence of Article 3:4 meant the effects of dumped imports as set forth in Articles 3:2 and 3:3. The proper interpretation of this provision was that circumstances could arise where the dumped imports although causing injury, were not causing injury through the effects of dumping, but through factors other than dumping such as quality or marketing strategy. The panel's interpretation rendered the first sentence of Article 3:4 meaningless. That interpretation was legally wrong, and extremely dangerous for future investigations.

113. The delegate of Singapore understood that a panel Report and panel findings had very serious implications in that they set a precedent. She asked if in adopting this Report the Committee was saying that this case would not serve as a reference, and that it was not relevant for any future panel's decisions. Singapore did not accept that if issues were not raised in the consultation and conciliation stage they could not be admissible later. That suggested that the process had to be completed in the early stages of the dispute procedure. Another concern was the reversal of burden of proof, because Article VI was an exception and the burden of proof should not be on the exporting country. Singapore also had concerns on the analysis of causation, as mentioned in the April 1993 meeting of the Committee.

114. The Chairman confirmed that the purpose of a panel Report was to resolve a specific dispute between the parties to the dispute. It did not create obligations on parties that were not parties to the specific dispute, and it did not represent binding legal precedent applicable to other disputes.

115. The delegate of Sweden, speaking on behalf of Sweden and Finland, observed that their most serious concerns regarding this Report were the limitation of facts, the verification of standing, causal link and the reversal of the burden of proof.

116. The delegate of Argentina agreed with the three points made by the Chairman. He stressed that there was no doubt that panel Reports solely referred to a specific dispute and did not create any binding legal precedent for subsequent panels. Concerning the comments made by the delegate of Norway, he stated that there were no different standards; there was a single standard and this was the one set out in the Agreement. Two judges may apply the same rule to different facts with differing outcomes. He also said that the discussion in the context of the Uruguay Round negotiations can not be utilized as a relevant argument in the process of the adoption of the Panel Report. Argentina recommended the adoption of the Report.

117. The delegate of Hong Kong said that Hong Kong's concerns on the Report had been mentioned in the Committee's meeting in April 1993 and the arguments were documented in ADP/M/40. Those concerns remained valid. He noted the statement of the Chairman, reiterated by the representative from Argentina, but said that the three issues were controversial, and that there was no clear position on those points. While the Committee had stated that there was no binding legal precedent by adopting a particular panel Report, the fact was that some panels had followed previous panels. For example, in paragraphs 5.25, 5.35 and 5.41, at least three panel Reports were cited by the Salmon panel. The conclusions of the panel on Mexican Cement virtually followed what had been described in previous panels. Thus it was not clear what would be the legal effect of the findings if the Salmon panel Report was adopted.



118. The delegate of the United States said that despite the United States' concerns about the Report, they were prepared to agree to adoption of the Report and to take such steps as are necessary to bring its practices into conformity with the findings of the panel.

119. The delegate of Japan noted that although the adoption of the panel Report would certainly solve the problems between the parties to the dispute, it would create a precedent for the future.

120. The Chairman noted that it was his understanding that decisions of panels only addressed the parties concerned. It may be that some panels reached the same or similar conclusions but that did not mean that the reasoning was always the same. He said that he would return to this matter later during the meeting after conducting further consultations.

121. Later, the Chairman said that he had conducted further consultations on this Report. He stated that it was his strong belief that the adoption of panel Reports was imperative for the functioning of the dispute settlement system. The discussion in the Committee and the consultations he had had on the panel Report confirmed that some delegations had strong views on issues such as burden of proof and causation and those delegations continued to have difficulties with interpretations by the panel. However, in order to alleviate any concerns he reiterated that the purpose of a panel Report was to resolve a specific dispute between the parties to the dispute. It did not create obligations on parties that were not parties to the specific dispute addressed by the panel Report, nor did it represent binding legal precedent applicable to other disputes.

122. The Committee took note of the statements made and adopted the Report of the Panel contained in ADP/87.

123. The delegate of Argentina asked whether from the point of view of the overall working of the system one could infer that there was a link between the adoption of the findings of a particular panel Report and a statement by the Chairman. While Argentina understood a pragmatic approach, Argentina was interested in the long run and could not accept any relationship between the adoption of the Panel Report and the statement that was made by the Chairman prior to the adoption of the panel Report. Argentina did not want to see in the future, under any circumstances, that the rules of the dispute settlement procedure be modified to include comments from the Chair as a way to secure the adoption of a panel Report.

124. The delegate of Japan recalled that Japan had expressed its concerns repeatedly in the Committee concerning this Report. On a critical issue the panel Report was inconsistent with the correct interpretation of the Agreement, and Japan had formally registered its concerns about the Report. The two parties to the dispute, however, wanted to conclude the dispute by adopting the Report. As a member of the Committee outside the dispute, if Japan did not block adoption of the panel Report, the only way for Japan to accept the adoption of the Report was to make it clear that, as the Chairman pointed out, this panel Report did not create obligations on parties (including Japan) that were not parties to the dispute. Nor would it represent a binding legal precedent applicable to other disputes. On the understanding that the Chairman's statement was a condition for the adoption of the Report, Japan had reluctantly allowed the Report to be adopted.

125. The delegate of Hong Kong noted that notwithstanding Hong Kong's concerns on several matters arising from the panel Report, there was no need for a statement by the Chairman to be made in conjunction with the adoption of the Panel Report. He noted that the Committee had only taken note of the Chairman's statement. He noted also the fact that in the past certain panel Reports did refer to the findings of previous Reports or even constructed their own findings based on those previous findings.



126. The delegate of Norway noted that the panel Report on Salmon had been adopted in spite of the fact that many delegations had strong objections to a number of interpretations made by the panel. The statement of the Chairman, prior to the adoption of the Report, had facilitated the decision of the delegation of Norway to adopt the Report. Norway's adoption of the Report was in line with Norway's policy of preserving efficient dispute settlement in GATT. As the entry into force of the World Trade Organization approaches, signatories should take determined action to adopt and implement the remainder of panel Reports under the Tokyo Round Agreements. Concerning the implementation of the panel Report on Salmon, he noted that at the Committee meeting in April 1993 the United States had stated that the Report would be fully implemented once it was adopted by the Committee.

127. The delegate of Singapore noted that Singapore had been one of the first delegations to seek clarification in relation to the legally binding precedent effect of the panel case. For that reason, Singapore had grave concerns with some of the reasoning, interpretations and principles which led to the panel findings. As a small trading nation, Singapore believed in upholding the functioning of the GATT trading system, in particular the dispute settlement system. It was imperative that panel Reports be adopted.

128. The delegate of the United States noted that the statements made by delegations only constituted national positions. A number of issues in this Report were controversial. That was not surprising as anti-dumping was an area which was notable for strong differences of view on many issues. Those differences could only be settled through joint action or through the use of panels. It was his understanding that the panel Report had been adopted without condition and that was also the understanding on which the United States had agreed to the adoption of the Report. Concerning the implementation of the Report, he reiterated his statement at the April 1993 meeting of the Committee.

