

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

RESTRICTED
ADP/M/41
21 March 1994
Special Distribution

(94-0521)

Committee on Anti-Dumping Practices

**MINUTES OF THE MEETING
HELD ON 25-26 OCTOBER 1993**

Chairman: Mr. David Walker (New Zealand)

1. The Committee on Anti-Dumping Practices ("the Committee") held a regular meeting on 25-26 October 1993.
2. The Committee adopted the following Agenda:
 - A. Yugoslavia - Status as a party to the Agreement (C/M/264, item 1)
 - B. Request by Chinese Taipei for observer status (ADP/W/346)
 - C. Adherence to or acceptance of the Agreement by other countries
 - Colombia (L/6453/Add.20)
 - D. Examination of anti-dumping duty laws and/or regulations of Parties to the Agreement (ADP/1 and addenda)
 - (i) Korea (ADP/1/Add.13/Rev.1/Suppl.2; ADP/W/332, 334 and 337)
 - (ii) Australia (ADP/1/Add.18/Rev.1/Suppl.6 and 7)
 - (iii) Romania (ADP/1/Add.9/Rev.1)
 - (iv) Laws and regulations of other Parties to the Agreement (ADP/M/40, paragraphs 48-50, ADP/1/Add.29/Rev.1)
 - E. Report by the Chairman of the Committee on Anti-Dumping Practices on informal consultations regarding semi-annual reports (ADP/W/333 and ADP/M/40, paragraphs 52-64)
 - F. 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)
 - G. Semi-annual reports of Parties to the Agreement on anti-dumping actions taken by Parties to the Agreement during the period 1 July-31 December 1992 (ADP/88/Add.10 and 13; ADP/M/40, paragraphs 87-97 and 104)

- H. Semi-annual reports of Parties to the Agreement on anti-dumping actions taken by Parties to the Agreement during the period 1 January-30 June 1993 (ADP/102 and addenda)
- I. Reports on all preliminary or final anti-dumping duty actions (ADP/W/334, 339, 340, 341, 342 and 345)
- J. United States - Imposition of anti-dumping duties on imports of seamless stainless steel hollow products from Sweden - Report of the Panel (ADP/47 and ADP/M/40, paragraphs 121-141)
- K. United States - Anti-dumping duties on gray portland cement and cement clinker from Mexico - Report of the Panel (ADP/82 and ADP/M/40, paragraphs 245-249)
- L. United States - Imposition of anti-dumping duties on imports of fresh and chilled Atlantic salmon from Norway - Report of the Panel (ADP/87 and ADP/M/40, paragraphs 142-179)
- M. Mexico - Anti-dumping duties on electric power transformers from Brazil (ADP/91 and ADP/M/40, paragraphs 190-197)
- N. United States - Anti-dumping investigations of imports of certain circular welded steel pipes and tubes from Mexico and Brazil (ADP/W/335, ADP/M/40, paragraphs 202-210)
- O. EC - Anti-dumping investigation of imports of 3.5" magnetic disks from Hong Kong (ADP/97 and 99; ADP/M/40, paragraphs 227-244)
- P. Mexico - Anti-dumping action against certain products exported from Hong Kong (ADP/M/40, paragraphs 311-318)
- Q. United States - Delay in administrative review (ADP/M/40, paragraphs 304-306)
- R. The European Community - Delay in anti-dumping investigation (ADP/M/40, paragraphs 99-103)
- S. United States - Anti-dumping duties on certain steel products (hot-rolled, cold-rolled, corrosion resistant and cut-to-length) from various member States of the European Economic Community - Request by the European Economic Community for conciliation under Article 15:3 of the Agreement (ADP/107)
- T. Other business
 - (i) Mexico - Foreign Trade Law
 - (ii) United States - Anti-dumping duties on certain corrosion resistant carbon steel flat products from Australia
 - (iii) United States - Anti-circumvention action on export of brass plates from Canada
- U. Annual review and report to the CONTRACTING PARTIES

A. Yugoslavia - Status as a Party to the Agreement.

3. The Chairman recalled that, in view of the United Nations General Assembly Resolution 47/1, the Council had decided at its meeting of 16 and 17 June 1993 that:

"The Council considers that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the contracting party status of the former Socialist Republic of Yugoslavia in the GATT, and therefore decides that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for accession to the GATT and that it shall not participate in the work of the Council and its subsidiary bodies. The Council further invites other Committees and subsidiary bodies of the GATT, including the Committees of the Tokyo Round Agreements and the Committee on Trade and Development, to take necessary decisions in accordance with the above."

4. In view of this decision by the Council, the Committee decided that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue the status of the former Socialist Republic of Yugoslavia as a Party to the Agreement and that the Federal Republic of Yugoslavia (Serbia and Montenegro) shall not participate in the work of the Committee on Anti-Dumping Practices and its subsidiary bodies.

B. Request by Chinese Taipei for observer status

5. The Chairman noted that the request by Chinese Taipei for observer status to the Committee was circulated to the members of the Committee in ADP/W/346. The Government of Chinese Taipei had requested observer status to the Committee as it was in the process of negotiating accession to the GATT, and it wished to follow closely the activities of the GATT standing bodies and the Committees established under certain Arrangements and Agreements. The Chairman recalled that the Council at its meeting of 29 September 1992 had invited Chinese Taipei, following its request for accession to the GATT, "to attend future meetings of the Council and of other GATT bodies as an observer during the period when the Working Party was carrying out its work" (C/M/259). He proposed that the Committee agree to grant observer status to Chinese Taipei on the same conditions as those applied to other observers, and in this regard recall that at its meeting on 5-6 May 1980, the Committee had agreed that "Observers may participate in the discussions but decisions shall be taken only by signatories", and that "The Committee may deliberate on confidential matters in special restricted sessions" (ADP/M/2, page 12). He also noted that observers received documents relating to the meetings they attended and emphasized that the proposed decision related only to the observership in the Committee on Anti-Dumping Practices and did not prejudice action in other fora.

6. The Committee decided to grant observer status to Chinese Taipei.

7. The Chairman welcomed the observer from Chinese Taipei into the meeting room, and expressed the Committee's appreciation regarding the interest shown by the Government of Chinese Taipei in the work of the Committee in order to develop a better understanding of the prerequisites of a future accession to the Agreement on Implementation of Article VI of the General Agreement. In this context, he recalled that the procedures for a future accession to the Agreement were separate from the procedures applicable to the granting of observer status. He encouraged the delegation of Chinese Taipei to provide the Committee from time to time with reports on any economic reform process in Chinese Taipei as it related to matters covered by this Agreement.

8. The Committee took note of the statements made.

C. Adherence to or acceptance of the Agreement by other countries

9. Document L/6453/Add.20 notified that on 2 August 1993 Colombia accepted the Agreement subject to ratification. The Chairman noted that document ADP/1/Add.29/Rev.1, which contained Colombia's anti-dumping and countervailing duty legislation, had been recently distributed to the Committee for information only.

10. The Committee took note of the statements made.

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

(i) Korea (ADP/1/Add.13/Rev.1/Suppl.2)

11. The Chairman recalled that the representative of Korea had explained the amendments to the Korean Customs Act (contained in document ADP/1/Add.13/Rev.1/Suppl.2) at the meetings in October 1992 and April 1993. At the latter meeting the Korean delegate had responded orally to questions from the delegation of Hong Kong (ADP/W/332), and the written text of the response was circulated subsequently in document ADP/W/337. The Chairman also noted that written questions on the Korean legislation had recently been circulated by Canada in document ADP/W/344, and that Korea had not yet replied to these questions.

12. The representative of Korea stated that the written questions submitted by Canada were received too late to permit a written reply. Replying to question A he said that qualified experts could include certified public accountants for analyzing production costs and expenses, an engineering technician could be engaged to provide advice concerning specific products or production processes, or computer programmers to analyze certain computer documents. Activities of qualified experts were limited to fact finding. As in the case of government officials, they were required to take oaths promising not to disclose the information acquired during investigations, nor to use the information for any objective other than the investigation. He was of the view that this protected the information and kept it confidential. If a company under enquiry objected to the provision of certain of their commercial information to the experts, the investigating authorities could disregard such information in accordance with Article 6:4 of the Agreement, unless it could be demonstrated to the satisfaction of the investigators that the information was correct.

13. In reply to question B he said that experts assisting dumping enquiries were required to keep any information or factual material submitted by interested parties secret both during and following the investigation. The investigating authority could take disciplinary action against the experts for any direct or indirect breach of confidentiality. If an expert disclosed information, the authorities could prohibit him or her from participating in a current or further investigations as well as ask the professional association to take disciplinary action against the expert. Regarding the third question, the representative of Korea stated that this question reflected a misunderstanding of the word "termination". In his view "termination" meant conclusion of an investigation. At the conclusion of the investigating, an investigation team consisting of government officials from the Korean Trade Committee and Korean Customs submitted to the Customs and Tariff Deliberation Committee an investigation report. The submission of that report terminated the investigation. The Customs and Tariff Deliberation Committee reviewed the need for an appropriate level of anti-dumping duty on the basis of the investigation report. The Minister of Finance then decided whether to impose anti-dumping duty on the basis of the result of the review by the Customs and Tariff Deliberation Committee. The Committee had to submit the report to the Minister so that the Minister might decide on the appropriateness of imposing duty, and if so whether to apply the lesser duty rule or not.

14. The Chairman noted that the delegation of Korea would later provide its responses in writing. The Committee took note of the statements made, and decided to revert to the matter at the next regular meeting if requested by any delegation.

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

(a) (ADP/1/Add.18/Rev.1/Suppl.6)

15. 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 (89 of 1992), and the Customs Tariff (Anti-Dumping) Amendment Act 1992 (90 of 1993), and the explanatory memoranda and second reading speech for the legislation. The Chairman recalled that at the April 1993 meeting the Committee had decided to consider the two pieces of legislation together.

16. The representative of Australia recalled that this document had been addressed in some detail by his delegation and at the last meeting the Australian delegation had stated that they would be prepared to answer any questions on the legislation if they were submitted in writing. He noted that no questions had been received in relation to the legislation and asked the Committee to agree that it had formally concluded consideration of this legislation.

17. The representative of Japan noted that his delegation and some other Parties had expressed concerns in relation to the issue of "cross cumulation" of the effects of allegedly dumped imports and of allegedly subsidized imports in determination of injury. He recalled that at the previous Committee meeting, the Australian delegation had stated that "unlike the case of dumping, subsidy was not always reflected in the price." However, the representative of Japan was of the view that if a subsidy did not have a price effect it could not cause injury. He said that "cross cumulation" could produce absurd results if unsubsidized dumped imports and subsidised imports (without dumping) were cumulated together, and may mean the creation of a new import restricting measure. He requested that Australia alter its legislation in conformity with the Agreement. The Japanese delegate noted that although his delegation had not submitted a questionnaire it had made its position clear and sought an answer to its concerns in the course of the current meeting.

18. The representative of Australia reiterated that lengthy discussion of the legislation had taken place at the previous meeting, in the course of which responses to several questions had been provided. Australia had also invited other delegations to put forward any questions in writing. If the delegation of Japan had wished to pursue the matter further, Australia had expected that it would have submitted written questions.

19. The representative of Japan said that his delegation would submit written questions at a later stage, and may wish to revisit the legislation at a later stage.

20. 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.

(b) (ADP/1/Add.18/Rev.1/Suppl.7)

21. The Chairman noted that at the April 1993 meeting of the Committee the Australian representative had addressed the changes made by the legislation contained in the document ADP/1/Add.18/Rev.1/Suppl.7, which contained amendments to Australia's (a) Customs Legislation (Anti-Dumping Amendments) Act 1992 (No. 207 of 1992), together with the second reading speech by the Minister and the Explanatory Memorandum for the introduction of the above legislation, and (b) Customs Tariff (Anti-Dumping) Amendment Act 1992 (No. 206 of 1992), together with the Second

Reading Speech by the Minister and the Explanatory Memorandum for the introduction of the above legislation. He proposed to take both the legislations in document ADP/1/Add.18/Rev.1/Suppl.7 together for discussion by the Committee.

