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ON TARIFFS AND TRADE

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Committee on Anti-Dumping Practices

MINUTES OF THE MEETING
HELD ON 30 OCTOBER 1995

Chairman: Mr. J. McNab (Canada)

1. The Committee on Anti-Dumping Practices ("the Committee") held a regular meeting on 30 October 1995.

2. The Committee adopted the following agenda:

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A. Semi-annual reports of anti-dumping actions taken within the period 1 January-30 June 1995

3. The Chairman noted that the Czech Republic, Hong Kong, Hungary, Malta (Observer), Norway, Poland, Romania, the Slovak Republic, Slovenia, Switzerland and Tanzania (Observer) had notified that they took no actions during the period. No reports were received from Egypt, New Zealand, Pakistan and Singapore.

4. The deadline for filing semi-annual reports was 31 August 1995. The Chairman found it regrettable that some Parties had failed to file semi-annual reports, particularly since some of them had filed in the past, indicating that they have undertaken actions whose status should be reported to the Committee. With few exceptions the semi-annual reports were not received by the deadline. The Chairman noted that the status of notifications was reported in the Annual Report of the Committee, and transmitted to the CONTRACTING PARTIES and thus made a matter of permanent record. It was regrettable that the last report of the Committee should demonstrate such gaps in notifications required by the Agreement.

5. The Chairman asked if any delegation wished to address any of the notifications.

6. The delegate of Hong Kong drew the Committee's attention to investigations initiated by South Africa on imports of acetaminophenol and footwear from Hong Kong. He observed that it was unfortunate that Hong Kong had not been informed of the investigations, which were initiated at the end of 1994, by the South African authorities. While Hong Kong understood that South Africa, being only a Observer to the Committee, did not have the obligation under the Code to do so, nonetheless Hong Kong would appreciate it if early notice of the initiation of anti-dumping investigations could be forwarded to Hong Kong in the future in the spirit of goodwill and cooperation. Hong Kong had written to the South African Consul-General in Hong Kong seeking further information about the investigation, and looked forward to receiving an early reply from the South African authorities.

7. Next, he drew the Committee's attention to the semi-annual report of Mexico, circulated in ADP/134/MEX dated 20 June 1995. He observed that the information reported on page 9 seemed to be different from what Hong Kong understood from the Mexican authorities. The report indicated that the case involved jean/denim, and a countervailing duty of 47 per cent was imposed. According to Hong Kong's information, the product was actually denim cloth, and the duty was actually US\$1 per kilogramme. Hong Kong sought clarification from the Mexican authorities about this discrepancy.

8. Lastly he drew the Committee's attention to Argentina's report of the initiation of an investigation on imports from Hong Kong, among other countries, of men's long-sleeved shirts, 100 per cent cotton and cotton/polyester blends of different proportions. The investigation was initiated in January 1994 and two days later, the Argentine authorities imposed preliminary measures on the imports from Hong Kong. Since then, Hong Kong had not been made aware of further developments in the case, and understood the case was still under investigation. In this connection, he drew the Committee's attention to Article 5.5 of the Tokyo Round Code, which states that except in special circumstances investigations shall be concluded within one year after their initiation. In addition, he drew the Committee's attention to Article 10.3 of the Agreement which states that the application of provisional measures shall not exceed six months. Hong Kong was conscious of the fact that when the Argentine authorities initiated this investigation, they were not yet a Party to the Code. They became a Party in April 1994. Nonetheless, Hong Kong believed that these two specific obligations were applicable to this case, and urged the Argentine authorities to bring this investigation to an early conclusion.

9. The delegate of Mexico took note of the concern expressed by the delegate of Hong Kong, and undertook to provide the information in due course.