129. The Committee took note of the statements made.

J. United States - Anti-dumping duties on imports of seamless steel plate from Sweden - Report of the Panel (ADP/117 and Corr.1)

130. The Chairman noted that at the regular meeting of April 1992, the Committee established a panel in this dispute. The Committee was informed on 17 September 1992 by the Chairman about the terms of reference and the composition of the panel. The Report of this panel was circulated in ADP/117, dated 24 February 1994. Corr.1 to the document was circulated on 30 March 1994, indicating a minor correction to one figure given in the Report. The Chairman thanked the members of the Panel for their work done in this dispute, and invited Mr. David Walker, a member of the panel, to make a statement on behalf of the Chairman of the Panel.

131. Mr. David Walker said that the dispute before the Panel concerned the ongoing application by the United States of anti-dumping duties on imports of certain stainless steel plate from Sweden, originally imposed in 1973. Sweden claimed that in continuing to apply these duties, the United States was in breach of its obligations under Article 9 of the Agreement.

132. The Panel met with the parties to the dispute on 8 December 1992 and 24-25 February 1993. The Panel submitted its findings and conclusions to the parties on 4 February 1994. The Panel circulated its full report to the Committee on 24 February 1994, after having been informed by the parties that they had not arrived at a mutually satisfactory solution.

133. The conclusions of the Panel were summarized in paragraph 439 of the Report. The Panel concluded that:

- (a) The United States had acted inconsistently with its obligations under Article 9:2 by dismissing the request made in 1987 by the Swedish exporter for the initiation of a review to revoke the dumping finding on stainless steel plate from Sweden, as a result of (1) the factual insufficiency and inadequate explanation of the USITC's determination that the information on the purchase in 1976 of a United States steel mill by a predecessor of the Swedish exporter did not substantiate the need for the initiation of a review, and (2) the inadequate explanation of the USITC's determination that the information on the changed structure of the Swedish stainless steel plate industry and on the free-trade agreements between Sweden and the EC did not substantiate the need for the initiation of a review;
- (b) the United States had not acted inconsistently with its obligations under Article 9:2 by dismissing the request made in 1987 by the Swedish exporter for the initiation of a review to modify the 1973 dumping finding on imports of stainless steel plate from Sweden; and
- (c) the United States had acted inconsistently with its obligations under Article 9:2 of the Agreement by dismissing the request made in 1985 by the Swedish exporter for the initiation of a review to revoke the 1973 dumping finding on stainless steel plate from Sweden, because the USITC had concluded based on factually incorrect data that the information on the purchase in 1976 of a steel mill in New Castle, Indiana, by a predecessor of the Swedish exporter did not substantiate the need for the initiation of a review.

134. The recommendation of the Panel to the Committee was given in paragraph 442. The Panel recommended to the Committee that it request that the United States bring its measure into conformity with its obligations under the Agreement, and that to this end the United States promptly initiate a review of the 1973 dumping finding on imports into the United States of stainless steel plate from Sweden, consistent with the Panel's conclusions in paragraph 439, and take such measures with respect to this dumping finding as may be necessary in light of the outcome of that review.

135. The Panel considered that with the circulation of its Report to the Committee on 24 February 1994, it fulfilled its mandate as set forth at the Committee's regular meeting of April 1992.

136. The Chairman asked whether the Committee was in a position to adopt the Report.

137. The delegate of Sweden expressed appreciation for the work carried out by the panellists and the Secretariat. His delegation believed that the panel had done a good job even though all the conclusions were in the Report were not satisfactory, and even though certain legal arguments made by his Government were not dealt with by the Panel. Despite that, it was appropriate for the Report of the Panel to be adopted. This case made clear that it could not be consistent with the Agreement to have duties in force for more than 20 years without ever conducting a review. The Panel made it absolutely clear that Article 9:2 contained both an obligation to conduct reviews upon request and an obligation to self-initiate reviews. The panel had explicitly found that the anti-dumping duties were temporary and remedial in nature. This very fundamental and self-evident principle would have repercussions on how and when anti-dumping duties can be imposed. The Panel also found that time was a fact to be considered with respect to the duration of duties and the review of duties. It therefore was not reasonable to have a duty in force for more than 20 years without review. The Panel also found that Article 15:5 of the Agreement did not allow an investigating party to ignore information in its possession, even though the investigated company had not raised that particular issue during the course of the investigation. The Panel also found that the explanations by the United States regarding the effects of the purchase of a US mill, the effects of the changed structure of the Swedish industry

and the effects of the Free Trade Agreements with the EEC to be inconsistent with the Agreement. Those findings must be respected when the United States reviewed the case. However, the Government of Sweden failed to understand how it could be possible for the Panel to have implicitly accepted that the United States could maintain the duty in question in 1994 when it had been established by the Panel that denials of reviews both in 1985 and in 1987 were inconsistent with the Agreement. The only logical conclusion that one could draw from this was that since no review was conducted even though this was called for, no basis existed for the maintenance of the Order. On the same issue, the Panel had stated that the issue whether the United States acted inconsistently with Article 9:1 by maintaining the duty without having established what was needed for the duty to continue, had to be examined in the light of the obligation under Article 9:2 to conduct the review. Logically, this statement by the Panel should have meant that if the Panel found that a review should have been conducted, the maintenance of the duty would have to be found inconsistent with the Agreement. The reason for not so finding seemed to be based on a notion that the Panel could not determine on the basis of facts available whether the continued imposition of the duty was necessary, and that the Panel did not want to prejudge the outcome of a possible review. This could lead to an unreasonable result. In theory it could mean that if the United States had accepted the request for a review back in the eighties, and found in that review that continued imposition was necessary, and if Sweden had been of the view that continued imposition was not necessary and had taken that case to a panel and the panel had agreed with Sweden and found that there was no basis for continued imposition, the panel would have found that the United States had acted inconsistently with Article 9:1 of the Agreement by maintaining the duty. If a Party to the Agreement ignored the obligation to conduct a review, it could only be found to be acting inconsistently with Article 9:2 and be recommended to conduct a review. But if the Party conducted the review and the review was inconsistent with the Agreement, then the Party could be found to be in breach of Article 9:1 by maintaining the duty and could subsequently be recommended to revoke the duty. This could actually encourage Parties not to conduct reviews, as the only remedy for breach of Article 9:2 was a belated review and revocation of the order. The Panel had also refrained from making rulings or findings on certain matters of law. The Panel thereby did not pursue its work and pronounce itself on matters of legal interpretation. Both Sweden and the United States had a thorough discussion in the panel process on how the concept of "positive information substantiating the need for a review" should be interpreted. This was not really touched upon by the Panel. Another problem with the Report related to the arguments made with respect to the state of the domestic United States industry. The Panel had rejected those arguments, by referring to the fact that the matter had not been taken up by the Swedish company in its 1987 request for a review of the dumping order. However, because of the outcome of its 1985 request containing that information, the company had understood that the information was not needed again. The Panel had been too narrow and legalistic in its approach to this matter. An additional problem was that the Report was not very clear on the question of which year's data should be the basis for review to be undertaken, as recommended by the Panel. Avesta, the Swedish company, had requested reviews both in 1985 and in 1987. The Panel found that on both occasions reviews should have been undertaken. In Sweden's view, a review should be conducted on the basis of the facts pertaining to those years. To do otherwise would seriously erode the obligation in Article 9:2 to conduct the review. There would be an incentive for government to postpone a requested review, waiting for circumstances to change in the interests of its national parties. He said that despite this, Sweden accepted the conclusions of the Panel. He urged the Committee to adopt the Report at the present meeting, and urged the United States to conduct a review in accordance with the conclusions of the Panel Report and in the light and spirit and legal reasoning of the Panel. Sweden was positive that the only possible outcome of such a review was revocation of the anti-dumping duty in question.