22. The Chairman recalled that at the April 1993 meeting, the representative of Australia had addressed the changes made in these legislations. At the meeting in April 1993, answering a question by the delegation of Canada, the representative of Australia had said that he would provide a response on how often the lesser duty rule was applied by Australia, and if possible, the extent to which it differed from the normal value. Such a response had been provided by Australia, and copies of this response were available in the meeting room. The Chairman also noted that Hong Kong had posed some questions on the legislation (ADP/W/348)

23. Responding to the question by Canada, the representative of Australia said that Australia adhered to the lesser duty rule contained in Article 8:1 of the Agreement. To give effect to this requirement, the Australian authorities during the course of their enquiries established an unsuppressed selling price ("USP") for the Australian produced goods, i.e. the price at which Australian industry could sell their goods if prices were not affected by dumping. Based on this USP, a free on board price at the point of export was then established, usually by deducting from the USP the cost of freight, insurance, normal customs duties and delivery into store costs. The calculated price was referred to as a non-injurious free on board price (or "NIFOB"). Normally, the normal values were expressed in the currency of the exporting country, or the currency in which the export sales to Australia were conducted. NIFOBs were expressed in Australian dollars. Duty was collected on the basis of whichever (i.e. NIFOB or normal value) was the lower, expressed in Australian dollar terms, on the date of arrival of the goods. Thus, exchange rate fluctuations over time meant that it was not possible to indicate whether the duty for any particular product was based on NIFOB or normal value until such time as the normal value was converted to Australian dollars and the duty was actually determined.

24. Normal values and NIFOBs were determined separately for each supplier and for each specification of the goods subject to measures. Differences in size, performance characteristics, construction materials, packaging and end-use could mean that there may be large number of NIFOBs and normal values for each supplier within any product category. For example, in the case of Agricultural Ground Engaging Tools from Brazil, there were 566 separate products with different normal values and NIFOBs. Accordingly, it was not possible to state with complete certainty whether or not duty was based on normal values or NIFOBs. An examination of cases not involving a large number of product categories, revealed that of fifty measures, half would be collected on basis of the NIFOB and half on the basis of the normal value (for the latter, in 17 of 25 measures the normal value differed from the NIFOB by more than 10 per cent). Of the former, ten had NIFOBs that were more than 20 per cent lower than the normal value, and eight had NIFOBs that were between 10 and 20 per cent less than the normal values. Details of the impact of the lesser duty rule had been tabulated in the written response by Australia to Canada's question.

25. The representative of Canada thanked Australia for its reply, and sought further information on how an USP was determined. He mentioned that this issue could also be taken up bilaterally.

26. The representative of Hong Kong also wished to know how an USP was calculated.

27. The representative of Australia said that he would respond to this question later during the meeting so that the information could be provided to all the members of the Committee.

28. The Chairman said that the Committee will revert again to this item prior to "other business".

29. Later in the meeting, responding to the questions by the delegation Hong Kong¹ (and within that context, also to the question raised by Canada), the representative of Australia first addressed the question by the delegation of Hong Kong concerning non-injurious prices. He explained that it was usual to calculate non injurious prices as follows: the first step in the process was to establish an unsuppressed selling price, i.e. a price at which the domestic industry would have been able to sell the goods had the domestic market been unaffected by the presence of the dumped imports. To arrive at such a price the investigating authority identified the time at which injury commenced, and then verified the domestic industry's cost to make and sell the goods in an accounting period which was generally an accounting period immediately preceding the date upon which injury commenced. To these verified costs, the investigating authority added an amount for profit. The level of profit was based upon what was judged to be a reasonable profit to the industry concerned. The validity of the notional profit was tested for reasonableness against other available information which can include industry surveys, or other economic indicators and reports. The unsuppressed selling price therefore was made up of the domestic industry's verified costs and a determined level of profit. As far as the costs were concerned, the investigating authority was not locked into reliance upon historical cost data, which may no longer be relevant. Adjustments to the verified cost may be warranted in the light of changes to the domestic industry's cost structure that may have occurred subsequent to the time at which injury commenced.

30. He said that the investigating authority determines a reasonable profit for importers, similar to the profit used for the unsuppressed selling price. The importer's profit margin was considered in the light of other available information which can also include industry surveys, or other economic indicators and reports. Using the unsuppressed selling price as a starting point, the investigating authority then deducted amounts for the determined importer profit, selling and administration expenses, other charges, duty and freight from the country of export so as to arrive at a non-injurious free-on-board price. These other deductions were established through a verification of information obtained directly from the importer or exporter, as the case may be.

31. He recalled that the Committee had been informed in April 1993 that there was formal provision for review which encompassed a review of a determined non-injurious price. The legislation allowed importers, exporters, and the local industry, to apply for a review of the interim duty rate established by reference to the lesser duty rule one year after it had been set, and at yearly intervals thereafter. Exporters of goods subject to anti-dumping measures who were not included in the initial enquiry, or subsequent reviews, may also apply for a review after the expiration of one year. The Minister had the discretion to initiate a review of duty rates at any time and once initiated, Customs had 120 days to complete a review.

32. In response to Hong Kong's question 2 concerning non-injurious prices, the representative of Australia said that under the provisions operating in Australia, the Australian Customs Service was responsible for preliminary finding enquiries. It must arrive at such findings within 100 days of initiation. In making positive preliminary findings, Customs must be satisfied that the applicant industry was suffering or was threatened with material injury which was caused by dumping of the goods. Where a positive preliminary finding was made, it was usual to impose provisional measures at the full margin of dumping. Final finding enquiries are undertaken by the Anti-Dumping Authority. The authority was responsible for an analysis of the Customs' finding and, in addition, an analysis of the non-injurious levels. This was consistent with Article 8:1 of the Agreement which focused upon the imposition of anti-dumping duty, not provisional measures, based on a lesser duty rule. This obligation was reinforced by section 10 of the Anti-Dumping Authority Act which emphasized that dumping duties

¹The written response of Australia to the questions raised by Hong Kong in ADP/W/348 was circulated in document ADP/W/354 and Corr.1.

should not be used to assist import competing industries nor to protect industries from the need to adjust to changing economic conditions. If Customs subsequent to its preliminary finding collected the amount imposed under provisional measures, which was done usually in the form of security rather than cash payment at a level which was less than that which may be determined in the final finding, the importer was not pursued for the excess amount.

33. Responding to question 1 in the second set of questions (i.e. those relating to dumping duties), the representative of Australia said that the ascertained values for dumping duties, interim dumping duties and provisional measures were obtained through enquiry and verification at the premises of importers, exporters and manufacturers, as appropriate. In response to the second question concerning interim dumping and provisional measures, he drew attention to previous statements made by the Australian delegation which were reflected in ADP/M/40, starting with paragraph 30. Provisional measures were applied in the manner as outlined above. Australia's new duty collection system was a more equitable method of ensuring compliance with our obligations under Articles 8:1 and 8:3 of the Agreement. Under the old or previous system of duty collection, duties were collected at the difference between the normal value or non-injurious price determined on a prospective basis at the time of the enquiry and the export price of each specific consignment. This method of duty collection based upon a prospective normal value may have precluded the importer from any refund of duty which may have been overpaid as a result of changes in the normal values during the period in which the prospective normal values applied. The new interim duty overcame this deficiency in that a normal value and export price were, as a result of the refund procedures, ascertained for each consignment of goods during a particular importation period to calculate the actual duty liability for that particular consignment. This approach ensured that any interim duty collected, which was later found to be in excess of the actual duty liability, was refunded. In response to question 3, he said that after a period of six months and at six monthly intervals during which measures applied, importers may make an application to Customs for a duty assessment. Customs will then ascertain the normal value and export price pertaining to each consignment of the goods in the relevant importation period, and then calculate the actual duty liability. It was this actual duty liability which was referred to as "the dumping duty". If the interim duty collected exceeded the actual duty payable for a particular importation period, the difference will be refunded in full. However, if the interim duty was less than the liability as calculated in the reassessment, the additional amount was not collected. Upon completion of a duty assessment the actual duty liability was then known.

34. The representative of Australia then requested that the Committee conclude its deliberation of these legislative provisions and conclude this agenda item.

35. The representative of Hong Kong said that he would refer the replies to his capital for careful reflection and may like to come back with some further questions, if appropriate. Meanwhile he asked that perhaps this legislation could be put, at least for the coming Committee meetings, pending depending on whether his delegation or other delegations will have any further questions to raise.

36. The representative of Australia requested the delegate from Hong Kong to reconsider his position to enable this item to be concluded at this meeting, and said that the delegation of Australia would be happy to pursue bilaterally any of Hong Kong's concerns.

37. The representative of Hong Kong said that he would agree with the Committee if it felt that the examination of this legislation could be concluded at this meeting, with the usual understanding that any delegation could come back with follow-up questions at a later date.

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

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

39. The Chairman recalled that at the meeting in April 1993, the Committee had considered document ADP/1/Add.9/Rev.1 which provided 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 or subsidised 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 Safeguards Measures, and thirdly, a Joint Order No. 128 of 24 August 1992 of the Minister for Trade and Tourism and the Minister for Economy and Finance on the rules of application and procedures for the establishment of anti-dumping duties and countervailing duties and safeguard Measures. He recalled that the Committee had decided to revert to the above legislation in ADP/1/Add.9/Rev.1 at this meeting.

40. The representative of Japan said that at the previous meeting it had expressed concerns on Article 2.8 of the Romanian legislation, as it applied the "duty as a cost" rule. In addition, certain other provisions of Article 2 that permitted "asymmetrical comparison" were of concern. In September 1993 a list of questions concerning these issues was sent to the delegation of Romania, which provided answers in October 1993. After consideration of the responses from Romania, Japan was still of the view that Romania was not complying with its obligations under the Agreement.

41. The representative of Canada asked a series of questions concerning the Romanian legislation, and the Canadian delegation undertook to provide these questions to the Committee (through the delegation of Romania). The first concerned Government Decision No. 228 (7 May 1992) and addressed the relationship between that Decision and Joint Order No. 128. An injury or causation test was required under Joint Order No. 128 but not under Decision No. 228. Thus, unless the two were read in conjunction it would seem possible that anti-dumping duties could be applied without an injury test. The second question concerned the intent of Article 9 which appeared to require domestic firms to set contract terms with foreign partners to ensure that they reflect "the level of prices in the normal commercial transactions in the domestic and international market". The third question related to Articles 10 and 11 on the role of the price offers, and the purpose of the list of prices, and how was such information collected. With respect to Order No. 127, he asked if the experts on the panel were government officials, and if not, how was confidential information to be protected. With respect to Order No. 128, the representative of Canada noted that Article 5 did not appear to require verification of standing, prior to initiation of a complaint. He also sought clarification of the term "interested parties" as it appeared on numerous occasions in the order.

42. The representative of Romania recalled that this was Romania's first legislation on anti-dumping. A reply to the written version of the concerns expressed by Japan at the last meeting of the Committee had been provided and held bilateral consultations had been held in this regard. She noted Japan's further concerns, and requested Japan to submit the further written questions through the Committee. In relation to the concerns of Canada, she noted that the three pieces of legislation were to be applied as a whole; they were interdependent. Any possible inconsistencies would be examined by Romania. She requested Canada to provide the questions in writing, and stated that the delegation of Romania would be available for consultations with any interested delegations. She emphasized that the principle object in drafting the legislation under review was to bring Romania into conformity with the principles and rules of the Agreement.

43. The Committee took note of the statements made, and decided to revert to the matter at the next regular meeting. The Chairman noted that the delegations that had asked questions to Romania would provide their questions in writing. He requested delegations wishing to ask questions of the delegation of Romania to do so in writing 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.

(iv) Laws and/or regulation of other Parties to the Agreement

(a) Hungary

44. The Chairman noted that at the regular meeting of the Committee in October 1991 the representative of the European Communities made a statement regarding the decree enacted by Hungary (document ADP/M/35, paragraphs 133 and 134). Written questions on the decree had subsequently been submitted by the European Communities in document ADP/W/306. At the regular meeting of the Committee in October 1992, the representative of Hungary had stated that a full review of the text was being carried out, to amend or replace the text. At the April 1993 meeting of the Committee, the representative of Hungary had informed the Committee that more time was needed than originally envisaged.

45. The representative of Hungary informed the Committee that the revision of the legislation had not yet been completed. He said that any new legislation would be notified to the Committee.

46. The representative of the EC asked whether the existing law being examined was currently being applied, or whether the authorities abstained from using the law.

47. The representative of Hungary said that the law was not being applied at present, and that no anti-dumping enquiries were currently being undertaken.

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

(b) Colombia

49. The representative of Canada said that he had some questions relating to the legislation of Colombia (circulated in document ADP/1/Add.29/Rev.1), and asked whether those questions could be asked under this item.

50. The representative of Japan also had some concerns about the legislation of Colombia and wished to seek some clarifications.

51. The Chairman said that the observer delegation of Colombia had circulated its legislation for the purpose of information only, and if there were any questions then in the first instance they should be discussed with the delegation of Colombia, and if necessary the matter could be brought to the attention of the Committee at its next meeting.