10. The delegate of South Africa, speaking as an Observer, took note of the concerns of Hong Kong and would transmit them to his authorities.
11. The delegate of Argentina commented that the matter referred to by the delegate of Hong Kong was under review and a final decision had not yet been taken. He observed that the investigation was initiated prior to Argentina becoming a Party to the Tokyo Round Code.
12. The delegate of Poland referred to the semi-annual report of Canada, observing with pleasure that Canada reported the revocation of anti-dumping measures on women's leather boots. Nevertheless, he expressed concern about another measure, in force for many years, concerning waterproof rubber footwear. The case had not been reviewed, but there had been an exchange of letters between Warsaw and the Canadian authorities. Poland had drawn the attention of the Canadian authorities to the fact that since 1987, there were no exports of the product, and events took place during this period. First, the Canadian industry undertook a very significant readjustment, and based on information received, the financial situations of all producers was quite good. Second, there were increasing imports of similar products from other sources, namely the United States. Third, Poland today was not the same country as it was 18 years ago when the investigation took place and the final determination was made. In Poland's view, there was no reason or argument which could warrant the continuation of this measure against Polish exports. He urged the Canadian authorities to take more a realistic approach to this case and rescind the measure.
13. The delegate of Canada pointed out that this particular case was last reviewed by the Canadian International Trade Tribunal in 1992, under Canada's sunset provisions for reviewing injury determinations. It would be reviewed again if any party made a case for such review. He therefore urged Poland to take advantage of the legislation and make any such representations to the Canadian International Trade Tribunal.
14. The delegate of Korea noted that Korea had the same concern regarding Argentina's investigation of textile goods from Korea as had been expressed by the delegate of Hong Kong. Korea urged Argentina to be more faithful to the Anti-Dumping Code of the Tokyo Round in its implementation of provisional anti-dumping duties on textile goods from Korea.
15. The delegate of Hong Kong thanked the delegates of Mexico, South Africa and Argentina for their responses to his questions. He looked forward to clarification from the Mexican delegate in due course. He took note of the comment made by the Argentine delegate, and would convey it to his authorities. However, he wished to highlight that undue extension of the investigation process and an imposition of preliminary measures apparently without preliminary findings of injury, dumping and causal link in Hong Kong's view was definitely not consistent with the spirit of the Agreement. The case in question had been in existence for over 20 months, and Hong Kong had not yet received any details from the Argentine authorities. Hong Kong wished to express its frustration and observed that trade had been affected adversely. Imports from Hong Kong had been dropping since the initiation of the case. He hoped that the Argentine authorities could take into account his comments today and bring the case to an early conclusion.
16. The delegate of Hong Kong sought clarification from the Canadian delegation regarding the report in document ADP/138/CAN. It had come to Hong Kong's notice that the duty on photo albums was currently under review. The review actually was initiated on 21 March 1994, and this piece of information was missing from the report. He sought clarification on this point.
17. The delegate of Canada agreed to look into the point made by the delegate from Hong Kong, and would respond bilaterally.

18. The Committee took note of the statements made.

B. Reports on all preliminary or final anti-dumping duty actions

19. The Chairman noted that lists of the notifications of preliminary and final anti-dumping actions received by the WTO Committee on Anti-Dumping Practices had been circulated to Parties in ADP/W/386 and Corr. 1, ADP/W/387 and ADP/139. Copies of the official notices of such actions taken by Australia, Canada, the European Communities, Japan, Korea, Mexico, New Zealand, Peru (Observer), Singapore and the United States (Observer) had been made available in the Secretariat for review.

20. No delegation indicated a wish to take the floor regarding these reports.

C. EC - imposition of anti-dumping duties on imports of cotton yarn from Brazil - Report of the Panel

21. The Chairman noted that at its regular meeting on 26 April 1994, the Committee established a Panel in this dispute. On 17 June 1994, the Chairman informed the Committee of the terms of reference and the composition of the Panel. The terms of reference of the Panel were "to examine in the light of the relevant provisions of the Agreement on Implementation of Article VI of the General Agreement the matter referred to the Committee by Brazil in document ADP/121 and to make such findings as will assist the Committee in making recommendations or in giving rulings". The report of the Panel had been circulated to the Committee in ADP/137 on 4 July 1995. As the Chairman and members of the Panel were unable to attend this meeting, the Chairman of the Panel had asked the Chairman of the Committee to make the following statement on his behalf.

22. "(a) The dispute before the Panel concerned the imposition of definitive anti-dumping duties by the EC on imports of cotton yarn from Brazil. Brazil claimed that the EC were in breach of obligations contained in Articles 2.4, 2.6, 3.1, 3.2, 3.3, 3.4, 8.2, and 13 of the Agreement on the Implementation of Article VI of the GATT. The Panel met with the parties to dispute on 12 and 14 September 1994 and on 9 and 10 November 1994. The Panel issued a ruling concerning a preliminary objection by the EC on 9 November. The Panel submitted its findings and conclusions to the parties to the dispute on 12 June 1995. After having been informed that the parties had not arrived at a mutually satisfactory resolution of the dispute the Panel circulated its report to the Committee on 4 July 1995. The conclusions of the Panel were summarized in paragraphs 591 through 596 of the report. In summary for the reasons expressed in the findings section of the report and summarized in paragraphs 591 to 596 the Panel concluded that Brazil had not established that the imposition of anti-dumping duties on imports of cotton yarn from Brazil by the EC was inconsistent with the EC's obligations under the Agreement. The Panel wishes to express its appreciation to the parties to the dispute for their cooperation in the work of the Panel. It also wishes to thank the Secretariat for its able assistance. With the submission of this report to the Committee the Panel considers that it has completed the tasks assigned to it as described by the terms of reference."

23. The Chairman thanked the members of the Panel for their work in this matter and enquired whether the Committee was in a position to adopt the Panel report.

24. The delegate of the European Communities expressed the EC's appreciation for the work of this Panel, which the EC found well drafted and soundly motivated. The issues involved were relatively straightforward although of great importance, not only to the parties to the dispute. As none of the members of the Panel was present, he asked that their respective delegations transmit to them the EC's appreciation for their work. The EC supported adoption of the report.