138. The delegate of the United States thanked the Panel and the Secretariat, and noted that regardless of the outcome of panel Reports, the United States accepted the important role that panellists played in the effective functioning of the system. Given the length of the panel Report and its recent release, he said that the United States would need to examine the Report further before reaching a decision

on adoption of the Report. One of the areas that was of some concern was the issue of a specific remedy. Some of the issues before the Panel were currently the subject of pending administrative proceedings in the United States, both at the United States Department of Commerce and the United States International Trade Commission. Those proceedings touched on scope of the products included in the anti-dumping Order and the need for review of injury. The outcome of those reviews may facilitate an assessment of the Panel's findings.

139. The delegate of Japan encouraged the adoption of the Report.

140. The delegate of Canada agreed with the delegate of Japan that the Report should be adopted by this Committee. He urged the United States to consider that option and to undertake a speedy administrative review of the case once the Report was adopted.

141. The delegate of Norway, speaking on behalf of Norway and Finland, supported the Swedish viewpoints in this case and urged the United States to promptly adopt the Report, and to take such measures as may be necessary in light of the outcome of a review.

142. The delegate of Mexico stressed that his delegation attached importance to the adoption of the Reports of panels in the Committee.

143. The delegate of the EC noted that the Report had been recently received by his delegation and said that it would be helpful to have more time to consider the details in view of the length of the Report and complication of the issue. The Community had previously had difficulties with specific remedies, but would see whether in this case the issue of specific remedies was really a stumbling block in view of the fact that the United States had already commenced the review.

144. The delegate of Sweden regretted the United States' position regarding adoption of the Report. He noted that the United States had received the Report on 4 February 1994, and that gave ample time to look at it carefully. The United States seemed to have problems with the recommendations. He did not understand why the United States could not accept the Panel's recommendation to bring its measure into conformity with the Agreement by initiating a review, which was exactly what the United States was doing. He urged the United States to reconsider its position and adopt the Panel Report at the present meeting, especially as the Committee was trying to wind up dispute settlement under the 1979 Agreements and prepare for new disciplines negotiated in the Uruguay Round.

145. The Committee took note of the statements made, and decided to revert to the Report at a future (special or regular) meeting. The Chairman said that he would hold consultations on this matter.

K. EC - Imposition of anti-dumping duties on cotton yarn from Brazil - Request by Brazil for the establishment of a panel under Article 15:5 of the Agreement (ADP/121)

146. The Chairman noted that the Committee had before it a request from the delegation of Brazil for the establishment of a panel in a dispute between Brazil and the European Communities concerning anti-dumping duties imposed by the European Communities on cotton yarn from Brazil (ADP/121). He recalled that the matter was the subject of a special meeting on 20 December 1993 for the purpose of conciliation under Article 15:3 of the Agreement (ADP/M/43).

147. The delegate of Brazil recalled that at the end of the meeting on 20 December 1993 regarding conciliation under Article 15:3 of the Agreement in this dispute, the Chairman of the Committee, reproducing the words of Article 15:4 of the Agreement, had encouraged the parties to reach a mutually satisfactory solution to the dispute. During the period of conciliation, Brazil had sought such a solution to this dispute. Brazilian officials and representatives of the private sector had visited all 12 capitals



of the EC member States and had met with national authorities which composed the Commission's Anti-Dumping Advisory Committee. Brazilian officials also met the representatives of the Commission in Brussels. In those visits, Brazilian officials had explained their position on the issue and had expressed their readiness to engage in an exchange of ideas on how the benefits accruing to Brazil under the Agreement could be re-established. Brazilian representatives had reiterated to the European authorities the main reasons of Brazil's complaint, namely: (1) disregard of the particular market situation prevailing in Brazil at the time of the investigation; (2) *de minimis* market share of Brazilian exports of cotton yarn to the EC; (3) settlement of alleged trade disruption problems in the framework of the existing bilateral textile agreement between Brazil and the EC, as stipulated in Article 9:1 of the MFA; and (4) a disregard for Brazil's status of developing country. Brazil had made its best efforts to find a mutually satisfactory solution to the dispute, without success. Consequently, Brazil had no other means to try to ensure that its rights were respected than to request that the Committee establish a panel under Article 15:5 of the Agreement. The written request circulated in document ADP/121 contained a summary of Brazil's arguments.

148. The delegate of EC did not dispute the right of Brazil to request the establishment of a panel and said that his delegation would not oppose the establishment of the panel. He noted that it was two years since the disputed duty was in force, and throughout the period there had been intensive consultations between Brazil and the EC. The points at issue dealt with an exchange rate problem caused by high inflation and an attempt by Brazil to fix exchange rates for a certain period. The EC was of the view that the market share of Brazil was beyond any *de minimis* threshold. The quantitative arrangements under the MFA did not preclude a finding of injury based on low prices. Regarding Brazil's status as a developing country, he said that the Community had carefully considered the possibility of accepting an undertaking, but could not do it for the technical reasons explained in the publication.

149. The Committee took note of the statements made and decided to establish a Panel under Article 15:5 of the Agreement in the dispute referred to in document ADP/121. The Committee authorized the Chairman to decide in consultation with the two parties to the dispute on the terms of reference of this Panel, and also to decide the Panel's composition after obtaining the agreement of the two parties to the dispute.

L. Mexico - Anti-dumping duties on electric power transformers from Brazil (ADP/91, ADP/M/41, paragraphs 125-128)

150. The Chairman recalled that a conciliation meeting on this matter was held during the regular meeting of the Committee in April 1993. This matter was raised again at the October 1993 meeting at the request of Brazil. At Brazil's request, the Committee had decided to revert to this matter at this meeting (paragraphs 125-128 of ADP/M/41).

151. The delegate of Brazil informed the Committee that officials in Brazil and in Mexico continued to search for a mutually satisfactory solution of this case. Representatives of Brazilian and Mexican companies involved in this issue had also been in contact in order to try to enter into an agreement. Brazil reserved its right of recourse to the provisions of Article 15:5 of the Agreement, should the search for a mutually satisfactory solution prove unsuccessful.

152. The delegate of Mexico confirmed the statement made by the delegate of Brazil regarding bilateral consultations.

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



**M. United States - Anti-dumping investigations of imports of certain circular welded steel pipes and tubes from Mexico and Brazil (ADP/W/335, ADP/W/349)**

154. The Chairman recalled that this matter was first raised by Mexico in October 1991, and had been discussed in the subsequent regular meetings of the Committee (ADP/M/41, paragraphs 129-136). Mexico had submitted written questions to the United States, and at the last regular meeting of the Committee, the United States had provided answers to the Mexican questions (ADP/W/335 and 349). The Committee had decided to revert to this item at the next regular meeting.