52. The Committee took note of the statements made.

(c) Mexico

53. The representative of Mexico asked whether he could speak on his country's legislation under this item instead of under "other business".

54. The Committee agreed to discuss the legislation of Mexico under this item.

55. The representative of Mexico referred to its recent Foreign Trade Law (circulated in ADP/1/Add.27/Rev.1, of which only the Spanish version was available in the meeting room). This Law had repealed the previous legislation that dealt with anti-dumping and was published on 27 July 1993. The part referring to unfair practices formed the major part of the statute, and covered two

Titles (Titles 5 and 7). Title 5 defined dumping and stated that action could only be taken after an administrative procedure had proved dumping, injury (including threat of injury) and causal link. The Title also set out the procedure for imposition of countervailing duty. The legislation included a change in some definitions, and from a procedural point of view was more detailed and contained additional elements. The main objective of the law was to increase transparency in the procedures, and to specify the rights and obligations of interested parties to an investigation, as well as to increase security for interested parties and better balance the enquiry process.

56. One of the major changes concerned normal values. A hierarchical approach to the determination of normal value had been introduced. The starting position for determination of the normal value was the price paid for like goods sold for consumption in the country of origin. If this was not possible the second approach was to use the export price to a third country. Finally, if neither of the above was possible, a normal value would be constructed. To determine normal value other than on the basis of the price paid for home consumption, there must be evidence of the unsuitability of that price. The law included an exception to the above hierarchical approach in the case of centrally planned economies. The law includes more precise definitions of injury, threat of injury and causal link. It also set a minimum percentage for the definition of national production at 25 per cent. It also introduced the concept of regional injury, and listed the factors to be taken into account for determination of injury or threat of injury. Title 7 of the law concerned procedural aspects of investigations, and replaced the word "denouncement" or "complaint" with "request" or "petition". It was now obligatory for interested parties to use certain approved forms. Other important changes were to alter the definition of an "interested party", so as to give all interested parties the same legal rights and obligations, and to give them access to the entire review process available under the Mexican legal system. This guaranteed the right of all interested parties to question the decision-making process.

57. The representative of Mexico recalled that the Committee had previously communicated its concern regarding the possibility under the old law of imposition of provisional compensatory fees prior to the conduct of a preliminary enquiry. The new legislation provided that a provisional duty could only be imposed after 45 days (or nine weeks) had elapsed. This guaranteed the rights of parties to make submissions, and accordingly enhanced transparency. The deadlines had been altered to reflect international practice. Upon receipt of a complaint, notification was published in the official journal and a decision was required within 30 days. Following that decision, a preliminary finding was required within 130 days. Following the preliminary finding, a final finding was required within 130 days. A decision could be reached within a lesser time period. Other important aspects included that any interested party could request clarification regarding the Order, including the tariff classification of the goods covered by the Order, to determine the precise scope of any anti-dumping duty. In addition, if an interested party so requested, a technical information meeting could be held to explain the methods and (de facto and de jure) reasons for any decision, including an explanation of the material findings of fact, evidence on which the findings were based, and any a statement of the law applied to the facts.

58. Access by the public to publicly available information and confidential information to legal representatives was guaranteed. The exceptions to guaranteed access were for proven "reserved commercial information" and "classified government information". The law provided an entitlement to conciliatory hearings and to meetings of parties. The hearings and questions or clarifications by the parties were to be held after the preliminary finding, prior to the final finding. This guaranteed transparency and access to parties of any relevant material in time enabling them to present their own defence. Also, verification procedures had been clarified; any interested party could request revocation of any decision that was final in character; and new penalties for use of confidential information for personal profit had been introduced. The representative of Mexico reiterated his government's willingness to discuss the new law with any Party to the Agreement.

59. The Committee took note of the comments made and decided to revert to the matter at its next regular meeting. The Chairman asked delegations wishing to put questions to the delegation of Mexico to do so well in advance of the next regular meeting so that the delegation of Mexico could provide a written response prior to the next regular meeting.

E. Report by the Chairman of the Committee on Anti-Dumping Practices on informal consultations regarding semi-annual report (ADP/W/333 and ADP/M/40, paragraphs 52-64)

60. The Chairman recalled that at the meeting of April 1993, Mr. Armando Ortega (the previous Chairman of the Committee) had reported on his informal consultations regarding semi-annual reports and had made some suggestions regarding the reports in document ADP/W/333. The representative of Hong Kong had sought clarification regarding whether in suggestion 3 in ADP/W/333, the term "order" referred to dates of initiation, and in suggestion 19 the cases pending included investigation and reviews.

61. Mr. Ortega (the previous Chairman) responded that the answer to both questions was in the affirmative. He also noted that the objective of the reports was to inform the Committee of important matters in a timely fashion.

62. The representative of Japan stressed the importance of accurate reporting of the anti-dumping measures taken. He was of the view that all cases under investigation should be reported whether or not determinations during the reporting period had been made. He hoped that the suggestions in ADP/W/333 would be accepted by the Committee.

63. The representative of the United States supported the initiative and wished to reflect further on the suggestions and revert to this matter at the next meeting.

64. The representative of Brazil supported the suggestion by the United States.

65. The representative of Australia supported the initiative, but considered that important questions of confidentiality primarily for the exporters and importers could arise in relation to the Committee's reporting requirements. Semi-annual reports prepared by Australia were completed within the constraints of confidentiality under its relevant laws. As the prime rôle of the reports was to enable countries to raise issues of concern, Australia was of the view that the amount of information required to be contained in them was quite limited. In relation to paragraph 8 of ADP/W/333, concerning lesser duty rules, the representative of Australia referred to his delegation's earlier reply to the delegation of Canada and noted the difficulties in including such information on a regular basis. He observed that there could be a need for flexibility in the type of information to be provided by countries.

66. The representative of Hong Kong endorsed the suggestions contained in ADP/W/333, and urged that the Committee agree to an early implementation of the suggestions in the present form or in revised form. He hoped that the alterations required be taken up as soon as possible, and that the Chairman could informally consult on this matter to implement the suggestions quickly.

67. The Committee took note of the statements made and decided to revert to the matter at its next regular meeting. The Chairman said that he would pursue the matter in informal consultations.

F. 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 and ADP/M/40, paragraph 64)

68. The Chairman recalled that at the regular meeting in April 1993, in view of the difficulty for certain countries to submit notices in the languages required, he had proposed to hold consultations on the matter of standardising the format for submitting information on notices by countries whose notices of anti-dumping actions were not in one of the GATT working languages. Subsequently, he had consulted members of the Committee on the basis of a format which he suggested for providing reports under Article 14:4 on all preliminary and final anti-dumping actions. The Chairman then noted that though the Agreement did not set forth precisely what information must be included in the reports, the necessity of a certain minimum quantum of information from all Parties was implied by the provision in Article 14:4 that "[s]uch reports will be available in the GATT secretariat for inspection by government representatives."

69. The Chairman said that his report on his consultations was contained in a note circulated in document ADP/W/347. On the basis of his consultations, it did not seem that a standard form was necessarily the best method of obtaining information through reports under Article 14:4 of the Agreement. Therefore, in the ANNEX to his note (in document ADP/W/347), he had suggested instead the minimum information that should be provided in the reports on preliminary or final anti-dumping actions because, in his view, what was needed was an agreement on minimum information to be provided in the reports under Article 14:4 for inspection by government representatives. Thus, as long as the required minimum information was submitted, the Parties should be free to submit the information in any form, and should not be discouraged to provide additional information if they were in a position to do so.

70. The Chairman said that the Committee had to consider two points, (a) his suggestions regarding the minimum information to be provided in the reports under Article 14:4 on preliminary or final anti-dumping actions, and (b) the time period within which these reports should be provided. During his informal consultations, two alternative periods were suggested, namely that the reports be provided within 30 days or 60 days of the action being taken. When considering the second aspect, it should be borne in mind that the requirement under Article 14:4 was that such reports shall be provided to the Committee without delay. He emphasized that the decision taken by the Committee in this regard should not be seen as providing any interpretation of what was meant by the term "without delay".

71. The representative of Brazil addressed three aspects, including the time period for submitting the report. First, he noted the Chairman's suggestion that a specific format would not be needed but that the Committee should agree to the minimum information that should be provided for fulfilling the obligations under Article 14:4 regarding preliminary or final actions. However, his view was that in selecting a list of items a format would thereby be created. Brazil was not necessarily against a format. He noted that the Committee had worked relatively well with a format for semi-annual reports under Article 14:4. Then why not define a format for the "without delay" reports under Article 14:4. The representative of Brazil said that a misconception had emerged from the informal consultations that the format and the proposed list would apply only to those countries whose working language was not one of the GATT official languages. He said that a summary of anti-dumping decisions should be required of all members. The longer determination could in addition be provided to the Secretariat, but since that determination would also have irrelevant material, the summary of that determination should also be provided. Otherwise the current efforts would end up in a format for only those parties whose official language was not one of the GATT languages. He also recalled that the Chairman's initiative had begun due to non-notification of the preliminary or final actions including by some of those Parties whose official language was one of the GATT languages.

72. Secondly, the representative of Brazil noted the statement in the Chairman's document that the list of suggested information items did not express a view (whether explicit or implicit) regarding the nature or type of information required for public notices as provided for in Article 8:5 of the Agreement. However, if the Committee agreed on the relatively substantial list proposed, it may be seen as having made a ruling on the nature and type of information required for public notices. Brazil was concerned about this issue which had a direct impact on the interests of signatories and even on the way in which disputes could be settled. The first nine items in the list suggested by the Chairman in ADP/W/347 offered no difficulty, but items 10 to 14 required further work in order to express the concepts in a uniform way. The example of Australia concerning difficulties in providing information on application of a lesser duty rule illustrated the difficulty in requiring certain types of information. Moreover, requiring information on these might even be introducing changes in the substantive rights and obligations of the Parties.

73. Thirdly, the representative of Brazil reminded the Chairman that Brazil had not expressed a view concerning a 30 or 60 day time period as an interpretation of the term "without delay" contained in Article 14:4 as Brazil considered that clarification of the term was neither necessary nor appropriate. Brazil believed that even if the term was not clear, it was not for the Committee to substitute a limitation (or interpretation) in abstract. It was the Parties' right to interpret the term "without delay" independently, as it would be for the Committee or Panels to decide whether in specific cases the obligation of providing a notification without delay was fulfilled.

74. The representative of the United States had no particular difficulty with the Chairman's proposal, and had understood it only as a list of minimal information requirements. If instead it was designed to establish a particular format, which may require summarisation of information already provided, then the United States would need to further consider the implication of that. In that situation, it was possible that the list suggested by the Chairman might be treated not as a minimum requirement but an exhaustive or maximum one. That would not assist transparency.

75. The representative of Japan welcomed the suggested minimum guidelines prepared by the Chairman, and stated that it was important that signatories report the status of refund and review enquiries under Article 14:4 of the Agreement.

76. The representative of Hong Kong supported the Chairman's proposal for a list of minimum information to be submitted, and noted that the list could be amended at a later stage if problems emerged with its operation. He hoped for an early implementation of the Chairman's proposals.

77. The representative of Australia noted that if the proposed list were adopted, it would require qualification to ensure that only non-confidential information was to be included. He noted that much of the information was already contained in semi-annual reports, and therefore Australia shared Brazil's concerns that additional reports should not be required of members if the information had already been provided in a different form. It was not clear what use was made by delegations of the information currently provided. He agreed on the usefulness of the Chairman's initiative to supplement the reports of countries that were not in a GATT working language, but he wondered how much change was needed for other countries. Further, he was of the view that at least 60 days was required, if indeed any time limit was necessary.

78. The representative of the EC was in principle supportive of the Chairman's proposal to set a minimum amount of information. He said that the issue of a new format required further consideration, but noted that a format might result in a further delay in provision of the reports. He said that in considering the time period within which the reports were provided, one should consider the time period from the time of publication of the measures or decisions, rather than from the taking of the decision. He also noted that depending on the interpretation of the minimum requirements there may be problems

in relation to confidential information. A deadline of 30 days was very short and could easily be exceeded.

79. The representative of Singapore supported the Chairman's proposal, and felt that it made clear that what was proposed was not a new format but a new minimum information standard. She did not share the fear of some other delegations that the format would become a new requirement. She sought a clarification from the Chair as to whether the proposal only applied to countries whose language was not an official GATT language. Singapore supported the notification to be provided as soon as possible and was willing to participate in further discussions on the time within which the reports should be provided.