25. The delegate of Brazil thanked the members of the Panel for their Report. Although Brazil had some reservations on the findings and conclusions of the Panel, which he would address, he recognized that a great deal of work was put into this report and was grateful to the members of the Panel for that. He also expressed gratitude to the members of the Secretariat who were involved in this Panel's proceedings.

26. Brazil's decision whether or not to adopt this Panel report had not been an easy one. As late as the previous week, Brazilian authorities were still reflecting on the contents of the report and on its consequences to the multilateral trading system. As far as the contents of the report were concerned, Brazil was, of course, dismayed with the Panel's findings and conclusions. By allowing the EC to continue to impose anti-dumping duties on imports of cotton yarn from Brazil, the Panel had justified a disruption of trade in this product between Brazil and the EC. In fact, Brazil's exports of cotton yarn to the EC had declined so sharply since the measure was adopted in 1991 that Brazilian yarn was practically not found in the European market any more. The anti-dumping measure adopted by the EC had not only avoided the alleged injury to the Community industry, an industry which already enjoyed the protection of import quotas, it had granted this industry the benefit of expelling one of its competitors from the market. These facts were not of course examined by the Panel. The Panel's findings and conclusions were addressed to the legal questions behind the measures taken. On these legal questions, Brazil had a few observations and reservations to make.

27. Brazil found it difficult to agree with the Panel that the freezing of the exchange rate, which was an instrument used by the Brazilian Government to try to curb hyper-inflation in 1990, was duly considered by the EC as a particular market situation in the sense of Article 2.4 of the Code. A recent article published in the Journal of International Trade, entitled "The Impact of a Hyper-inflationary Economy on the Determination of Dumping", referred to the consideration which was given by other governments to this particular situation which justified the decision not to impose anti-dumping measures in circumstances very similar to those examined by this Panel. Nonetheless, Brazil was prepared to accept the findings of the Panel on this issue, and on other issues as well, related to the failure of the EC to make adjustments to ensure a fair comparison between normal value and export price, and the determination of injury.

28. What Brazil could not accept was the extremely narrow interpretation given by the Panel to Article 13 of the Agreement which deals with special treatment to developing countries. In paragraph 582 of the report, the Panel expressed its views that the wording of Article 13 "contained no operative language". This equalled a conclusion that there was no purpose in the invocation of Article 13 by a developing country - in other words the provision of special regard to the situation of developing countries was useless. Neither could Brazil accept the Panel's opinion contained in paragraph 585 of the report to the effect that constructive remedies in the sense of Article 13 are only to be applied once the investigation is over and not during the investigation. The Panel went on to conclude that there was no obligation on the part of a country imposing anti-dumping duties "to enter into constructive remedies" with the exporting developing country. According to the Panel, in paragraph 590, the obligation of the importing country was "merely to consider the possibility of entering into constructive remedies". Such conclusions by the Panel had led Brazil to reflect on the consequences for the multilateral trading system of the adoption of this Panel report. Brazil had serious concerns with the effect such narrow interpretations by this Panel might have on the future interpretation of similar provisions regarding developing countries contained in the WTO Agreement. He noted for the record that the drafting of Article 13 in the Tokyo Round Agreement is exactly the same as Article 15 of the Anti-Dumping Agreement under the WTO. These concerns with the narrow interpretation were of course the gravest concerns of Brazil with this Panel report. Therefore, Brazil wished to reserve its position on the interpretation of Article 13 given by this Panel and stated for the record that Brazil did not agree with the interpretation contained in paragraphs 565 to 590 of the report.

29. Having made this explicit reservation, Brazil wished to express and to stress its commitment to the multilateral trading system and to the GATT/WTO Dispute Settlement Mechanism and to recall to Members of this Committee that, as of today the Government of Brazil had agreed to adopt all Panel reports in which they have been involved. This Panel should be no exception.

30. The delegate of Hong Kong also thanked the Panel for their efforts in considering the case and preparing the report. Regarding the findings, Hong Kong had a few observations. First on procedures, in considering whether Brazil's claim was outside the Panel's terms of reference, Hong Kong was concerned that the Panel may have drawn too fine a distinction between claims and arguments. Indeed, in its original submission to the Panel, even the EC had itself classified two precise contentions as arguments which the EC later clarified were meant to be claims. (See paragraph 25 and footnote 9 of the report.) In Hong Kong's view, these concepts of claims and arguments might not be as clear as one would expect in an ideal purely legalistic domain, too rigid a separation might lead to exclusion of matters that were material and relevant to the merits of the case. In Hong Kong's view the Panel could have adopted a more liberal approach towards the interpretation of its terms of reference, in order that the very objective of the Panel not be frustrated by purely technical considerations.