155. The delegate of Mexico thanked the delegation of the United States for the answers to the questions and said that these responses were being studied by his delegation. At the next meeting of the Committee, Mexico may wish to comment on the responses given by the United States.

156. The Committee took note of the statement made and decided to revert to this matter at the next regular meeting.

**N. EC - Anti-dumping investigation of imports of 3.5 inch magnetic disks from Hong Kong (ADP/97, 99 and 120)**

157. The Chairman recalled that this matter had been discussed by the Committee since October 1992. At its meeting in October 1993, the Committee had decided to revert to this matter at its next regular meeting (ADP/M/41, paragraphs 137-148; ADP/97 and 99). At the last meeting of the Committee, the representative of the EC had said asked Hong Kong to provide its statement in writing and subsequently Hong Kong's statement was circulated in ADP/120.

158. The delegate of Hong Kong recalled that at the Committee meetings held in October 1992, April 1993 and October 1993, his delegation had drawn the Committee's attention to certain areas where Hong Kong considered that the EC has not acted consistently with the requirements of the Agreement. Notwithstanding repeated efforts, the Commission had still decided to impose provisional anti-dumping duties on 3.5 inch magnetic discs originating in Hong Kong with effect from 12 March 1994. This was a disappointing decision and he strongly urged the EC to reconsider its determination and to terminate its proceedings as soon as possible. Hong Kong's concerns related to the interpretation of "domestic industry", the determination of selling, administrative and general costs, the use of unverified third country data to establish the residual rate, and the lack of positive evidence to demonstrate injury. Under the interpretation of the term "domestic industry" in Article 4:1 of the Agreement, Japanese affiliated producers in the Community were excluded from the definition of "Community industry". Such exclusion was inconsistent with the Agreement. Article 4:1(i) of the Agreement stipulated that "when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the industry may be interpreted as referring to the rest of the producers". For the present proceeding in respect of imports from Hong Kong, only the Community producers related to Hong Kong companies or Community importers of the "allegedly dumped products" from Hong Kong could have been excluded. The exclusion of Community producers related to Japanese exporters was therefore inconsistent with Article 4:1. That definition would also have inflated the level of representation of the complainants and unfairly overstated the effects of the allegedly dumped imports.

159. The representative of Hong Kong said that the Commission had explained that the selling, administrative and general costs of the actual data of the Hong Kong companies subject to investigation were not used by the EC because of the "non-representative nature" of their domestic sales of the product concerned when a normal value was constructed. Instead, the Commission derived expenses from one company's sales on the Hong Kong market of products in a different business sector (i.e. not a "like product"). Such a method was regarded by the Commission as the most reasonable basis for

determining the administrative, selling and any other costs in Hong Kong. However, Article 2:4 of the Agreement referred to "... a reasonable amount for administrative, selling and any other costs ...". Hong Kong considered that sufficiency of domestic sales was not a relevant factor for determining whether actual data of the companies subject to investigation should or should not be used. The key point in Article 2:4 was that the amount used must be a reasonable one. Putting aside the question of whether the level of domestic sales was sufficient or not, it was not logical why the level of expenses of one company pertaining to local sales of products in a different business sector would be considered even more reasonable and representative than the actual data of those companies subject to investigation. The representative of Hong Kong said that such manipulation of data would inevitably cause dumping to be found much more easily.

160. The representative of Hong Kong was disappointed that the Commission had resorted to the use of best information available (BIA) in determining the residual duty. This was not necessary as actual data should have already been obtained and verified in the course of investigation. His Government understood that the residual rate was identical to the highest dumping margin (35.7 per cent for 1MB discs only) alleged by the complainants. Despite the participating companies accounting for only 26 per cent of import of 3.5 inch magnetic discs from Hong Kong, this was used because of the allegedly high degree of non-cooperation by Hong Kong companies. If 26 per cent of Hong Kong data was not regarded as representative, it begged the question why arbitrarily selected and unverified third country data, in effect zero per cent Hong Kong data, could have more legitimacy. Moreover, Hong Kong had grave concerns that arbitrarily adjusted data provided by the complainants which was clearly biased (e.g. based on third country data and without taking 2MB discs into account) should be accepted as BIA. Hong Kong had pointed out at previous Committee meetings that the use of third country data in the construction of normal value was unjustified. Article 6:8 of the Agreement, which provided for the use of BIA, stipulated that "preliminary and final findings ... may be made on the basis of the facts available". The 1984 GATT Recommendation Concerning Best Information Available in Terms of Article 6:8 of the Agreement stated that: "If the investigating authorities have to base their findings, including those with respect to normal value, on information supplied in the complaint, they should do so with special circumspection. In such cases, the authorities should check the reasonableness of the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation." To use the figures quoted by the complainants without verification was clearly inconsistent with the requirements under the Agreement and the Recommendation. Hong Kong was also concerned that the residual rate was higher than the highest provisional anti-dumping duties imposed on the companies which participated in the investigation. In this regard, the delegation of Hong Kong drew attention to Article 8:3 of the Agreement which stated that "the amount of the anti-dumping duty must not exceed the margin of dumping as established."

161. The representative of Hong Kong argued that the evidence of injury was also flimsy. Article 3:1 of the Agreement required that a determination of injury be based on positive evidence and involve an objective examination of, *inter alia*, the consequent impact of allegedly dumped imports on domestic producers of such products. The Commission had not demonstrated positive evidence of injury to the Community industry. In the Regulation imposing provisional anti-dumping duties, quantitative indicators such as production, sales and capacity utilization of the Community industry showed positive developments. Between 1989 and the investigation period, Community consumption increased by 122 per cent; the volume of production of the Community industry recorded even higher growth, i.e. an absolute increase of 180 per cent; and capacity utilization went up from 49 per cent in 1989 to around 84 per cent in the investigation period. Sales increased more rapidly than the market expanded, namely by 170 per cent compared to 122 per cent. As a result, the market share grew by 2.5 percentage points. Additions to production capacity were substantial and continuous. The only ground that the Commission considered to justify a case of injury was that the complaining industry did not generate an adequate net profit. This injury test seemed therefore to require an overall profitability sufficient not only to

finance an average of 20 per cent yearly increase in the investment in production capacity but also an additional net profit. Hong Kong believed that it was not the objective of Article VI of the GATT nor the Agreement to protect domestic industries against competition from imports. He requested that the case be terminated as soon as possible, and said that Hong Kong would continue bilateral contacts with the EC to discuss, *inter alia*, the above concerns. Meanwhile, Hong Kong reserved its rights under the Agreement to pursue this case further.

162. The delegate of the EC said that in March 1994, the Commission imposed provisional anti-dumping duties which the Hong Kong delegate had just discussed. He noted that the EC had very recently provided written explanations of parts of the decision. It was a difficult issue whether the Japanese production in the Community should have been excluded. There were good arguments to do so, especially when cumulating imports. The investigation against Hong Kong was only shortly after the original investigation which included Japan. The effect of the exclusion of Japanese producers was relatively minor, because standing and injury findings could have been made even if that producer had been included.