80. The representative of Mexico supported the effort by the Chairman and noted that it would improve transparency. He noted that some countries were not meeting the requirement of notification contained in Article 14:4, including those whose official language was a GATT language. He took note of the concerns of Brazil and said that Mexico was also concerned that any action taken should not be seen as discriminatory. He said that a uniform format would involve additional notification for Mexico, and suggested that a balance between further work and greater transparency could perhaps be found through the process of consultations.

81. The representative of Hong Kong stated that an analysis of the average time periods taken by several major delegations to notify actions revealed that most reports were in the form of public notices, the time periods for submission varied even for a particular delegation, because many delegations only submitted notification to the Committee once several notices had been compiled. He wondered whether there was really any technical difficulty in meeting the notification requirement without delay. The longest delay that Hong Kong was prepared to accept was 30 days, or in the alternative retain the currently unspecified period.

82. The representative of the United States noted that many delegations were in agreement concerning confidentiality. He also noted that the question of whether or not a particular format was to be preferred or not was unresolved. What was being proposed was the minimum requirement which would apply to all Parties. The United States intended to provide substantially more than the minimum required information. If delegations believed that it would be useful to have a reporting format, his delegation would participate in consultations on this point with the Chair. But that was a separate issue.

83. The representative of the United States further said that a time limit of 30 days could be complied with, but his preference would be for a limit that was advisory (e.g. a recommendation from the Chair), and not mandatory. This would address the concern regarding the interpretation of the term "without delay". He suggested that the Chairman could perhaps consult delegations and return to this point before the conclusion of the meeting.

84. The Chairman decided to consult and return to the matter prior to "other business".

85. Later in the meeting, the Chairman said that, as noted by the delegations of Singapore and the United States, the proposal from the Chair in document ADP/W/347 clearly related to a standard of minimum information which would be required from all signatories. It did not seek to prescribe any specific form in which that information would be provided. It was clearly specified that there were no implications for the interpretation of obligations on public notices under Article 8:5 of the Agreement.

86. The Chairman then informed the Committee that his consultations revealed that it would not be possible to achieve a complete consensus regarding the reports at this meeting. A number of delegations had indicated that they could accept the proposed list appended to ADP/W/347, and wanted

further clarification of some items upon the list. In view of that situation, he suggested that, to the extent possible, the Parties to the Agreement bear these suggestions in mind when submitting their reports under Article 14:4 of the Agreement. He also noted that there was an additional suggestion from the delegation of Brazil to take up consideration of information being provided in specific form. In light of all the above, he intended to continue the informal consultations on this matter including on the aspect of whether or not a specific form should be used.

87. The representative of Brazil requested the Chairman, in his consultations, not to lose the perspective that the consultations were started because there was a lack of notifications by users of anti-dumping actions. He had seen no reference to this problem or to how the Chairman would address the lack of notifications of all preliminary and final actions. Brazil did not believe that countries whose official language was not a GATT-language should have to work extra in comparison to other Parties. The representative of Brazil therefore requested the Chairman to address in his consultations the problem of lack of notification and how to solve it.

88. The Chairman said that the point raised by the delegation of Brazil had been the subject of the consultations and would continue to be an important element in his consultations in the context of the minimum information required from all Parties.

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

G. Semi-annual reports of parties to the Agreement on anti-dumping actions taken by parties to the Agreement during the period 1 July-31 December 1992 (ADP/88/Add.10 and 13; ADP/M/40, paragraphs 87-97 and 104)

90. The Chairman recalled that at the April 1993 meeting the Committee had decided to revert to the semi-annual report of the United States (ADP/88/Add.10) at the next regular meeting of the Committee. Document ADP/88/Add.13 contained the semi-annual report of Australia, which was not available at the April 1993 meeting and therefore the Committee was considering it at this meeting.

91. No comments were made on both these reports.

H. Semi-annual reports of parties to the Agreement on anti-dumping actions taken by parties to the Agreement during the period 1 January-30 June 1993 (ADP/102 and addenda)

92. The Chairman said that the following Parties had informed the Committee that they had not taken any anti-dumping action over the previous reporting period: Czech Republic, Egypt, Finland, Hong Kong, Hungary, Norway, Pakistan, Poland, Romania, Singapore, Slovak Republic, Sweden and Switzerland. No report had been received from Brazil. The reports of the Parties which had taken actions in the first half of 1993 were examined in the order in which they had been received.

New Zealand (ADP/102/Add.2 and Suppl.1)

93. No comments were made on this report.

India (ADP/102/Add.3)

94. No comments were made on this report.

Korea (ADP/102/Add.4)

95. No comments were made on this report.

Japan (ADP/102/Add.5)

96. No comments were made on this report.

Australia (ADP/102/Add.6)

97. The representative of Australia noted that some criticism had been made of Australia's semi-annual reports. The criticisms had been levelled on two fronts, i.e. the content of the reports and the timeliness of submission. In the reports for 1991 and the first half of 1992 only the first five left hand columns were completed. He said that for the reports for the first half of this year, a new system had been introduced to report certain values without breaching any confidentiality requirements. He noted that the present report had been submitted before the time limit.

98. No comments were made on this report.

99. The Committee took note of the statements made.

United States (ADP/102/Add.7)

100. No comments were made on this report.

Canada (ADP/102/Add.8)

101. No comments were made on this report.

Austria (ADP/102/Add.9)

102. No comments were made on this report.

Mexico (ADP/102/Add.10)

103. No comments were made on this report.

European Communities (ADP/102/Add.11)

104. The representative of Japan noted that the EC did not report all pending cases. For example, in the case of Japanese products, five pending cases in the relevant period were not listed: a review for tapered roller bearings which was initiated in May 1989; parts for gas-filled non-refillable pocket flint lighters which was initiated in August 1991; review for compact disc players which was initiated in December 1991; review for plain paper photocopiers which was initiated in August 1992; and finally a review for certain kinds of outboard motors which was initiated in August 1992. Japan requested the EC to put all pending cases in the semi-annual report. He also noted that the EC's report on anti-dumping and countervailing measures in force as of 1 October 1993 had improved as it distinguished the forms of measures taken and imposition of duty and undertakings were specified. He felt that further distinction of anti-dumping and countervailing action was required.

105. The representative of the EC stated that he doubted whether it was the purpose of the document to list all cases. He considered it to be a listing of cases where action had been taken during the relevant

period. The parts for lighters was a case which had not been concluded as it entailed a customs investigation into the origin of the parts. The CD players case had been terminated. The plain paper photocopiers case was continuing. He had no information concerning the remaining cases. He apologized for the error that countervailing duties had been included in the report.

106. The representative of Japan said that item 19 in document ADP/W/333 which recommended the format for semi-annual reports stated that "for further improving the transparency of the anti-dumping investigations, information on all cases pending at the end of the period should be reported even if there was no action taken during the period for which the report is provided". He urged that the guideline be adopted.

107. The representative of the EC said that he understood the guidelines were not yet adopted.

108. The representative of Poland, referring to the anti-dumping enquiry against Polish pipes and tubes of iron or steel, enquired of the EC why Croatia had been used as a third-country market, particularly since Poland had the same type of market economy. He was of the view that in the case against Poland, Poland should be the market examined to determine the appropriate price.

109. The representative of the EC noted that if Croatia was the same type of economy, then the choice of Croatia as a surrogate country was probably very appropriate. He also noted that Poland had been treated as a non-market economy by the EC in the past and that there was a bilateral agreement between the EC and Poland, not to so treat Poland any further from 1 March 1992. In relation to the case mentioned, the date of initiation was 1991, and the reference period was just before that period. Before 1991 Poland was not a full-scale market-economy. He remarked that a review may remedy any problem as it may permit reclassification of the Polish economy.

110. The Chairman noted that the representative of the EC had correctly responded to Japan in respect of the status of suggestions in document ADP/W/333. He also drew attention to the fact that termination of an investigation would be something that would be included in a report in any case. The Committee took note of the statements made.

I. Reports on all Preliminary or Final Anti-Dumping Actions (ADP/W/334, 339, 340, 341, 342 and 345)

111. The Chairman noted that copies of official notices of preliminary or final anti-dumping actions had been received from Australia, Brazil, Canada, the European Communities, India, Korea, Mexico, New Zealand and the United States. He recalled that at the regular meeting in April 1993 an advance copy of ADP/W/334 had been provided for the Committee's consideration.

112. No comments were made on these report.

J. United States - Imposition of Anti-Dumping Duties on Imports of Seamless Stainless Steel Hollow Products from Sweden - Report of the Panel (ADP/47)

113. The Chairman noted that the panel Report was submitted for the first time to the Committee in August 1990, and this was the ninth meeting that the Report had been before the Committee. He hoped that any interventions on this matter would account of the seriousness of the situation. The Committee had not been able to adopt this Report due mainly to differing views on the nature of the remedy recommended by the panel in paragraph 5.24 of its report. He noted that the Committee should not lose sight of the immediate commercial implications at the lack of solution to this dispute. He informed the Committee that his consultations with the two parties to the dispute on this matter had

not resulted in any mutually agreed solution, but neither had the two parties suggested that such a solution could not be found.

114. The representative of the United States said that the United States's concerns remained the same as before. He appreciated the efforts of the Chair to find a mutually acceptable solution and intended to participate constructively in further consultations of that nature.

115. The representative of Sweden informed the Committee that Sweden's position remained the same as before. No progress has been made so far. The United States had not been able to propose any solution that would solve the commercial problems of the affected Swedish firm (Sandvik). He said that it seemed that the United States had no real possibility to do so and asked the United States if it had any legal means to implement the panel Report. He noted also that the United States' position was that the so-called procedural obligations were less important than other obligations. This position, which seemed that standing of petitioners could be cured retroactively, was in contradiction to the findings of the panel Report. The United States was not satisfied with the wording of the recommendation of the Report, even though the United States seemed willing to accept the substantial findings of the Report. Sweden was of the view that the proposed recommendation was the only possible one. Anti-dumping duties were by their very nature specific, and if a signatory engaged in a *prima facie* violation of the Agreement a specific remedy as suggested in this case was the only possibility to rectify the situation. He referred to Sweden's previous citations to panel Reports in this regard, and said that specific recommendations were of paramount importance to the dispute settlement system, not only in the area of anti-dumping. He again urged the Committee to adopt the panel Report.

116. The Committee took note of the statements made and agreed to revert to this matter at a future meeting, either special or regular. The Chairman said that he would conduct further informal consultations with the parties in an effort to seek a mutually satisfactory solution to the matter.

K. United States - Anti-Dumping Duties on Gray Portland Cement and Cement Clinker from Mexico - Report of the Panel (ADP/82)

117. The Chairman noted that the Report of the panel was first considered by the Committee at its regular meeting of October 1992 and then again at the regular meeting of the Committee in April 1993. Mexico had requested the adoption of this report on both occasions and the United States had stated that the parties were seeking a mutually satisfactory resolution of this dispute and requested the Committee revisit the panel Report at a later meeting. Mexico had agreed to the United States' proposals at the two meetings.

118. The representative of Mexico noted that in the past Mexico had agreed to a postponement of a substantive decision on this Report while bilateral efforts were made in an attempt to find a mutually satisfactory solution. Mexico again requested that the panel Report be adopted.

119. The representative of the United States remarked that, due to a number of factors, there had been no opportunity to consult with the Government of Mexico since the last regular meeting of the Committee. He was of the view that further consultations could yield a mutually satisfactory resolution of the dispute, and therefore that the Committee should revert to the matter at a future meeting.

120. The representative of Canada noted that as with the Swedish steel case, Canada had in the past supported the adoption of both panel Reports, particularly because of the nature of the findings of the panels which they found very important in terms of interpretation of various obligations under the Agreement.

121. The representative of Japan shared the view expressed by the Canadian delegation.

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

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

123. The Chairman noted that this panel Report was considered by the Committee at its regular meeting in April 1993. The United States at that meeting had agreed to adopt this Report but Norway was not in favour of its adoption. He noted that both parties to the dispute had informed him that they did not feel it would be fruitful to further discuss this report at the meeting.

124. The Committee agreed to revert to this Panel report at a future meeting, either special or regular. The Chairman said that he would hold informal consultations with the parties to the dispute in an effort to seek a mutually satisfactory solution to the matter.

M. Mexico - Anti-Dumping Duties on Electric Power Transformers from Brazil (ADP/91)

125. The Chairman recalled that at the regular meeting of the Committee in April 1993, Brazil had requested conciliation in this matter under Article 15:3 of the Agreement. After discussion at that meeting, the two parties to the dispute were invited to make further efforts to find a mutually satisfactory solution to this matter, consistent with Article 15:4 of the Agreement.