31. Hong Kong believed that the reference to a particular market situation in Article 2.4 of the Tokyo Round Code was open to interpretation. Nothing in the Code suggested that the particular market situation *per se* could not prevent a proper comparison of the normal value and export price. Hong Kong supported Brazil's view that Article 2.4 should be subject to the overriding requirement that the methodology adopted by the investigating authorities should always permit a fair comparison. In this regard, Hong Kong was not convinced by the finding that a fair comparison was deemed to be effected by meeting the requirements of Article 2.6 *per se*. In any case with the coming into force of the WTO A-D Agreement the issue became unequivocal, as Article 2.4 explicitly stipulated the overriding requirement of fair comparison. Hong Kong therefore encouraged investigating authorities to give special consideration to the particular situation of the exporting country in deciding to use third country sales or production costs plus SG&A and profits to establish the normal value.

32. As to whether the exchange rate was a difference affecting price compatibility, Hong Kong did not accept the finding that only relevant differences in the factors that affected price determination in the respective markets should be taken into account. The fact that the EC used the official exchange rate rather than, for example, lagged exchange rate, was a matter which could have affected price determination. A more liberal interpretation by the Panel would have arrived at this result.

33. As a final observation, Hong Kong wished to commend Brazil's willingness to adopt the report. Notwithstanding that some of the findings might not be to Brazil's advantage, its confidence in the multilateral system was appreciated. Hong Kong of course extended its appreciation also to the EC for its willingness to adopt the report.

34. The delegate of the EC thanked Brazil for the position it had taken. While the EC did not share the concerns that Brazil had about this report, it did understand them. Regarding the issue of the treatment of developing countries according to Article 13 of the Tokyo Round Code, he stated that in spite of disagreement between the EC and Brazil on the interpretation of that provision, the EC did not believe that the provision was devoid of substantive content, and would continue to give special regard to the situation of developing countries in these cases.

35. Regarding Hong Kong's comments, he had one observation concerning the procedural issues. He did not believe that the approach that the Panel had taken was an unduly rigid or unduly legalistic one. Indeed, he thought the Panel had substantially advanced the cause of legal certainty in the dispute settlement process, and that was something all Parties should welcome because it would benefit all

in a world which had become more complicated and in a legal environment which had become more complex and therefore subject to greater differences in interpretation than before.

36. The Chairman declared the Panel report adopted, and thanked the Parties for their decision.

D. EC - anti-dumping duties on audio cassettes originating in Japan - Report of the Panel

37. The Chairman recalled that the report of this Panel was circulated to the Committee on 28 April of this year and was considered at the Committee's last regular meeting in June. He enquired whether the Committee was in a position to adopt the report.

38. The delegate of Japan noted that this was the second time that the report of the Panel had been considered by the Committee. On the first occasion in June a number of Parties felt that they had had insufficient time to consider the matter and it was decided to defer decision. However, now it was clearly time to make a decision. An additional consideration favouring a decision at this meeting was that the Committee would shortly disappear. This was undoubtedly one of the last substantive meetings of the Committee. Regarding the matters decided by the Panel, he did not propose to go into detail, as the remarks made at the June meeting were summarized in the Committee minutes. He observed that one of the most important aspects of this case was the asymmetry which the EC introduced into the comparison of export price and normal value when the exporter and importer were related. The Panel ruled in favour of Japan and proposed that the EC be recommended to change its law. Because of similarities between the Tokyo Round Code and the WTO Anti-Dumping Agreement, the Panel Report had important implications for the way in which the new Agreement would be interpreted. It was therefore important that the Panel report be adopted so as to give it the status it deserved.

39. Some members of the Committee had expressed dissatisfaction with particular aspects of the report. As Parties would recall from its statement in June, Japan itself was not happy about some of the Panel's views. However, Japan believed that the significance of this report must be viewed in the light of the highly unusual legal situation in which the Committee found itself, with the imminent termination of the Tokyo Round Code.

40. Another important reason why Parties should support the adoption of the report was that, despite the Committee's unsatisfactory history regarding adoption of reports, the basic principle of the Committee's operation was that adoption of reports was the norm and non-adoption was an exception. As the successful complainant in this dispute, Japan was entitled to expect other Parties to be in favour of adoption and not to be deterred by the existence of minor concerns. Consequently, bearing in mind the importance of the Panel's condemnation of asymmetry and the established principle that Panel reports should wherever possible be adopted, Japan called on Members to support its request for the Committee to adopt the report of the Panel.

41. The delegate of Korea supported adoption of the Panel report despite the fact that the conclusions with respect to the issues of burden of proof, zeroing and cumulation were not acceptable to Korea. In particular, Korea agreed with the Panel's conclusion on the issue of asymmetry, that the EC's law and practice of asymmetrical comparison was a violation of Article 2.6 of the Code. In that context, Korea also welcomed the Panel's recommendation in paragraph 460 of the report that the EC bring its Regulation into conformity with its obligations under the Agreement.