163. The representative of the EC questioned Hong Kong's opinion that representativeness did not play a role in the establishment of sales, general and administration expenses. He said that viability of activity in a market should play a major role in the findings for normal value. All the major users performed those tests and established whether an activity in the domestic market was viable or not. There was sometimes very selective cooperation and this might lead to situations when it was difficult to find sufficient sales in the domestic market of the exporting country. Apparently, this had been the case here. It was not unreasonable to resort to sales, general and administrative expenses of one of the exporters for a product in the same business sector.

164. Regarding the use of BIA, the representative of the EC said that if there was cooperation of only 26 per cent of the exporters to the Community, it meant that 74 per cent did not cooperate. That clearly justified use of the alleged dumping margin because it was very likely that at least some of those companies which did not cooperate would have made their decision not to cooperate, on the basis of the alleged margin. If the EC behaved in a different way with non-cooperating exporters it would result in even higher levels of non-cooperation. Injury findings involved very complex, dependent economic factors and were extremely difficult. The market for microdiscs was quickly expanding and under such conditions the relative performance of the companies in question could be a decisive element for an injury finding. The EC would try to find clarifications and solutions on this issue and would take the opportunity to discuss this with Hong Kong before the next meeting.

165. The delegate of Japan observed that as a related case concerned Japanese products, Japan had concerns on this case also. He recalled that in the Committee meeting last April, Japan had noted that the Community's producers had increased their production volume and expanded their market share. Japan was therefore of the view that the injury determination was not consistent with the Agreement and shared the concerns of Hong Kong on this point.

166. The delegate of Hong Kong understood that his Government was having bilateral contact with the EC at the moment and the points that he had mentioned were part of the discussions. He noted that his delegation would revert to this issue at the next meeting.

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

O. United States - Delay in administrative review (ADP/M/41, paragraphs 157-162)

168. The Chairman recalled that the delegation of Japan had raised this matter in every regular meeting since October 1992. At the October 1993 meeting, the Committee decided to revert to this item at the next regular meeting of the Committee (ADP/M/41, paragraphs 157-162).

169. The delegate of Japan noted that his delegation had on several occasions requested the United States to improve the situation regarding delay in administrative procedures. Following the Committee meeting last October, the situation had improved a little. The administrative review for tapered roller bearings for the period between 1990 and 1992 had been concluded. There were still pending cases on tapered roller bearings, i.e. an administrative review for the period between 1980 to 1985, which had lasted for more than ten years.

170. The delegate of the United States recognized that a significant backlog of cases did build up during the late 1980s. Significant efforts were made at the beginning of the 1990s to reduce this backlog, and progress had been made in that area. The backlog began to build up again in 1992 with the large influx of new cases. However, recently the backlog had been reduced. By the end of the next month he expected there would be no backlog on tapered roller bearings.

171. The delegate of Hong Kong welcomed the undertaking by the United States to speed up the clearance of the backlog. He noted that Hong Kong had also encountered some delays in administrative reviews.

172. The delegate of Japan hoped that the United States would speed up the process so that his delegation would not need to return to this matter.

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

P. EC - Delay in anti-dumping investigation (ADP/M/41, paragraphs 163-169)

174. The Chairman recalled that this matter had been raised by Japan in the regular meetings of the Committee in April and October 1993.

175. The delegate of Japan recalled that at the time of the regular meeting of the Committee in October 1993, there were two pending cases which took more than one year. Recently the investigation on outboard motors had been terminated. The original investigation on parts of gas-filled non-refillable disposable pocket lighters was still pending although it was initiated in August 1991, i.e. two years and a half years since the initiation of that investigation. In addition, there were two pending cases which had taken more than one year, one a review investigation for plain paper photocopiers initiated in August 1992, and the original investigation for television camera systems initiated in March 1993.

176. The delegate of the EC said that the parts of disposable lighters case was delayed due to customs enquiries into matters relating to origin. The review case concerning photocopiers was near completion. The television camera systems case was being conducted fairly fast. There were only seven months between opening and provisional duty. The provisional duty would lapse on 30 April 1994.

177. The delegate of Japan reiterated that the delays in the investigations caused serious problems for the exporters. Japan strongly urged the Community to complete these pending cases in conformity with the relevant Article of the Agreement.

178. The Committee took note of the statements made.



Q. Mexico - Anti-Dumping Actions Against Certain Products Exported from Hong Kong  
(ADP/M/41, paragraphs 149-156)

179. The Chairman recalled that at the regular meetings in April and October 1993, the representative of Hong Kong had drawn the Committee's attention to anti-dumping actions by Mexico on a wide range of products originating in China, a substantial volume of which were re-exported from Hong Kong.

180. The representative of Hong Kong said that since the Committee last met in October 1993, definitive duties had been imposed by Mexico on footwear in December 1993, but other products were subject to provisional duties since April 1993 and the final determinations for those products were still pending. He requested the Mexican representative to provide any information on the latest developments regarding the cases. He reiterated Hong Kong's concerns on this matter and continued to reserve Hong Kong's rights to pursue the matter under the Agreement.

181. The representative of Mexico confirmed that the final ruling on footwear was published in December 1993. The investigation on other products had not been concluded and a final determination was expected by June 1994.

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

R. United States - Anti-Dumping Measures on Man-Made Fibre Sweaters originating in Hong Kong

183. The Chairman noted that this item was included in the Agenda at the request of Hong Kong.

184. The representative of Hong Kong recalled that an anti-dumping duty order was imposed by the United States on imports of man-made fibre sweaters originating in Hong Kong in September 1990. In May 1991 his government had entered into bilateral consultations with the United States under Article 15:2 of the Agreement. A special meeting of the Committee was held in July 1991 pursuant to Hong Kong's request for conciliation under Article 15:3 of the Agreement (ADP/60). A further bilateral meeting was held in June 1992 in Washington, but no mutually satisfactory solution was reached. On 18 March 1994 the United States announced the results of the first administrative review of the anti-dumping duty Order covering the period from 27 April 1990 to 31 August 1991. Apart from the regrettably long delay on the part of the United States authority in completing the review, Hong Kong had grave concerns on, *inter alia*, the inclusion of a 115.15 per cent best information available (BIA) rate in the calculation of the sample group rate. This sample group rate was applicable to the 14 companies named by the complainants and selected for detailed review. As a result of the inclusion of the BIA rate, the 14 companies were now subject to an unreasonably high rate of 20.64 per cent as compared to the previous 5.86 per cent imposed by the original anti-dumping duty Order. Hong Kong considered that the United States' calculation of the sample group rate was not in conformity with the requirements of the Agreement, particularly Articles 6:1, 6:8 and 8:2. Hong Kong had requested bilateral consultations with the United States under Article 15 of the Agreement on matters relating to the first administrative review as well as those arising from the original anti-dumping duty Order. Hong Kong reserved its rights under the Agreement to pursue the case further.

185. The representative of the United States said that his Government was willing to enter into the consultations requested by Hong Kong in order to try to reach a mutually agreeable solution.