126. The representative of Brazil said that since the last meeting Brazil and Mexico had followed the suggestion of further efforts to find a mutually satisfactory solution of this dispute. The solution had not been found but constructive developments had emerged. The representative of Brazil asked that the item be kept in the Agenda for the next meeting. He reserved Brazil's right to request the Committee to examine an eventual request under Article 15:5 before the next regular meeting.

127. The representative of Mexico reiterated that intense technical and other types of conversations were taking place in an attempt to reach an agreement in this dispute. Mexico fully agreed with Brazil that the talks should continue in an attempt to find a solution.

128. The Committee took note of the statements made and agreed to revert to the item at its next regular meeting. The Chairman invited both parties to the dispute to make continuing efforts to find a mutually satisfactory solution consistent with Article 15:4 of the Agreement.

N. United States - Anti-Dumping Investigations on Imports of Certain Welded Steel Pipes and Tubes from Mexico and Brazil

129. The Chairman noted that this matter was first raised by the representative of Mexico at the regular meeting held in October 1991 and subsequently discussed at the Committee's regular meetings in April and October 1992 and April 1993. At the meeting in October 1992, the representative of Mexico had stated that he would submit some additional written questions relating to the investigation. These questions were submitted at the regular meeting in April 1993 and were circulated to the Committee in document ADP/W/335. Mexico had requested that the United States respond to its questions in writing prior to the next regular meeting of the Committee. The United States had not responded to the Mexican questions. The Chairman also recalled that the representative of Brazil had reserved Brazil's rights to examine and return to the responses to Mexico's questions at future meetings (ADP/M/39, paragraphs 165-176). At the meeting in April 1993 the representative of Brazil had requested the United States' delegation to provide information on the determination of injury in this case and had raised certain concerns regarding the investigation, (ADP/M/40, paragraphs 204-206).

The United States' delegation had agreed to provide the information on injury determination in this case and had invited Brazil to provide its questions in writing. Brazil had not provided its questions in writing.

130. The representative of Mexico stated that the delegation of the United States had provided a written reply to the questions submitted by Mexico, and thanked the United States for its reply. He noted that answer to one question, i.e. contained in document ADP/W/335 at paragraph 3, was still pending. He sought an early reply to that question. He remarked that Mexico had a serious concern about the extension of the scope of the anti-dumping order. He recalled that Mexican exporters had well-founded legal reasons for justifying that the investigation be kept at its present scope, which was the like product. He remarked that it would be inappropriate for him to give a reaction to the other answers without analyzing the general contexts or the answers. He requested that the item be placed on the Agenda for the next Committee meeting.

131. The representative of Brazil noted that this was the fourth time this investigation had been discussed in Committee meetings. He believed that those discussions were useful. In relation to the injury question in Article 3, he considered it would be useful to examine information on injury to be provided by the United States. In light of the numerous investigations on Brazilian products by the United States, he was not sure if the relevant information in this case had been provided by the United States.

132. The representative of the United States, turning to the remarks by the Mexican delegation, clarified the response to question three by indicating that certain aspects of that particular issue remained outstanding. The question was two-fold, relating to the product classification applied by the United States Customs to determine if the goods were liable to duty, and the question relating to the clarification of the scope of the anti-dumping order. That latter aspect remained outstanding. An enquiry into the matter whether or not certain galvanized pipes fell within the scope of the order had collected comments from interested parties. Some clarifications had been sought and a preliminary decision was expected within the next month. With respect to the request from the Brazilian delegate, he stated that the International Trade Commission's opinion in that particular case had been published some time ago. If it was of assistance, he would arrange to have a copy of the opinion presented to the Brazilian delegation.

133. The representative of Brazil was interested in receiving and examining such information in order to determine whether to have the item relisted on the agenda of the next meeting.

134. The Chairman noted that at the last meeting, Mexico had requested the United States to respond in writing to its questions prior to the next regular meeting (ADP/M/40, paragraph 210). He understood from the statements made that the United States had provided a response to the delegation of Mexico.

135. The representative of the United States undertook to provide the response in writing to the Committee (The text of the United States' replies was subsequently circulated in document ADP/W/349).

136. The Chairman thanked the representative of the United States for that undertaking. the Committee took note of the statements made and decided to revert to this item at its next regular meeting.

O. EC - Anti-dumping Investigation of Imports of 3½ inch Magnetic Disks from Hong Kong (ADP/97 and 99)

137. The Chairman noted that at the regular meeting in October 1992, the representative of Hong Kong had expressed some doubts about a number of claims raised in the complaint relating to this enquiry. Subsequently, Hong Kong presented its concerns in writing and those were circulated to the Committee

in document ADP/97. The text of the reply by the representative of the EC to Hong Kong's written and oral submissions had been circulated to the Committee in document ADP/99.

138. The representative of Hong Kong noted that at the last Committee meeting Hong Kong drew the Committee's attention to a fundamental principle concerning the use of third-country production data as the basis for constructing the normal value of Hong Kong products, and about the acceptance of justification based on such normal value as sufficient evidence of dumping for the purpose of initiation under Article 5:1 of the Agreement. Following the last meeting the Commission had issued a written communication which was reproduced as document ADP/99. On 2 September 1993, taking into account the Commission's response and non-confidential data on the domestic industry as supplied by the Commission, the Government of Hong Kong submitted a second representation to the Commission elaborating on why the proceedings should not have been initiated and requested that it be terminated. The response by the Commission, received on 19 October 1993, was currently being considered. Without prejudice to other issues remaining to be resolved bilaterally, Hong Kong would like to elaborate further its concerns on the use of third-country production data in constructing normal value and in relation to the authorities' obligations under Articles 6:2 and 6:3 of the Agreement.

139. The representative of Hong Kong recalled that in ADP/97, Hong Kong had stated that it considered that the use of third-country production data as the basis for constructing the normal value of Hong Kong products, with or without adjustment, was inconsistent with Article 2:4 of the Agreement. The allegation of dumping justified by such constructed normal value should not be regarded as sufficient evidence for the purpose of initiation under Article 5:1 of the Agreement. Even if such methodology were permissible, which Hong Kong did not accept, such use was inappropriate because of the different economic and industry structures in different places which would make proper adjustment difficult. Hong Kong had earlier demonstrated how such a methodology lent itself to manipulation for achieving the desired result.

140. Responding to the views of the EC presented in document ADP/99, the representative of Hong Kong said that the nature of the evidence of dumping for the purpose of Article 5:1 of the Agreement must be within the framework set out in Article 2 of the Agreement. There was no other definition of dumping in the Agreement or in Article VI of the General Agreement. The objective of the Agreement was to interpret the provisions of Article VI of the GATT and elaborate rules for their application in order to provide greater uniformity and certainty in their implementation. Therefore, evidence of dumping in Article 5:1 of the Agreement should be interpreted within the meaning of Article VI of the GATT as interpreted by the Agreement. The argument that third-country production data could be used as best information available under Article 6:8 of the Agreement was unconvincing and unreasonable. Article 6:8 of the Agreement was designed to address non-cooperation during investigation and was relevant only for preliminary and final findings. It was irrelevant for initiation. If the Agreement were to be otherwise interpreted, it would allow initiation of an anti-dumping proceeding on the basis of any evidence submitted by the complainant. This would introduce arbitrariness, and would be contrary to the objective of the Agreement. Furthermore, such an interpretation was out of line with the Recommendation made by the Committee in 1983 concerning transparency of anti-dumping proceedings which acknowledged the possibility that complaints may not contain sufficient evidence to warrant initiation (he referred to paragraph I.3 of the Recommendation in this regard). Hong Kong considered that "sufficient evidence" in Article 5:1 of the Agreement should not be loosely interpreted. In particular where the evidence to substantiate an allegation was open to different interpretations (as was in this case), it should be verified before initiation.

141. In view of this, the representative of Hong Kong considered that for the Commission to fully discharge its obligation under Article 5:1 of the Agreement, it was obliged to take steps to verify the evidence before initiation. The Commission had considered that the use of third-country production data for the construction of normal value was acceptable in the absence of any other information

available. Without prejudice to Hong Kong's position that normal value construction on the basis of third-country production data should not be accepted as sufficient evidence for the purpose of initiation under Article 5:1 of the Agreement, the representative of Hong Kong questioned how the complainants knew that Hong Kong companies had been dumping if they had no available information at all. This raised questions about the reasonableness on the basis on which adjustments were alleged to have been made to reflect the cost situation in Hong Kong. It was difficult for Hong Kong to understand why and how an adjustment to the Japanese and Chinese costs should be made to take into account the alleged high degree of sourcing of components in Japan and China by the Hong Kong firms. Similarly, it was difficult to understand the alleged adjustment to take into account the high overhead costs by Hong Kong firms companies which run manufacturing companies in other countries of south east Asia from their alleged Hong Kong headquarters. If the Hong Kong companies had such a structure then one would expect the overhead costs to be relatively lower on a unit basis. It was also obvious that in principle overhead costs unrelated to production or sales in the domestic market of the country of export should not be included in the normal value of the products concerned. Thus Hong Kong found it difficult to comprehend how third-country data could be regarded by the EC as duly and reasonably adjusted. The adjustment factors listed by the complainants illustrated once again the immense scope for abuse and inequity of the use of third-country production data.

142. Another issue to which the representative of Hong Kong drew the Committee's attention was whether the authority's obligation under Articles 6:2 and 6:3 of the Agreement was fully discharged by the mere provision of indices rather than actual data. Also, Hong Kong found it difficult to understand why aggregate actual data should be regarded as confidential. In the current case Hong Kong was given incomplete, non-confidential data. They were mostly in the form of indexes and the base level and the weight of each index were not given. Hong Kong found it impossible to ascertain the effects of individual company's indexes on the domestic industry as a whole. Hong Kong therefore felt that the authorities' obligation under Article 6:2 was not fully discharged unless non-confidential data capable of meaningful interpretation was provided. In Hong Kong's view, it was reasonable that the authorities make available aggregate data covering the whole industry, balancing confidentiality with possibility for the interested parties to make representations. It was noted that in fact such aggregate actual data were usually included in the non-confidential version of the complaint or in the official notice on the imposition of provisional anti-dumping duty.

143. The representative of the EC noted that in part Hong Kong's statement was a repetition of its previous arguments and it was clear that this was a case of disagreement on a principal issue. The EC was of the opinion that the standard to be applied for the evidence necessary to open a proceeding was not the same as the standard to be applied for the evidence necessary to impose preliminary measures. The Agreement made that very clear and the EC had already quoted the relevant provisions in its earlier reply to Hong Kong. The argument that the Agreement gave an indication that for injury there should be a different standard in comparison to dumping could be read from the pure language of the Agreement. Also, it made sense that a complaining industry had to submit more evidence from data relating to its own camp, i.e. for injury. While sufficient evidence was required, data necessary for full evidence of dumping was very difficult to obtain if an investigation had not be already carried out. The standard of initiation cannot be of a kind that required the authorities to carry out a pre-investigation investigation. This was not intended by the Agreement, and it would also cause delay. He noted that these issues had been discussed extensively in the negotiations and there was large agreement on this point.

144. The representative of the EC said that it was perfectly comprehensible to make the adjustments on the basis discussed. Hong Kong companies usually sourced their parts from Japan and China. Overhead costs were very often accounted for only in one place, and in other places there was no accounting for them. Also, the issue of confidential information was always open to controversy. There may be industries and situations which required certain issues to be regarded as confidential

which in other cases might be non-confidential. That was a matter of fact and would have to be judged on a case-by-case basis. Furthermore, if an industry was relatively small and relatively concentrated, it was not necessarily right to have all the production and sales data in an aggregated form. Indexes might give the appropriate data and the rest might in fact be confidential.

145. The representative of Hong Kong said that even if this case had been initiated on *prima facie* evidence, Hong Kong doubted whether the standard for initiation had been met. The reasons for this had been made clear in his intervention submitted to the Committee. Concerning adjustment, he remarked that his examples illustrated that the data could be varied to find a high degree of dumping, or no dumping. Because such a degree of manipulation was possible, he hoped that the Community could verify prior to initiation whether such evidence was acceptable even at the standard of *prima facie* evidence. Concerning non-confidential data, he was unsure whether it was correct that if an industry was small and concentrated then there was no need to provide aggregate data, and that indexes were adequate in such a situation. He reserved his right to come back to that point later. He also reserved Hong Kong's rights under the Agreement to pursue the matter further and asked to have this item remain on the agenda of the next meeting.