42. The delegate of Norway supported the position taken by Japan and Korea.

43. The delegate of Hong Kong stated that, despite reservations on some of the findings of the report, including those concerning the burden of proof and claims not properly before a Panel,

Hong Kong welcomed the report by the Panel, in particular with respect to the issue of making due allowance for differences affecting price comparability. Hong Kong agreed with the Panel's analysis that due allowance should be made, on merit, for all differences affecting price comparability, to ensure a fair comparison of the normal value and export price. Hong Kong strongly supported the Panel's conclusion that the EC, by failing to make due allowance on its merits for differences in indirect selling expenses and with respect to profits related to differences in the functions performed by the seller in the domestic and export markets, had acted inconsistently with its obligations under Article 2.6 of the Tokyo Round Agreement.

44. Hong Kong also strongly supported the Panel's conclusion that the relevant provisions of the EC's regulations were mandatory legislation inconsistent with Article 2.6 of the Agreement. Hong Kong noted that the inconsistencies identified in the Panel report still existed under the EC's existing anti-dumping regulation. Therefore, Hong Kong strongly urged the EC to bring its legislation into conformity with its obligations under the Agreement. Hong Kong supported the adoption of the Panel report.

45. The delegate of Singapore supported adoption of the Panel report, although Singapore did have some reservations on certain findings, which had been highlighted by the delegates of Japan and Hong Kong. In light of the fact that, in principle, Singapore did not favour reports being blocked or not adopted, in this particular instance Singapore strongly urged the Committee to adopt the report at this meeting.

46. The delegate of the European Communities observed that the report was complex and complicated. Previous speakers had themselves underlined the fact that they had mixed views about the contents of the report, although on balance they favoured adoption of it. The EC too had mixed views. However, the EC had not yet reached a decision on its position on the report in its entirety, and was still looking at its implications.

47. The delegate of the United States supported the EC in requesting further opportunity to study this report. The United States had not yet fully determined its position regarding the report, although as a general matter, the United States did not agree with the specific and retroactive remedy specified by the Panel. Furthermore, the United States disagreed with the interpretation of the Tokyo Round Code given by the Panel, in that the Panel read obligations into the Code which the United States did not believe are there. For these reasons, the United States disagreed with the findings of the Panel.

48. The delegate of Canada expressed concerns with the Panel report largely related to the problems that could exist with an expanded interpretation of Article 2.6 which required adjustments to be made for all cost differentials in order to achieve a fair comparison. These concerns largely related to the practicality and paper burden related issues, and whether these could raise problems which could lead to an increased use of best information available. This could conceivably lead to perverse results and a system which would not function under the weight of the paper required for such a detailed analysis. Based on these concerns, Canada shared the US and EC position, and felt the need for further reflection on the report.

49. The delegate of Hong Kong clarified that Hong Kong supported the adoption of the report, despite some reservations about the legal points and findings that the Panel put forward. Hong Kong's position consistently had been that the Committee should respect dispute settlement, and therefore Hong Kong supported the adoption of the report.

50. The delegate of Japan observed that, regarding specific remedies, recommending such remedies had become an established practice, and in some cases even the US and EC accepted that. If authorities were allowed to keep illegally collected anti-dumping duties, it would lead to hit and run practice and abuse of dumping investigations. Japan strongly urged the EC to stop delaying. In this case, in the

establishment of the Panel and also in setting up terms of reference, Japan had already faced various delays by the EC. This was not the right way to deal with dispute settlement in the Tokyo Round.

51. The delegate of the United States clarified that the position of the United States was that the purpose of Panels is to determine whether national laws and their implementation by the national authorities were consistent with their obligations under the Agreement. If they were found to be inconsistent with their obligations under the Agreement, it was then incumbent upon the national authority to bring those laws into conformity with the Agreement if the Panel report has been adopted by the Committee. In addition, the objection of the United States to the report was that the Panel read obligations into the Agreement that the United States did not believe are there. It was for those reasons that the United States objected to adoption of the report.

52. The delegate of the EC observed that, as a matter of principle, the EC was opposed to Panels recommending specific remedies for much the same reason as the United States. The EC had consistently taken that position. As to this report, the EC was actively considering it, and was not engaged in delaying tactics. Furthermore, any delays in the establishment of the Panel and in setting its terms of reference were due to the Parties' difficulties in coming to agreement on those issues and were certainly not due to the EC wanting to delay the process.

53. The Committee took note of the statements.

E. United States - imposition of anti-dumping duties on imports of seamless stainless steel hollow products from Sweden - Report of the Panel

54. The Chairman observed that this was the thirteenth meeting of the Committee at which this Panel report had been considered. At the last regular meeting the Committee agreed to revert to the matter if any Party so desired. He enquired whether any Party wished to take the floor.

55. The delegate of the EC stated that the EC had learned that the anti-dumping order which was imposed on imports of seamless stainless steel from Sweden into the US had been revoked. The underlying dispute therefore was now settled. As to the adoption of the report, he observed that the report contained a specific remedy recommendation. The EC had consistently taken the position that Panel reports should restrict themselves to stating whether a particular action is or is not consistent with the Agreement. For those reasons, the EC could not support adoption of the report.