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

S. Participation of Observers in the work of the Committee

187. The Chairman recalled that the Committee on Subsidies and Countervailing Measures had adopted a new rule for the participation of Observers in that Committee. (SCM/M/67, paragraphs 3-16, SCM/W/303, SCM/181) Given the close link between the Committee on Subsidies and Countervailing Measures and the Committee on Anti-Dumping Practices, the previous Chairman of the Committee, Mr. David Walker, had consulted on a possibility of adopting a similar rule for the Committee on Anti-Dumping Practices. Consultations revealed that there was a consensus on the Committee adopting a rule similar to that adopted by the Committee on Subsidies and Countervailing Measures. Therefore, the Chairman proposed that the Committee adopt the rule that,

"An Observer government should provide the Committee with any information the Observer government considered relevant to matters within the purview of the Agreement including the text of its laws and regulations regarding anti-dumping duties and information regarding any anti-dumping measures taken by the Observer government. At the request of any Party or the observer government any matter contained in such information could be brought to the attention of the Committee after governments had been allowed sufficient time to examine the information."

188. The Chairman noted that except for substituting "countervailing" with "anti-dumping", this rule was the same as that adopted by the Committee on Subsidies and Countervailing Measures. The Committee adopted the rule proposed by the Chairman.

T. United States - Anti-Dumping Duties on Grey Portland Cement and Cement Clinker from Mexico - Report of the Panel (ADP/82 and ADP/M/41, paragraphs 117-122)

189. The Chairman recalled that this Report of the panel was first considered by the Committee at its regular meeting in October 1992. It had since then been considered at every regular meeting of the Committee. The delegation of Mexico had requested the adoption of this Report on each of these occasions and the representative of the United States had informed the Committee that the parties to the dispute were seeking a mutually satisfactory solution to the dispute or that further consultations could yield a mutually satisfactory solution to the dispute.

190. The representative of Mexico recalled that at the last meeting of the Committee, Mexico requested the adoption of the panel Report which had been before the Committee since October 1992. Consultations had taken place between the United States and Mexico on this subject but no mutually satisfactory solution had been reached. In this context, and without prejudice to any additional action that might be undertaken, Mexico required a substantive decision on the subject. The representative of Mexico requested that the panel Report be adopted at the present meeting of the Committee.

191. The representative of the United States confirmed that consultations with Mexico had taken place and that these consultations were helpful. The United States was presently reflecting on the content of these consultations and expected that there will be further consultations. Thus, the United States was not in a position to take a position on the adoption of the Report at this meeting.

192. The representative of Hong Kong supported the adoption of panel Reports by this Committee and wished to put on record that Hong Kong agreed with the interpretation of the requirement for "standing" in regional industry and the specific remedy that the Panel had recommended.

193. The representative of Japan supported the adoption of the panel Report.

194. The representative of Norway (speaking also on behalf of Finland and Sweden) said that the Nordic countries supported the panel's conclusions and recommended that the panel Report be adopted.

195. The representative of Korea supported the adoption of the panel Report. He recalled that in 1993, Korea had adopted the Report of the Panel on Korea's anti-dumping measures against polyacetal resins from the United States even though Korea was not satisfied with the results of that panel review. Korea had adopted that Report because Korea always insisted that the multilateral dispute settlement procedure must be strengthened. He urged the United States to accept this panel Report in the same spirit.

196. The representative of Singapore supported the adoption of the panel Report.

197. The representative of Argentina supported the adoption of the panel Report.

198. The representative of New Zealand noted that some panel Reports had been adopted at the present meeting and hoped and expected that similar success would be achieved by the Chairman in clearing away all other unadopted Reports.

199. The Committee took note of the statements made and decided to revert to this panel Report at a future meeting, special or regular. The Chairman indicated that it was his intention to have informal consultations with the parties to the dispute in an effort to seek an mutually satisfactory solution to this matter.

U. Other business

(i) Anti-Dumping Workshops run by the Secretariat

200. The Chairman recalled that at the regular meeting of April 1993, the Committee had noted the trend towards a greater reliance on anti-dumping policies by a growing number of countries. The Committee had discussed the possibility of assisting the countries with less experience in conducting investigations with training so that they could conduct investigations in a fair, professional and transparent manner. The Committee had therefore "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" (ADP/M/40, paragraph 297). This was in line with the Committee's decision of 5 May 1980 in which it had decided that developed countries should endeavour to furnish technical assistance to less developed Parties.

201. The Chairman informed the Committee about the training workshops that had been held and about the programme regarding these workshops in the near future. Three workshops had been conducted by the Rules Division in conjunction with the Centre for Applied Studies in International Negotiations on the mechanics of anti-dumping and countervailing investigations. Workshops were held in February, June and November 1993. In the first workshop the participants were from the Philippines, who sent three participants, Argentina, Colombia, Egypt, Japan, Thailand, Venezuela (who sent two participants each) and India, Mexico and Turkey who sent one participant each. Instruction was provided by the Secretariat and by guest instructors from administering authorities in the European Community (three lecturers), United States (four lecturers) and Canada (two lecturers). The second workshop had participants from Bolivia, Jamaica, Malaysia, Morocco, Romania, Turkey (who sent two participants each), the Czech Republic, Hungary, Peru and Poland who sent one participant each. The lecturers were from New Zealand and the EC (two lecturers each) and from the United States and Canada (one lecturer each). For the third workshop, the participants were drawn from Austria, Chinese Taipei, Colombia, Egypt, Korea, Morocco, the Philippines, South Africa and Thailand (two participants each) and Hungary, Israel and Poland (one participant each). Australia and New Zealand provided two

lecturers each and the Government of Mexico provided one lecturer. Nominations for participation in all the workshops were accepted only for officials charged with conducting or with establishing a framework for anti-dumping and/or countervailing duty investigations. The expertise of the instructors played an important part in the success of the workshops, as they were able to impart highly specialized and practical knowledge. Although the officials were volunteers in the administering authorities of various countries, their presentations taught fundamental techniques and did not advocate a particular approach favoured by their government. Participants had reaffirmed the need to continue the workshops, and were universally of the opinion that the workshops had assisted them greatly in learning about complex issues and had sensitized them to the principles of the GATT and the Agreement. Without the assistance provided by some members of this Committee through finance and in kind, many of the participants would have been unable to attend. Indeed some nominees accepted into the workshops had been forced to withdraw due to funding shortfalls. Following the last workshop, participants requested that workshops be held in regional centres in order to facilitate attendance. Participants also requested that workshops be of longer duration and focus on particular topics in greater detail and also provide instruction on how exporting countries or companies should respond to anti-dumping and countervailing petitions.