146. The representative of the EC agreed with the delegate of Hong Kong that it might be better to have his statement in written form to go through it in some detail and to give a response to his document. The EC did not accept that there was any manipulation concerning the opening of the investigation. The EC's standard for *prima facie* evidence was a standard carefully chosen to make sure that the stakes were not too high for petitioners as much information was not easily available to them, such as prices in third countries or cost of production in third countries. The petitioners could not be asked to have a full investigation into the various elements. Also, whether there was sufficient evidence was a question of appreciation of the investigating authorities, and this was exercised in the EC to the best of the ability.

147. The representative of Australia noted that the standard of evidence required for initiation should not be the same level as would be expected when a preliminary or final finding was made. Moreover, there was no obligation under the Agreement to expect verification prior to initiation and it was not reasonable for there to be such a expectation. On those issues he agreed with the comments of the Community.

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

P. Mexico - Anti-Dumping Action against Certain Products from Hong Kong

149. The Chairman recalled that at the regular meeting in April 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 from China, a substantial volume of which was re-exported from Hong Kong. The Committee had decided to revert to this matter at its next regular meeting.

150. The representative of Hong Kong informed the Committee that since the imposition of the provisional duties in April 1993, the volume of re-exports of the products concerned, through Hong Kong, from China to Mexico, had decreased significantly and in some cases had decreased by half. Hong Kong was concerned about serious adverse effects to its re-export trade, and had raised its concerns with the Mexican Government and would continue to monitor closely the development of the case. He noted that Hong Kong reserved its rights to pursue to the matter further under the Agreement. He requested the delegation of Mexico for further information on these cases.

151. The representative of Mexico noted that the anti-dumping investigation was in respect of China not in respect of Hong Kong, which had been incidentally affected as the principal re-exporter of the Chinese goods in question. It was not Mexico's intention to open an investigation against Hong Kong in respect of any of the products on which action had been taken. Mexico had contacted the representatives of the Hong Kong Government to whom they had explained the procedure that they should follow in presenting their defence as exporters. He noted that as yet Hong Kong had not made submissions as exporters. He recalled that on 1 October, the preliminary resolutions and certain modifications were made. Certain general criteria were respected, such as having forwarded the proof of injury to China, which Mexico was not under an obligation to do under its law. Exempted from the investigation were all products for which there was either no national production or where there was no injury or threat therefrom. All submissions by exporters, China, or transnationals located in China, who could show that a revision or change to the initial dumping margins was appropriate, were considered. Some dumping margins were significantly reduced and some were actually eliminated when the appropriate information from exporters was considered. The products shipped by China or Hong Kong covered by the enquiry which were in transit or under contract when the compensatory quotas were applied in April were exempted. However, quotas were not modified in the case of Chinese exporters because no Chinese exporters submitted sufficiently valid information which would lead Mexico to modify the measures. The only Chinese exporters who put forward valid information were transnationals, whose defence was of the quality required by the Mexican anti-dumping investigators. China continued to be subject to the initial compensatory charges, except in one case. He requested that the Hong Kong delegation speak with the Chinese exporters so that satisfactory information may be submitted. He noted also that in one case (chemical products) Mexico had decreased the duties by recalculating it on a reduced price once they had the proof of injury. In general, the compensatory quotas in respect of China had been ratified with a certain number of exceptions. All the resolutions were available in the Mexican Mission in Geneva, and the Mexican delegation was willing to answer any questions on the matter. He noted that if a proper defence was not advanced by the Chinese exporters the final decision would be to ratify the present levels in February or March 1994.

152. The representative of Hong Kong thanked the representative of Mexico for the provision of the updated information. He hoped that through Hong Kong and Mexico's continued bilateral effort they could address the case with a satisfactory result.

153. The observer from China re-iterated his country's serious concerns about Mexican anti-dumping action against Chinese products. In April 1993, the Mexican authorities had announced a sudden anti-dumping investigation on Chinese products without any prior notice. The products investigated covered more than 4,000 items under ten big categories. At the same time as the investigation, anti-dumping duty ranging from 16 per cent to 1,105 per cent was imposed on the products. His delegation believed the action by Mexico had deviated from the Sino-Mexican trade Agreement as well as from GATT rules and the Agreement. As had been well recognized since 1979, China had made remarkable achievements in her market oriented reform and as a result the prices of commodities in China were determined by market forces. The major role of market forces determining commodity prices in China had also been recognized by the World Bank. Nonetheless, the Mexican authorities used third-country prices as normal value to determine the price of Chinese goods. Also, the anti-dumping measures on ten big product categories were classified by four-digit tariff numbers without any description of goods. The provisional measures were imposed using a sampling survey without any investigation and without evidence. Many allegedly dumped products were never exported from China to Mexico, nor did the Mexican domestic industry produce them. They entered the Mexican market by smuggling. Furthermore, the Mexican authorities did not examine material injury. This was discriminatory treatment; among China's trade partners, Mexico was the only one not to provide an injury test to Chinese exports. He said that China had been conducting consultations with the Mexican authorities.

154. The observer from China noted that China was in the process of resuming contracting party status in GATT and would be prepared to accede to the Agreement. He appealed to the Mexican Government to redress its unfair and discriminatory treatment of Chinese exports, in light of the basic GATT principles and the bilateral trade Agreement.

155. The representative of Mexico responded that the position of the Mexican Government in this investigation was that it had gone much further than the obligation placed under the trade legislation between the two countries in light of the fact that China was not a GATT member. Proof of injury was examined. Certain products that were not produced in Mexico were, due to the statistical method of calculation, examined during the investigation but were later withdrawn. On several occasions the case had been discussed in detail with representatives of the Government of China. It had been indicated exhaustively what was required from China to defend its interests. A verification visit was to be conducted in China very soon. Due to a paucity of information the precise scope of the verification visit was unknown. Nevertheless, authorization had been requested from the Chinese Government to undertake the verification. He reiterated that the Government of Mexico will not allow unfair trading practices in its territory and that all exporters involved in the investigations would have to submit their defence otherwise it would not be possible to consider their arguments nor to remove any duties applied.

156. The Committee took note of the statements made and decided to revert to this item at the next meeting if so requested by any delegation.

Q. United States - Delay in Administrative Review

157. The Chairman said that this item had been included on the Agenda at the request of Japan. He recalled that the representative of Japan had raised this matter in previous meetings also (ADP/M/40, paragraph 304).

158. The representative of Japan recalled that at the previous meeting of the Committee he had expressed concerns on the delay in the administrative reviews and revocation processes in the United States and had requested the United States to improve the situation. Japan had informed the United States of particular cases about which it has serious concerns. In some cases the administrative review had taken more than ten years. The United States had given only a preliminary response and he requested the United States to give a detailed explanation.

159. The representative of the United States agreed that administrative reviews should be completely in a timely manner. The United States tried to fulfil this obligation whenever it was possible to do so. The specific reviews that the Japanese delegation had expressed concern about dealt with the anti-dumping duty orders on roller chain and on tapered roller bearings and the information provided to them was that the reviews concerning roller chain had final results issued in September 1992. In September 1993 preliminary findings were made in the various administrative reviews relating to tapered roller bearing. He expected to have final results of the review available sometime in the next few months. He repeated that it was the United States' objective to minimize delays and that they will make every effort to do so in the future.

160. The representative of Japan thanked the United States delegate for giving explanations about the status of the two cases referred to. He noted that the roller chain case was finalized in September 1992 but in some cases the investigation had taken more than ten years to complete. In the case of tapered roller bearings, the final determination was pending even after more than thirteen years. Trade had been seriously affected and companies had faced enormous pressures and difficulties as a result. Actual improvement in the processing of reviews was required. He asked to return to the issue at the next regular meeting and he hoped that there would be a positive development.

161. The representative of Canada noted that the delays in United States administrative reviews was a problem which Canada had also experienced. He encouraged the United States to try to complete these reviews within the legislated deadlines. He noted that Canada had never required thirteen years for an administrative review.

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

R. The European Community - Delay in anti-dumping investigation

163. The Chairman noted that the representative of Japan had raised this matter at the regular meeting in April 1993 in the context of the discussion of the EC semi-annual report for the second half of 1992 (ADP/M/40, paragraphs 99, 100 and 102). He recalled that this item was included in the agenda at the request of Japan.

164. The representative of Japan informed the Committee that after the last meeting of the Committee, Japan had sent a questionnaire dated 8 November 1993 pointing out pending EC cases in which the investigation took more than one year. The EC had not replied to the questionnaire. He noted that the investigations put exporters in an unstable situation and affected trade seriously. The initiation of the investigation could be a trade barrier during the investigation even if the cases were concluded with a negative results. Article 5:5 of the Agreement required that investigations, except in special circumstances, be concluded within one year of initiation. The EC's basic regulation also contained a corresponding provision (he referred to Article 7.9(a) of Council Regulation No. 2423/88 of 11 July 1988). He requested the EC to observe the EC's internal regulation, as well as the obligation under the Agreement.

165. The representative of the EC noted that four cases had been raised by Japan. The first three were 3.5 inch magnetic discs, review of roller bearings and review of compact disc players. The magnetic discs cases had been finalized with the imposition of a definitive duty. Measures on roller bearings had been repealed and a decision had been made to reimburse the duties collected for the period during the period of the review proceedings. In the review concerning compact disc players, the proceedings had been terminated. The fourth case was regarding parts for gas-fuelled non-refillable pocket flint lighters which was ongoing, because there were complicated questions of origins of these parts to be solved. He acknowledged that the EC investigations often took more than one year, but noted that the investigations had become more complicated. On the other hand there was also a tendency of investigating more thoroughly and giving parties more time to make submissions. This often operated to the benefit of the exporters. However, the EC recognized the possible detriment to exporting countries arising from delay and will endeavour to speed up its investigations.

166. The representative of Japan thanked the delegate of the EC, but noted that the review of compact disc players took one year and eight months and the case of 3.5 inch magnetic discs case took two years and three months. The review case for tapered roller bearings took four years and four months. The investigation for parts for lighters which had not been concluded, had continued more than two years two months. In addition he was aware of two more cases which were initiated in August 1992 and had not been concluded. He was encouraged by the comments that the Commission was endeavouring to speed up the whole process, but results were required very quickly. The customs investigation in the case of non-refillable pocket lighters case should not be an excuse for the delay in the investigation. He reiterated that Article 5:5 stipulated that countries should finish investigations in one year's time.

167. The representative of the European Community did not deny these periods of time mentioned by Japan. In the case of the tapered roller bearings measures had been repealed and reimbursed for

the period of this investigation up to the expiry of a period of five years. Other cases had taken a relatively long time but Article 5:5 foresaw exceptional cases which were very complicated, like the cases mentioned above. The compact disc player case involved a large number of exporters and high export volume and hundreds and thousands of transactions. Such cases clearly took longer than less complicated ones. Although the origin of goods was an internal enquiry it was a complicated case and also took considerable time.

168. The Committee took note of the statements made and decided to revert to this item at its next meeting, if so requested by any delegation.

S. United States - Anti-dumping duties on certain steel products, hot-rolled, cold-rolled, corrosion resistant steel from various member States of the European Economic Community - Requests by the European Economic Community for conciliation under Article 15:3 of the Agreement (ADP/107)

169. The Chairman recalled that at the regular meeting in April 1993 the European Communities had raised some specific concerns regarding the United States investigation relating to certain steel products from the EEC (ADP/M/140, paragraphs 107 to 109-110). The Chairman noted that consultations under Article 15:2 of the Agreement on the matter had been held on 29-30 March, 22 July and 30 September 1993 but the two parties had not been able to arrive at a mutually satisfactory solution.

170. The representative of the EC noted that the request for conciliation by the Community, dated 13 October, mentioned two points - definitive dumping determinations by the United States authorities and definitive injury determinations by the United States International Trade Commission (hereinafter "ITC"). He wished to extend this request to an additional point, i.e. the preliminary injury determinations. Although that point had not been included in the initial request, it had been raised in consultations with the United States, but agreement could not be found. He said that he was using the occasion of the meeting to submit a formal request for conciliation on that point so that conciliation meeting in that regard could be held at the shortest possible notice. He noted that the United States had agreed to go into conciliation on another similar point which was regarding the definitive injury determinations by the ITC, but on which there was no agreement whether consultations had been concluded. He asked for that point to be also included in his request for a quick conciliation meeting.

171. The representative of the EC said that the steel cases under review were of high political importance in the United States as well as in the EC, and the outcome of these cases was worrying to the EC. While a series of consultation meetings with the United States authorities had clarified factual matters to a large extent, the differences of opinion had not been bridged. The purpose of his intervention in the meeting was to elaborate further on the points generally mentioned in the conciliation request. There were other points about which consultations had taken place and the EC would reserve its rights to seek conciliation if necessary.