56. The delegate of the United States confirmed that, as of 16 August, the United States Department of Commerce did revoke the order as it pertained to seamless pipe imports from Sweden. The United States too had disagreements both in terms of substance and with the remedy recommended by the Panel. However, in light of the fact that neither the EC or the United States wished adoption of this report, he recommended that the Committee take it off the agenda for future meetings.

57. The delegate of the EC reserved the EC's right, if necessary, to request inclusion of the item in the agenda of a future meeting.

58. The Committee took note of the revocation of the order, and of the statements made.

F. United States anti-dumping duties on grey portland cement and cement clinker from Mexico. Report of the Panel

59. The Chairman observed that this report had been on the Committee's agenda at every meeting since October 1992. While Mexico had asked at every meeting for adoption of the report, the United

States had not been in a position to adopt it. In addition there had been bilateral efforts to reach a mutually satisfactory solution.

60. The delegate of Mexico expressed once again Mexico's regret that the report of the Panel had not yet been adopted. Mexico believed that the decision and conclusions of the Panel were correct and should so be recognized by the United States. In this regard, Mexico shared the views expressed by Japan (see paragraph 50) in the sense that if an investigation was deemed incorrect, the money would have to be refunded. Several contacts had taken place with the delegation of the United States in order to reach a satisfactory conclusion. He informed the Committee that during the course of October, there was once again a meeting between the Minister of Trade of Mexico, Mr. Blanco, and Mr. Brown, Secretary of Commerce of the United States. Mexico expected that the spirit and good will that prevailed in the meeting between Mr. Blanco and Mr. Brown would very soon come to fruition in the final solution of this case.

61. The delegate of the United States confirmed the Governments of the United States and Mexico had been engaged in intensive review of all of the legal options available to them for reaching a mutually agreeable solution to this matter, consistent with their WTO obligations, US law and the interest of US industry. The parties would keep the Chairman advised of any progress in these talks. However, there was another issue he wanted to raise.

62. It had come to the United States' attention that the Government of Mexico and the Mexican cement industry believed that the United States Government had an affirmative legal obligation to revoke the anti-dumping order on Mexican cement because of the recommendation of the Panel in its report. Although the United States regretted that this report had been the subject of so many Committee meetings and had been a source of friction with Mexico, the United States felt it necessary to state very clearly that they were under no legal obligation to implement the recommendations of an un-adopted Panel report. Under GATT 1947 and the Tokyo Round, a Member simply had no legal obligation to implement a Panel's recommendation prior to adoption of the Panel's report.

63. The delegate of Japan welcomed the information that serious reviews were going on between the United States and Mexico in this matter. Nevertheless, as a matter of principle, he stated that this Panel report should be adopted.

64. The Committee took note of the statements made

G. United States anti-dumping duties on imports of stainless steel plate from Sweden, report of the Panel

65. The Chairman noted that this report had been considered by the Committee at its last three regular meetings. At the last regular meeting the United States reported that actions before the domestic authorities had been instituted in connection with this matter. The EC had urged adoption of the report but the United States was not in a position to agree to adoption.

66. The delegate of the EC stated that, while the EC traditionally opposed the recommendation of a specific remedy, in this particular case the element of specific remedy in the Panel report was extremely reduced, if not negligible. For that reason, the EC urged adoption of the Panel report. The EC understood that the US authorities were carrying out a review on this particular case, and urged the US authorities to carry this out as expeditiously as possible.

67. The delegate of the United States stated that the review was still under way, and he would keep the Committee informed as to its progress. However, the United States were not in a position to agree to adoption at this time. The United States did not share the EC's view in terms of the specific

remedy mentioned in this report and had several other substantive objections to this report which had been articulated at the last meeting.

68. The delegate of Japan supported the adoption of this Panel report.

69. The Committee took note of the statements made.

H. EC anti-dumping investigation of imports of three and a half inch magnetic discs from Hong Kong

70. The Chairman observed that this matter had been discussed by the Committee at each of its meetings since October 1992. At the last regular meeting the Committee decided to revert to the matter at its next meeting if any Party so wished. No new statements had been received from any Party.

71. The delegate of Hong Kong noted that Hong Kong's exports of 3.5 inch magnetic discs to the EU have been subject to definitive anti-dumping duties since 1 September 1994. At the meeting of the WTO Committee on Anti-Dumping Practices held that morning, Hong Kong had referred to the fact that the European Commission on 20 October 1995, initiated an investigation on the alleged circumvention of anti-dumping duties imposed on 3.5 inch magnetic discs. This anti-circumvention investigation was targeted at the same products that were subject to anti-dumping duties pursuant to the measures in question. Hong Kong had serious objections to this investigation. Since the substance of the investigation and the implications of its final outcome on the measures in question were still unknown, Hong Kong reserved its rights under the Tokyo Round Code to pursue the matter further.

72. The delegate of the EC stated that, in the EC's view, the matter of anti-circumvention was a WTO discussion. He expressed the EC's willingness to continue bilateral discussions if Hong Kong authorities considered them necessary.