202. The Chairman said that in view of the requests by the participants of the workshops, the Rules Division was organizing a course aimed at government officials charged with assisting exporters that are respondents to anti-dumping and countervailing actions. A pilot exporters' workshop was scheduled for May 1994, and would be offered to participants from all former, Central and Eastern European State Trading Nations, including members of the Commonwealth of Independent States. It would be hosted by the Government of the Czech Republic in Prague. A need for more detailed course aimed at previous participants in the Geneva-based workshops or at other experienced administrators was also identified. The first such workshop would take place in southeast Asia, given the growth in anti-dumping administrations in that and adjoining regions. It was scheduled to be held in July 1994. Representatives of the administering authorities in Australia, the EC and New Zealand had indicated their willingness to teach the courses. The focus of the courses will be how to deal with more complex issues in an anti-dumping or countervailing investigation in a manner consistent with the GATT and the Agreement. The Government of Malaysia had expressed an interest in hosting such a workshop. The Chairman noted that the workshops had been run on an extremely limited budget due to the readiness of many institutions to provide services free of charge as well as the fact that many governments sending participants had covered their participants' expenses. The GATT and the Centre for Applied Studies in International Negotiations provided free of charge all facilities and administrative assistance to the workshops. The Fair Trade Center of Japan, the Government of Finland and the Nordic countries had made donations to cover some costs of participation of participants from the poorest countries. Governments of Australia, Canada, Mexico, New Zealand, the United States and the Commission of the European Union had contributed in kind by fully financing the participation of lecturers who taught at these workshops. With the additional areas of focus identified for the workshops and the continued need felt for their usefulness, the Chairman urged the members of the Committee to contribute or to continue to contribute to the support of the workshops through financial or in kind contributions. Some limited funds would be required in particular to enable as many of the poorest former state trading and developing countries as possible to send participants to these workshops. He recalled the strong support expressed at the regular meeting in April 1993 for the workshops and presumed that the Committee will still strongly support them. In view of the usefulness of the workshops he proposed that the Committee reaffirm its decision of April 1993 to support the programme of workshops for developing countries and former state trading countries on anti-dumping measures and requested the members of the Committee to participate in the financing of this programme.

203. The Committee reaffirmed its decision on April 1993 to support the programme of workshops on anti-dumping measures for developing and former state trading countries. The Chairman requested members of the Committee to participate in the financing of this programme.



(ii) Brazil - Anti-Dumping Investigation of Vinyl Acetate from Mexico

204. The Chairman noted that this item had been added to the agenda at the request of Mexico.
205. The representative of Mexico referred to investigation number 10768.029921/93-94, initiated by Brazil on 10 November 1993 against imports of vinyl acetate from Mexico. Mexico considered that the investigation did not fulfil various provisions of the Agreement, in particular that the exporting party had been prevented from adequately defending its rights during the enquiry. There was a lack of notification to the exporters, and documents sent to the exporter's representatives in Brazil were sent late. Consequently, the exporting party had very little time to prepare and present its case. The representative of Mexico informed the Committee that his delegation was requesting consultations with Brazil under Article 15 of the Agreement.
206. The representative of Brazil informed the Committee that an investigation on vinyl acetate from Mexico was initiated on 10 November 1993, which was reflected in the semi-annual report contained in document ADP/114/Add.5. The period of investigation was from September 1992 to August 1993. Exporters were notified on 17 December 1993 and questionnaires were sent to the exporters in Mexico on 20 December 1993. The Brazilian authorities had received answers to the questionnaire from one Mexican firm and had a meeting of interested parties. The enquiry was continuing and no decision had been taken on the application of provisional measures.
207. The representative of Mexico said that the lack of notification was only one of the complaints. The Brazilian legislation required that interested parties appoint a representative in Brazil. The Mexican exporter had appointed a representative in Brazil thus fulfilling the Brazilian condition. In spite of the nomination of a representative, the Mexican firm in the City of Mexico was notified directly, resulting in a delay in obtaining the notification and the questionnaires.
208. The representative of Brazil said that it seemed that the Mexican exporters took some time in nominating a representative in Brazil and questionnaires and notifications were sent directly to the City of Mexico to the interested exporting companies.
209. Regarding lack of notification, the representative of Mexico clarified that the Mexican firm appointed a legal representative in Brazil in accordance with Circular 135 published in the Official Bulletin of Brazil on 10 November 1993, within the time set therein. In spite of this the Technical Department of Tariffs in the Ministry of Trade of Brazil sent the relevant notification one month later by ordinary mail to the City of Mexico.
210. The Committee took note of the statements and decided to revert to this matter at its next regular meeting if requested by any delegation.

(iii) Status of Uruguay Round Draft Implementing Legislation

211. The Chairman noted that this item had been put on the agenda at the request of the delegation of Japan.
212. The representative of Japan noted that following the conclusion of the Uruguay Round negotiations, many countries were preparing national legislations for the implementation of the results. Although these new national legislations will be examined in the Anti-Dumping Committee in the near future, Japan wished to know the status of preparation and the schedules for the deliberation in administrative and legislative body in advance at this stage, especially in large countries such as the United States and the EC. Japan was concerned about rumours that discussions were going on in some big countries to implement anti-dumping schemes which were incompatible with the WTO system.

Japan strongly requested the members of the Committee to observe the provisions of the new Agreement and not to change their legislation in the direction of protectionist application of anti-dumping measures.

213. The representative of the United States said that Japan was asking, in a body which was established to implement the current anti-dumping Agreement, a question that related to the implementation of an agreement not yet in force, i.e. that negotiated in the context of the WTO. Also, having meetings based on rumours was not necessarily useful. He said that the United States took its obligations and commitment to implement the Agreements negotiated in the Uruguay Round very seriously but if there was to be a discussion of implementation of the Uruguay Round, that had to take place in the proper forum. Without prejudice to what the Committee might decide to do, he noted that his delegation in other work in international trade organizations over the years, had sought information from other governments regarding their pending legislation or regulations, but had been told that the information was not available, was confidential, or that it was illegal to show anything until it had been adopted. The United States on the other hand had a fairly transparent system and he invited delegations to take advantage of that to learn whatever information they could as the process developed. He was also willing to provide information. But that was separate from the purpose of the work in this Committee.

214. The representative of Singapore said that informed sources had indicated to her delegation that there could be cause for concern with respect to the implementation of the Uruguay Round Agreement in some big countries. She said that the Committee should not be bound by static rules and if the need arose then perhaps new procedures could be implemented. Her delegation saw merit in getting a forum where such issues could be discussed.

215. The representative of the EC agreed with the view expressed by the delegation of the United States, and said that there was no basis to have a discussion on this matter in this forum. The Community had its rules to adopt legislation, including the implementing legislation, and from a certain point of the process the discussion took place in public and was relatively transparent. Every country can take part in it. All third countries could ask the Community to have discussions on these matters.

216. The representative of Japan shared the views of Singapore and said that there may be other forum possible for this kind of discussion but the Committee had experts on dumping and thus it was the appropriate forum for discussing dumping-related issues. Also, at least in substance, there will be continuity in this Committee and the new Committee under the Uruguay Round. Thus, this Committee should not hesitate to deal with these important issues because at some stage, the implementing legislation will be discussed in this Committee or the new Committee. He asked for the opinion of other members on this matter.

217. The representative of the United States reiterated that this was not a discussion which should be taking place in this particular forum. If delegations believed it would be useful to set up some system with experts to review implementation, a proposal in the appropriate form should be made for consideration, but with the understanding that all Parties be willing to provide their draft implementing legislation/regulation on all aspects of the implementation of the Round and in sufficient time so that there was adequate opportunity to review it and comment on it. If such a proposal was made in the appropriate forum, the United States would take a serious look at it.