172. The representative of the EC said that in relation to the definitive determinations, the main point of concern was the very extensive use by the United States authorities of best information available ("BIA"). With one or two exceptions all companies concerned in the EC had co-operated and this was recognized by the United States' investigating authorities. Nevertheless none of the companies were able to escape the application of BIA. In the EC's view there were only two explanations for the extensive use of BIA; either EC companies were negligent or there was an inadequate handling of the case by the investigating authorities. Negligence on the side of the EC companies would be astonishing, as no respondent in an anti-dumping proceeding had an interest of being subject to a finding based on BIA, because BIA was used in a way which was not advantageous to the company. If however a company co-operated and pointed out the considerable difficulties involved in providing all the information request it was reasonable to assume that it had tried to be as complete as possible. In the

EC's view the handling of the case was not fully in line with the requirements of the Agreement. More specifically, the EC considered that the use of BIA in many instances was unnecessary, unjustified and was contrary to the requirements of the Agreement and in particular of Article 6:8. The United States had resorted to the use of BIA in a number of situations where, in the view of the EC, it was perfectly unnecessary as there was no lack of information as alleged, or was avoidable or it was caused by the failure of the United States authorities to give sufficient guidance to the exporters or to fulfil their own duty to properly evaluate the information available. Moreover, the United States had applied BIA in an inconsistent manner to the detriment of the exporters involved, had used BIA in a selective and arbitrary way which did not reflect the reality of the situation, and had applied BIA when its use was unnecessary or unjustified.

173. The representative of the EC said that the investigating authorities in anti-dumping cases should make their determinations on the basis of all relevant facts. That was confirmed, amongst other parts of the Agreement, by paragraph 2 of the Preamble and by the provisions of Article 6 in general and in particular of paragraphs 1, 7 and 8 of Article 6. Article 6:1 provided that the foreign suppliers and all other interested parties should be given ample opportunity to present in writing all evidence that they considered useful. Article 6:7 provided that all parties shall have the full opportunity to present a defence of their interests throughout the investigation. With regard to BIA, Article 6:8 stated that in cases in which any interested party refuses access to or otherwise does not provide necessary information within a reasonable period or significantly impedes an investigation, preliminary and final findings whether affirmative or negative may be made on the basis of facts available. Therefore, the investigating authorities when trying to complete investigations speedily were under the obligation to take account of special circumstances as provided for in Article 5:5 and to comply with the requirement contained in Article 6:8. Given the special circumstances prevailing in this case the United States failed to comply with the requirements of the Agreement when deciding to apply BIA. In 1992 sixty-eight anti-dumping and countervail cases against imports of steel from various countries were initiated in the United States. The investigating authorities requested a large amount of information from major exporting companies, which in some cases required those companies to report data on thousands of different products according to their specifications and on hundreds of thousands of sales transactions by the exporters and their related parties in the domestic markets and in the United States. The exporters had to report product classification including the description of the product with more than seventy parameters for each individual product. The United States authorities applied very specific rules on determining the point of time when a specific sale had been made. This methodology often meant that the records of the companies, kept in the normal course of business, could not be used for gathering the requested information. In the published definitive determinations the United States authorities confirmed that they considered the investigations to be complicated in view of the variety of products, the number of countries and exporters involved and the amount of information to be processed. However it was the EC's view that those special difficulties were only mentioned in order to justify why the authorities need not use information made available by the exporters, nor extend deadlines or pursue further investigations, and instead use BIA.

174. The EC did not deny the right of an investigating authority to use BIA. However, the United States authorities did not try to limit the use of BIA to unavoidable cases but resorted to it wherever less than perfect information was supplied. This practice was not in line with Article 6 of the Agreement because often the amount of information requested was unnecessary and the deadlines granted were unreasonably short. In addition insignificant errors were used as a justification for use of BIA even when those failures could not have significantly impeded the investigation. Article 2.5 of the Recommendations concerning BIA adopted by the Committee on 8 May 1984 stated that even though information provided may not be ideal in all respects this factor in itself should not justify the investigating authorities from disregarding it since the interested parties may have acted to the best of their ability. The representative of the EC said that in at least one case an exporter had made available virtually all information requested by the United States authorities either in the original response to

the questionnaires or in a supplementary submission both within the deadlines set. The United States authorities refused to use this information. Some information on sales of related parties on the domestic market had not been supplied in the original response to the questionnaire because the exporter thought that those sales were not of products comparable to those exported to the United States. After the United States authorities showed that some of these products were indeed comparable, the exporter gathered all the information on the sales in question and reported them to the United States authorities in the requested format. The United States authorities refused to use the new information for the calculation of the dumping margin arguing that the initial assertion of the exporter that there was not comparable product sold on the domestic market, had proven the unreliability of this reporter. The EC considered that this use of BIA was inappropriate and contrary to the signatories' obligation to use information whenever it was provided within sufficient time to use it in the investigation. The EC therefore considered that the handling of the enquiry infringed the requirements of the Agreement and in particular of Article 6 thereof. Also, bearing in mind the volume of data requested and the lack of clarity in the request, the deadlines were applied very inflexibly by the United States authorities. This was inconsistent with the requirements of the Agreement for the use of BIA.

175. The representative of the EC noted that under United States' practice for determination of normal value an exporter may demonstrate that its sales to related customers were made at prices comparable to those made to independent customers, a so-called arms length test. However in the course of consultations it became clear to the EC that the exporters involved were not informed what would be the parameter for determining whether related party sales were arms length or not. Some exporters believed they would have been able to demonstrate that their related party sales were made at arms length, as their prices to related parties were normally even higher than those to direct customers. At a late stage of the proceeding, the United States authorities revealed that they would apply a very strict test with regard to this issue, but they were not prepared to grant a deadline sufficient to enable the exporters to report all sales by related parties. In the cases under review, a significant portion of sales in the exporters' domestic market were made by related parties, and the transactions involved could amount to several hundreds of thousands, including products supplied from other steel producers. The date of sale used by the United States often meant that all this information had to be put together manually. The deadlines were not extended, even in a case where an exporter supplying cost of production could not meet the deadline because its personnel capable of gathering the requested information were assisting the United States authorities in verification at the premises of the exporters. In another case all requested information was made available in so far as the respondent was able to supply it. One related company sold on the domestic market not only the steel products of its parent company but also steel from other producers. The related company was not able to determine, in some cases, whether the product was purchased from its parent company or from other companies. However it supplied all information on sales for which it could find with certainty that the exporter under investigation had been the supplier. The mere fact that similar information could not be determined for other sales was used by the United States authorities to reject all the information supplied by the related company and to use BIA. This was a case where the exporter and its related parties tried, to the best of their ability, to supply all the information they had. The missing information was not the result of a reporting failure but of extensive request for other material by the United States. In another case in which a company only registered the date of invoice and shipment and did not keep records on when particular sales had been confirmed, the United States applied BIA because the date of sale could not be determined according to their standard approach. The use of BIA by the United States in the above-mentioned cases disregarded its obligations under the Agreement.

176. The representative of the EC further stated that in some instances the United States alleged reporting failures in cases where it would have been its own obligation to evaluate the facts submitted. Because of the variety of steel products under investigation it was necessary to classify the different qualities in order to compare sales in the domestic market with exports. The United States authorities asked all exporters to classify their products according to a given set of specifications and then find

the correct products according to concordances. However whenever the exporters misinterpreted the United States' instructions, where there was disagreement on a proper classification, or where it turned out during the verification that some classification might have been wrong, the United States authorities refused to correct the concordances and used BIA. The United States had shifted the obligation to carry out an investigation and to compare normal value with export prices for the like product on to the exporters. In another case an exporter had indicated, in its initial response to the questionnaire, that for the time being it could not report sales which had not yet been shipped, but if necessary would report these at a later stage. Early in 1993 the United States authority discovered that this information had not been supplied as originally requested it decided to use BIA for both preliminary and definitive determinations on the grounds of this alleged reporting failure. The United States authority refused to give the company any further opportunity to supply the missing information. In the view of the EC, this was evidently a case in which the failure of the investigating authority to evaluate information supplied sufficiently in time deprived the exporter of the opportunity to correct simple errors. This was in plain contravention of the Agreement and the Recommendation. In another case a company which separately offered to submit corrected versions of data on computer tape before verification was told by the authorities that it should postpone the submission to a later date when it would be so requested. A subsequent attempt to submit the tape was rejected and BIA was used instead.

177. The representative of the EC said that BIA was applied in an inconsistent way. In at least one case the United States authorities treated two companies differently with regard to the application of BIA, concerning sales made by related parties. BIA was used only for one of the two companies. The EC was of the opinion that the investigating authority was obliged to base its findings on all relevant facts, including in appropriate cases, for the use of BIA. This was clearly supported by the language of Article 6 and the Recommendation. Arbitrary selection from the facts available led to results disconnected from the reality of the case, contrary to the requirements of the Agreement and to the Recommendation. High dumping margins based on BIA resulted from a non-objective and arbitrary selection from the data available. In many instances the United States applied the so-called highest non aberrational dumping margins found, which meant that from the full spectrum of calculated dumping margins on a transaction by transaction basis the United States authorities picked the highest rate, which they determined to be non aberrational and applied it for those comparisons where reporting failures were alleged. On this approach, margins of over 200 per cent were found in some cases, and this lacked any relation with reality. It was not denied by the United States that on the basis of a weighted average dumping margin these very high margins were much lower, in some cases only in the range of about 20 per cent. This showed a clear abuse of discretion by the investigating authorities because an extreme peak could not be representative. The use of the highest non aberrational margins to fill in gaps in the responses of co-operating exporters led sometimes to margins more than four times higher than even the highest margin alleged in the complaint.

178. The representative of the EC then reiterated that the preliminary injury determination be covered by his request for conciliation. He said that United States law and practice deemed that a positive, provisional injury determination had been made unless two conditions were met, that the record as a whole contained clear and convincing evidence that there was no material injury and that there was no likelihood that any contrary evidence would arise in the final investigation. The EC was of the view that this amounted to a clear reversal of the burden of proof, contrary to Article 3:1 of the Agreement which required findings be based on positive evidence. This required the investigating authorities to show that there is sufficient evidence of injury and not the other way around.

179. The representative of the EC then addressed cumulation of a large number of countries for the finding of material injury. He noted that the United States law required the ITC to proceed to cumulate unless imports were negligible and had no discernible impact. Article 3:3 of the Agreement reads as follows: "There should be immediate termination in cases where the margin of dumping or the volume of dumped imports, actual or potential, or the injury is negligible". He submitted that

in applying a rule which added a condition of no discernible adverse impact, the scope of the negligibility condition had been narrowed. Negligible must mean that there was a discernible impact which was too small to justify a finding of material injury. According to the EC the ITC did not consider whether there was sufficient evidence to causally link the dumped imports and the injury in its preliminary determinations. If the ITC had applied in its provisional determinations the injury standard prescribed by the Agreement a large number of cases would have been terminated, and many may not have been initiated. Because of the enquiry, a number of companies were exposed to a burdensome, and extremely costly procedure.

180. The representative of the EC then gave specific examples from the four product groups which were subject to investigation. He said that for cut-to-length carbon steel plate, the injury finding was based on cumulation of imports from eleven countries and these cumulated shares had increased during 1990 to 1992. However, in the case of imports from Germany, the market share decreased from 1.1 per cent in 1990 to only 0.4 per cent in 1992 and in the case of the United Kingdom the market share decreased from 0.8 per cent in 1990 to 0.4 per cent in 1992, in both cases a drop of at least 50 per cent in market shares. The EC did not think there should have been an initiation of the cases and subsequently a finding of discernible adverse impact on the domestic industry given such small market shares. In the circumstances exports originating in the United Kingdom and Germany should have been considered negligible and excluded as not having been able to contribute to the finding of material injury in accordance with Article 3 of the Agreement.

181. Concerning definitive determinations in the cold-rolled carbon steel, the representative of the EC said that the ITC found that imports from Germany and the Netherlands constituted a threat of material injury for the United States domestic industry. Paragraphs 6 and 7 of Article 3 of the Agreement laid down the requirements for a determination of threat of injury, and stated that a determination must not be based merely on allegation, conjecture or remote possibility. The Recommendation concerning threat of material injury adopted by the Committee on 21 October 1985 underlined those requirements. In the EC's view the ITC findings did not meet those requirements. With regard to Germany, the market share was 1.1 per cent in 1990, 1.0 per cent in 1991 and 1.2 per cent in 1992. The variations were completely insignificant and did not justify the conclusion that there was an upward trend. The United States producer sales in the same period showed a real increase over the same period. The ITC argued that the prices of the German cold-rolled steel would have a suppressing or depressing effect on prices in the United States, on the grounds that German average prices declined steadily over the period of investigation. However, an attempt to assess the possible future price developments had to take account of the prices charged by other importers involved in this case. The German prices were the second highest of all importers. The decrease in German prices were considerably smaller than the price decreases of several other importers.