73. The Committee took note of the statements made.

I. Derestriction of documents

74. The Chairman observed that it had been proposed that the Committee consider issues related to the derestriction of documents after the termination of the Tokyo Round Agreement. He recalled that Committee documents found in documents series ADP were routinely derestricted in accordance with the Committee's decision in ADP/M/2 paragraph 39. Under this procedure the bulk of the Committee's documents with the exception of all unadopted Panel reports had been derestricted. However, the Committee had also decided that working documents of the Committee and Committee minutes, which could be found in document series ADP/W and ADP/M, would not be derestricted under the routine procedures, but would instead remain restricted documents. Since the Committee would not meet again in all likelihood to discuss business such as this, unless the Committee acted now to derestrict documents in the W and M series, those documents would remain restricted for eternity. As a consequence, not only would the public never have access to those documents, but WTO Members who were not also CONTRACTING PARTIES to the GATT 1947 would also never be entitled to those documents.

75. He therefore proposed that the Committee decide to direct the Secretariat to issue a list of all documents in the ADP/W and the ADP/M series and propose them for derestriction in accordance with the normal procedure, followed prior to this time with respect to documents in the ADP series. Parties would be given an opportunity to object to the derestriction of any document or any part of any document, which would then not be derestricted. He proposed that any future documents in the ADP/W and the ADP/M series be treated in the same fashion. This proposal would not affect the

status of unadopted Panel reports, which he suggested the Committee discuss after taking a decision on the derestriction on the ADP/W and the ADP/M documents.

76. The delegates of the United States, Japan, Korea, and the EC, supported the derestriction of the ADP/M and ADP/W series documents.

77. The Committee so decided.

78. The Chairman stated that, with respect to unadopted Panel reports, it had been suggested that these also should be derestricted in order to allow broader access to the discussions and the reasoning contained in those reports.

79. The delegate of the EC stated that the EC's position on unadopted Panel reports was different than regarding M and W series documents. The EC believed that derestriction of unadopted Panel reports would give them a status which they did not have by themselves. If they were derestricted and consequently published, it might be considered that these reports had an official status which had not been guaranteed by adoption by the Committee. In the Tokyo Round system a Panel report was not adopted until the Committee had agreed on that. For these reasons, the EC opposed the derestriction of unadopted Panel reports.

80. The delegate of Mexico and supported the position taken by the EC.

81. The delegate of Japan stated that Japan did not agree to derestriction of unadopted Panel reports. Japan considered that the Committee could discuss this issue next year because the transition provisions (ADP/131) covered this situation.

82. The delegate of the United States encouraged the Committee to derestrict unadopted Panel reports. The United States would actually even go further and suggest derestriction of the submissions to the Panels with the caveat that any business proprietary information be redacted. The United States believed that in encouraging the openness and transparency of the organization, it would be helpful to derestrict these documents.

83. The Chairman stated that it seemed clear that there was no consensus of view on derestricting unadopted Panel reports. Therefore, the position would remain as it was, and unadopted Panel reports would remain restricted.

J. Other business

84. The delegate of the United States referred to the United States' significant concerns with the conduct and result in the European Commission's anti-dumping investigation of soda-ash from the United States. This matter had been raised at the June Committee meeting. The United States had noted that the Commission had taken an excessively long and unjustified period of time to conduct the investigation and that the Commission had failed to consider dumping and injury in the context of the enlarged European Union. The United States shared the concerns that other Members raised at the June WTO Committee meeting regarding the automatic application of anti-dumping duty orders in the context of the enlargement of the EC.

85. The soda-ash investigation, however, was a particularly egregious example in that the Commission had not even completed its preliminary investigation when the new member States joined the European Union on 1 January 1995. When the Commission did finally complete its preliminary investigation, four months after the enlargement took effect, it applied provisional measures to imports of all 15 EU members. Nor did the Commission attempt to use the final investigation period to determine dumping

and injury in light of the entire EC market. On 10 October the Commission imposed definitive duties on imports of soda-ash from the United States even though it had never once seriously considered the effect of enlargement. In response to the enlargement issues raised by the respondents in the soda-ash investigation the Commission had stated merely that "This claim was not substantiated". This statement certainly did not evidence any serious attempt on the part of the Commission to address the legitimate concerns about the imposition of orders covering 15 member States, when the investigation had only covered 12 member States. The United States were very concerned about the effect of the definitive duties on imports.