218. The Committee took note of the statements made.

(iv) Outstanding Dispute Cases Subsequent to Entry into Force of the WTO

219. The Chairman recalled that this item was put on the agenda at the request of the delegation of Hong Kong.

220. The representative of Hong Kong said that he wished to address the problem relating to outstanding dispute cases upon the entry into force of the WTO, including panel proceedings and consultations or conciliation process not yet having led to the panel report or its adoption. He quoted from Article 3:11 of the Dispute Settlement Understanding of the WTO Agreement that "with respect to the dispute for which the request for consultations was made under GATT 1947 or under any other predecessor Agreement to the covered Agreements before the date of entry into force of the WTO Agreement, the relevant dispute settlement rules and procedures in effect immediately prior to the date of entry into force of the WTO Agreement shall continue to apply". Footnote 2 of the Dispute Settlement Understanding stipulated that Article 3:11 of that Understanding "shall also be applied to the disputes on which panel reports have not been adopted or fully implemented". These provisions provided broad procedural arrangements in dealing with outstanding dispute settlement cases upon the entry into force of the WTO Agreement. These procedural arrangements were based on the assumption that the existing Committee, in this context the present Anti-Dumping Committee, will remain in operation and that the parties to the outstanding dispute cases in question will continue to be signatories to the Tokyo Round Anti-Dumping Agreement even after the WTO Agreement has entered into force. A problem would arise if an existing signatory who is the defending party in an outstanding dispute case decided to withdraw from the present Tokyo Round Anti-Dumping Agreement upon joining the WTO. Under such circumstances, it was unclear whether there remained any legal obligations on the part of the defending party to continue its participation in the existing dispute settlement proceedings in relation to the outstanding dispute case in question, including consultations, conciliations, panel proceedings, adoption of panel report and the implementation of panel recommendations. Thus it may be that when a panel is established there may not be any defending party at all or when the panel report has been adopted there would be no defending party to implement the panel recommendations. Hence, this was not just a procedural question but a legal problem concerning the substantive rights and obligations of signatories under the Tokyo Round Anti-Dumping Agreement. Therefore, the delegation of Hong Kong proposed that the Secretariat be asked to produce a factual paper outlining the current international law practices that may be relevant to this issue and that on the basis of the Secretariat paper informal consultations should be carried out by the Chairman to take the issue further.

221. The representative of the United States said that the issue raised by Hong Kong seemed to straddle the interests of this Committee as well as the interests of the Committee yet to be formed under the WTO. It was a cross cutting issue in terms of the WTO, and will undoubtedly be reviewed in the new legal sub-group of the Preparatory Committee. His delegation would reserve judgement on the best way to discuss this issue, but had no objection to the idea of factual material being prepared for the Parties. Regarding what should be done once that paper is available, his delegation would take a decision in light of the work of the Preparatory Committee.

222. The representative of Hong Kong said that apart from Anti-Dumping and Subsidies/Countervail, only the Agreement on Government Procurement may have a panel case under the Tokyo Round Agreements. The delegation of Hong Kong had considered whether this issue would be more appropriate for the Preparatory Committee to handle or by the individual Tokyo Round Committee. A number of reasons suggested the latter. First, the membership of this Committee or the Tokyo Round Committees was different from the composition of the Preparatory Committee. Secondly, since the issue related to outstanding dispute cases arising from the Tokyo Round Agreement, it would be better for the Tokyo Round Agreement signatories to consider how to deal with the outstanding cases arising from this Agreement. Thirdly, if in future this Committee or the signatories conclude that there would be some appropriate way to deal with the outstanding dispute cases when some member withdraws from the Agreement, decision may more appropriately be made by the signatories of the Agreement themselves. Thus, it might be more appropriate for this Committee to further consider the issue. He noted the concern raised by the United States but was of the view that the Secretariat could proceed with the factual paper which would be useful for any forum to discuss this matter.

223. The representative of Japan said that Hong Kong had made a very useful suggestion. He noted that Japan had many cases under the present Tokyo Round Anti-Dumping Agreement. He supported the idea of asking the Secretariat to prepare papers describing the problems which may arise after entry into force of the WTO Agreement. The best place for discussion of the matter was a separate issue. It would be very useful to have a discussion in the Committee first and it may be necessary to coordinate with another forum such as the Preparatory Committee with regard to the interpretation in other areas.

224. The representative of Singapore said that her delegation would like to endorse the proposal by Hong Kong to request the Secretariat to proceed with a factual paper on this issue. Hong Kong's idea merited serious consideration but Singapore was still considering what was the best means to move ahead on this matter. She appreciated the suggestion by Japan that perhaps the first reading of this paper could be done in this Committee and then one could assess how to proceed further.

225. The representative of Brazil supported the proposal by Hong Kong.

226. The representative of Norway (speaking on behalf of the Nordic countries) said that this issue deserved full consideration and the Committee may revert to how that consideration should take place, be it in the Committees or within the framework of the WTO. He supported the proposal that a factual paper be made by the Secretariat as a basis for further discussion. He emphasized that the dispute cases under the Tokyo Round Agreement should be dealt with seriously even before the WTO is in place. To the extent that current or outstanding dispute cases such as those dealt within the GATT Council were to be addressed within the new WTO structure, the appropriate organ for discussion in that respect would be the Preparatory Committee, which had been established for that purpose after the Marrakesh meeting. He recommended that the Committee have a paper as a first basis for discussion.

227. The representative of the EC said that the issue under consideration was probably a difficult legal issue and it could be helpful to have some factual basis. But the Community reserved for later consideration and judgement where the discussion on this issue will take place. It could well be that the appropriate body for that discussion be the Preparatory Committee for the WTO and not this Committee, but that could be decided later.

228. The Chairman said that the issue raised by the delegation of Hong Kong was an issue which overlapped with the work of other Committees. It was therefore his intention to consult with the Chairpersons of the other Committees on this matter and then report to the Committee on whether a background document would be required to be prepared for the Committee only, or a general background document would be prepared for consideration of Committees for which there was an overlap of the issues concerned. However, before taking a decision on the background document, it was important to consult the Chairpersons of the other Committees. Also, some of the issues might be considered within the work of the Preparatory Committee and in that case the Committee need not prepare any documents on those particular aspects. He encouraged the members to begin thinking about the questions relating to the transition from the current regime to the WTO. By their Decision on the Application and Review of the Understanding on Rules and Procedures Governing the Settlement of Disputes, the Ministers had invited the Committees to decide that they shall remain in operation for the purpose of dealing with any dispute for which the request for consultations was made before the date of entry into force of the WTO Agreement. Thus the Committee will need to take a decision in this regard at a future meeting.

229. The representative of New Zealand asked how the Chairman would report back to the Committee the results of his consultations.

230. The Chairman said that he would convene a special session before the regular meeting of the Committee.



231. The Committee took note of the statements made.

(v) EC - Refund of Anti-dumping Duty

232. The Chairman noted this item was introduced under "Other business" by the delegation of Singapore.

233. The representative of Singapore referred to ADP/115 which contained a request for consultations from Singapore to the EC with respect to the EC's anti-dumping duty. She confirmed that Singapore and the EC will be entering into bilateral consultations on this matter at the end of that week.

234. The representative of the EC confirmed that consultations will be held.

235. The Committee took note of the statements made.

Date of next regular meeting of the Committee

236. The Chairman informed the Committee that the next regular meeting of the Committee will take place in the last week of October 1994.