86. The United States raised this issue in the Committee because of the Commission's failure to take the enlargement issue and hence its obligations seriously. At the June meeting the EC delegate told the Committee that it viewed the issue of enlargement largely as a question of fact. This statement indicated that the Commission simply did not believe it had any GATT obligation to consider dumping and injury in light of the unified market as required by Article 4.3 of the Tokyo Round Anti-Dumping Agreement. According to the EC delegate, because the issue of enlargement was one of fact, the EC proposed to deal with enlargement through a changed circumstance review. The United States questioned the seriousness of this offer. At the June meeting, the EC delegate had stated that "the Community would clearly be flexible on the initiation of reviews and the standard of evidence required would be rather limited. It could be for example, simple evidence that sales had been made to the new member States at the time of original investigation". However, the EC regulations imposing the anti-dumping duties stated that the Commission would initiate a changed circumstance review if "evidence is submitted that measures would have been significantly different had they been based on information including the new member States". This statement definitely set a much higher threshold for seeking a changed circumstance review than the threshold that the EC delegate spoke about at the Committee's last meeting. Regardless of the threshold for a changed circumstance review, however, the United States remained very concerned that the Commission believed this to be an adequate remedy. When investigations were completed in timely manner, one year as prescribed by Article 5.5 of the Tokyo Round Agreement, the actual investigation time was too short to consider all the current events that could conceivably impact on the existence of dumping, injury, and causation. However, where the investigating authority failed to complete the investigation in a timely manner as in this case, it then became incumbent upon it to consider significant events such as enlargement. The United States urged the Commission to take seriously its obligations under the Agreement. In the meantime the United States and the respondents in the soda-ash investigation would be considering all available options.

87. The delegate of the EC observed that, not having been given previous notice of the specific facts that would be raised, he was unable to respond with respect to the specific facts referred to by the United States, but would be happy to provide information bilaterally to the US delegation. The soda-ash review obviously fell under the Tokyo Round Code and the new legislation concerning time limits was not applicable to it. He noted that, while he did not intend to address the enlargement issues in general, no request for reviews had been received by the Community. The EC was ready to open reviews and to carry out investigations on a flexible standard of evidence, but since 1 January no requests from reviews from WTO Members had been received.

88. The delegate of the United States observed that no reviews could have been requested since January of this year, because the final determination only took effect 10 October of this year. Therefore there had been no opportunity for the US firms to request a review. In addition, it was his understanding, which he hoped was true, that any review that the Commission did conduct of this order would be covered by the WTO. He thanked the delegate of the European Community for the offer to discuss the matter bilaterally.

89. The delegate of Japan raised the matter of the results of sunset reviews for plain paper photocopiers. As result of the sunset review the measures had been extended to cover high-speed copiers,

which were excluded in the original investigation. This was a deviation from the purpose of reviews, which was to examine the need for the continued imposition of the existing measure. Japan asked the EC to explain the extension of the measures.

90. The delegate of the EC stated that the EC had carried out in its examination a very thorough analysis of the like product. It was the EC's understanding that a review should have the same product coverage as the original proceeding. In this particular case, no measures on certain segments of the products were originally imposed because there were no imports of those segments at that time and there was no domestic or Community industry at that time, although high speed copiers were included in the like product and in the product coverage. At present, high speed copiers were both exported from Japan to the Community and produced by the Community industry. For this reason, as part of the product subject to investigation, measures could be imposed on these products once they were found to have been dumped and to cause injury. In the same manner, certain segments of the like product had been excluded from the measures as they had been in the original investigation.

91. The delegate of Japan expressed Japan's strong opposition to the EC's position concerning the sunset review and reserved its rights.

92. The Committee took note of the statements made.

K. Officers for future special meetings

93. The Chairman recalled that the Committee decided at its meeting on 8 December 1994 that the Agreement would terminate one year after the date of entry into force of the WTO Agreement and that in light of unforeseen circumstances the Parties could decide to postpone the date of termination by no more than one year. The Committee further decided that for a period of two years from the date of entry into force of the WTO Agreement the Committee would continue to exist for the purpose of dealing with any dispute arising out of any anti-dumping investigation or review not subject to the WTO Agreement on Anti-Dumping Practices. There had been no indication from any Party that unforeseen circumstances required the postponement of the date of termination of the Agreement. Accordingly this would be the last regular meeting of the Committee. If any Party believed that a special meeting of the Committee was necessary for the purpose of dealing with any dispute arising out of any anti-dumping investigation or review not subject to the WTO Agreement, the Party should advise the Secretariat that a special meeting was requested. Parties should keep in mind that at least ten days notice was required for a meeting of the Committee.

94. Given that there would be no more regular meetings of this Committee, the Chairman proposed that the Committee make a decision as to officers to preside over future special meetings in the event that such a meeting or meetings were necessary. In the past the Committee had elected officers for the year at its first regular meeting in April. The Chairman proposed that should a special meeting of the Committee be held, the Chairman of the WTO Committee should preside at such a meeting. In the event that the Chairman was not available or was from a WTO Member not a Party to the Tokyo Round Agreement, the Vice-Chairman of the WTO Committee should preside. In the event that neither the Chairman nor the Vice-Chairman was available or if both were from WTO Members not Parties to the Tokyo Round Agreement, the Committee then would elect a Chairman to preside at such a special meeting.

95. The Committee so decided.

L. Annual report to the CONTRACTING PARTIES

96. The Committee adopted its last Annual Report to the CONTRACTING PARTIES.

97. The meeting was adjourned.