182. He noted that the ITC also found that because anti-dumping and countervailing duties had been imposed on German exporters of corrosion resistant steel, German exporters might have to reduce these exports and compensate the resulting loss by increasing exports of cold-rolled steel products. However, the combined anti-dumping and countervail duty on those products was 4.87 per cent, making a shift in exports extremely unlikely. The ITC also found that because German home market demand was weak and falling and German exports to third countries other than the United States were declining, Germany would shift its exports to the United States market. The ITC found that this would also be fuelled by an increase in German steel imports from Eastern European countries. This reasoning in the EC's view was flawed and was contradicted by evidence on the record. The reasoning ignored that demand in all countries had fallen due to the world-wide recession. It was very much unclear why German exports should follow a pattern different from other countries, about which no assumption of increased exports was made. Concerning steel imports from Eastern Europe the ITC finding ignored measures taken by the EC to monitor import prices. The ITC's conclusions were also contradicted by the 1990 decrease in German exports to third countries by 126 thousand tonnes which accompanied

the decrease of 75 thousand tonnes to the United States. German exporters did not divert the exports to the United States market.

183. The representative of the EC said that the determination concerning threat of injury caused by imports from the Netherlands raised a procedural problem. From the determinations by the ITC it appeared not possible to discern one single clear reasoning for threat of injury. It was necessary to read three separate views of three ITC commissioners. Each commissioner started from different assumptions, sometimes different definitions, and followed different reasoning. Only the conclusion that imports of cold-rolled plate from the Netherlands were considered a threat of injury was identical. The EC submitted that this method of reporting rendered its rights under Article 8:5 of the Agreement empty of any meaning. These reports did not meet the provision stating the requirement that an affirmative finding set forth the findings and conclusions reached on issues of fact and law and the reasons and basis therefore.

184. The representative of the EC queried whether imported steel products were the actual cause of the injury claimed by the United States domestic integrated industry. This issue was stressed frequently by the defending companies in these cases. Article 3:4 of the Agreement stipulated that other factors such as competition by certain domestic producers which may injure the rest of the domestic industry should be examined by the authorities. These matters were however not examined in sufficient depth by the ITC.

185. The representative of the EC also said that it seemed that the ITC ignored submissions by certain EC producers of specialty steel that their products did not compete with steel made in the United States. It was clear that imports which cannot injure the domestic producers because they were not active in a segment of the market must not be the subject of anti-dumping duties.

186. The representative of the United States said that the United States did not necessarily agree with the position stated by the EC on the matters on which it had requested conciliation. The United States would elaborate its position in greater detail at an appropriate time. Turning to the issues affecting the decisions in the actions taken by the United States Department of Commerce (hereinafter the "Department"), he recalled that Article 5:5 of the Agreement required that investigations be completed within a year. Due to the immense amount of data the Department had to gather and analyze in connection with these complex investigations, it became necessary to set reasonable yet stringent deadlines for the reporting of information. Those deadlines were set in an effort to respond to novel issues raised in the numerous cases. Although in certain cases information submitted after a deadline could not be accepted there were numerous extensions provided in virtually every investigation. For example in one investigation respondents requested eight extensions for the provision of information and all extension requests were granted. Ultimately, due to the time restrictions provided for in the Agreement and in the United States law, the Department was compelled to disallow further submissions of factual information beyond 21 December 1992. However each and every respondent was made fully aware of this deadline early enough to properly file any additional information that was required. If submissions of information after that date had been permitted the Department would not have had the resources needed to examine any alterations to the record, given the number of decisions to be made and the volume of data required to be analyzed for the preliminary and final determinations. In the view of the United States, the Department struck a proper balance between the rights of the parties to submit information and the need to complete the investigations in a timely manner.

187. The representative of the United States said that normally the Department required information on all United States sales and home market or third country market sales to be reported in order to ensure that the most suitable sales comparisons could be made. Though not all information requested was provided, the Department decided to limit the sales required to be reported due to the complexity of the investigations. For example, the Department informed respondents that they need not report

certain categories of sales when they were less than 5 per cent of total sales, and in one investigation the Department agreed the respondent need not report all home market sales because none of those sales would match with United States sales. In an effort to be co-operative the Department first allowed that respondent to sample certain transactions and then allowed that respondent to report only limited sales information for the sample sales after that respondent claimed that these products could not be compared to United States products. The respondent company reported all sales data for some of the sample sales after it discovered that there were some matches to United States products within the sampled sales. Because it could not find matches to the remaining sampled sales it did not provide full reporting of those sales. Because full reporting was not provided and the premise on which the respondent had been allowed to limit reporting was determined to be false, i.e. that no sales from the sampled group could be matched to United States products, the Department had no alternative but to apply BIA.

188. The representative of the United States then addressed the EC's statement that the reporting failures were invoked in investigations where it would have been the Department's obligation to evaluate that the facts was misleading. He said that although the Department did not allow the submission of new information after the 21 December 1992 deadline, many respondents improperly reported certain sales prior to that date. Once the Department determined that the respondents had improperly reported certain home market sales, it was not possible to accept sales for comparisons because there may have been other merchandise sold in the home market that would have matched the United States products.

189. The representative of the United States argued that the Department applied BIA in a transparent and consistent manner. The Department followed a two-tiered methodology assigning lower margins to respondents who attempted to co-operate in an investigation and adverse margins for those respondents who refused to co-operate with the Department or were determined to have significantly impeded the investigation. In the latter situation, the Department would look to the higher of the margin from the preliminary determination for that firm for the same class or kind of merchandise or to the highest margin alleged in the petition for the same class or kind of merchandise in the same country or the highest margin for any other responding company for the same class or kind in the same country. On the other hand when a company co-operated with a request for information but failed to provide such in a timely manner or in the form required, BIA of the average of margins in the petition or the calculated margin for another firm in the same class or kind in the same country was used.

190. The representative of the United States said that in one investigation, a respondent claimed that the date of sale was the invoice date which was also the date of shipment, and that even if the correct date of sale were the order date it would have been difficult for them to report sales on that basis. Upon verification the Department ultimately determined that the order date was in fact the correct date of sale, and then assigned a co-operative BIA to that respondent. The margin for that respondent decreased by over 12 percentage points from the preliminary to the final determination. In another investigation, respondents proposed several alternatives as their dates of sale. The Department decided that the respondents' methodology was reasonable and therefore did not apply BIA. Thus, while in the first example given above the respondent did not report information accurately and therefore BIA was applied, the respondent in the second case reported accurately to the extent possible and therefore no BIA was applied. The Department's application of BIA was conducted in a consistent manner.

191. The representative of the United States said that the cardinal tenet of BIA under United States practice was to induce respondents to provide timely, complete and accurate factual information so that dumping margins can be determined as accurately as possible within the time-limits required. The Department employed BIA so as not to reward non-compliance with a request for necessary information by using rates adverse to the non co-operating respondent. In cases where the Department recognized however that its instructions may have been ambiguous and contributed to non-compliance it tempered the use of BIA by assigning an average of other calculated margins from that investigation.

That did not constitute a non-objective or arbitrary selection of the facts available. The approach to each and every respondent was uniform and fair.

192. Concerning the United States ITC's injury determination (in particular cumulation and negligibility), the representative of the United States noted that Article 5:3 of the Agreement required the immediate termination of an investigation where the volume of dumped imports was negligible. He said that while the EC asserted that this necessarily implied that there must be some minimum specific penetration level of imports, the Agreement was silent on a particular import penetration level that should be regarded as negligible. The Agreement directed a determination of whether the volume of dumped imports, actual or potential, or the injury was negligible. Interpretation of the term "negligible" was left to the signatories. Under United States law the ITC was the authority charged with determining whether the volume of dumped imports or injury was negligible. The ITC based its judgement on a number of factors including the price sensitivity of the particular market, the trend of imports, confirmed loss of sales, the extent of competition between a particular country's imports and domestic products, the isolated or sporadic nature of the imports as well as import penetration level and actual volume of imports.

193. The representative of the United States said that dumped imports from many sources including a number of EC countries were assessed as negligible. In the hot-rolled case, Belgium with 0.1 per cent import penetration in 1992 and Germany at 0.4 per cent import penetration in 1992. In the cold-rolled cases Belgium had 0.4 per cent import penetration in 1992, France had 0.4 per cent, Italy had 0.2 per cent and in the plate case France had 0.1 per cent and Italy had 0.1 per cent, and were all found to be negligible.

194. The representative of the United States considered that the EC's real objection was not that the United States failed to determine that certain imports were negligible but that it did so by a reasonable analysis of the function of the imports in the market, instead of by application of a mechanistic test not prescribed by the Agreement. The ITC had found dumped imports from certain EC countries not to be negligible based on many factors including increasing import volumes, shipments to the United States of imports during the period of investigation, and sales at prices below domestic prices. While the import penetration levels for Germany and the United Kingdom of plate were low, imports from these two countries were not *per se* negligible, as these imports constituted fully 21 thousand tonnes of plate worth United States\$11 million and United States\$8 million respectively in 1992. As the plate market was found to be price sensitive, smaller volumes of imports were likely to have an adverse impact on the domestic industry. Imports of EC plates consistently undersold comparable domestic plate, entered all regions of the United States and were imported in each of the thirty-six months which were considered. Despite this, the EC was asserting that Article 3:2 of the Agreement precluded cumulation unless imports from each country individually demonstrated a significant increase in volume or significant price depression or significant price suppression. Nothing in the Agreement imposed such conditions precedent on cumulation. The United States cumulated imports only when certain competitiveness conditions were present. Although it could be possible to disaggregate imports and argue, as the EC did, that imports from one or two sources may be distinguishable from the collective imports, that ignored a determination concerning the collective impact of the imports. The only EC case in which there was both declining volume and no clear pattern of imports was steel plate from Belgium. While Belgian steel plate volume was declining it represented 0.9 per cent of the United States market in 1992 and instances of underselling exceeded instances of overselling.

195. The representative of the United States noted that the EC had also asserted that United States law requires two findings, negligibility and no discernible adverse impact. The United States assessed negligibility by determining, *inter alia*, whether the imports had any adverse impact. The determination of whether particular imports were negligible was consistent with Article 5:2.

196. Concerning the issue of threat of injury from cold-rolled steel products from Germany and the Netherlands, the representative of the United States said that threat of material injury was not an exception to the injury test but was one of three equally acceptable modes of injury analysis under Article 3:3 together with present material injury and material retardation. The language of Article 3:6 requiring threat to be clearly foreseen and imminent did not create a higher evidentiary standard for threat than for present material injury. It merely acknowledged the predictive nature of a threat determination. Article 3:7 provided that in threat cases application of anti-dumping measures shall be studied and decided with special care, which was precisely what the ITC did in the cases of cold-rolled steel from Germany and the Netherlands. With respect to the German case, four commissioners identified a number of factors supporting their conclusion that the dumping of German cold-rolled steel would cause injury which was clearly foreseen and imminent, including volume and percentage increase in German imports between 1991 and 1992, continued high level of unused German capacity by the end of 1992, evidence that German imports would contribute to the price suppression of domestic prices in the future given significant German underselling in the later portion of the period of investigation, evidence that product shifting had occurred in 1992 from the German domestic market and other foreign markets to the United States' market, decreasing German domestic demand, potential product shifting from corrosion-resistant products to cold-rolled products and the possible negative impact of dumped cold-rolled imports on domestic United States investment in production facilities. Thus there was no mere assumption that German imports would increase, but the conclusion was based on facts. Similarly three commissioners made an affirmative threat-finding with respect to the Netherlands, largely based on confidential information, but with reasoning and analysis similar to the German cold-rolled imports case.

197. Concerning the allegation that the ITC had not analyzed other factors in its causation analysis on the basis of all relevant facts, the representative of the United States noted that the EC had argued that the Agreement imposed an obligation to analyze other causes of injury. In this context, the EC had contended in the discussions that United States mini mills were such other factors and that the ITC's failure to treat mini mills as such was inconsistent with Article 3:4. However, there was no requirement in Article 3:4 or anywhere else in the Agreement that a signatory determine whether an industry was injured by other factors. The EC's assertion regarding mini mills was not only that there was such an obligation but also that the other cause at issue was the impact of the domestic industry on itself. He noted that the term domestic industry was defined by Article 4:1 and United States law as "the domestic producers as a whole of the like product". In the case of a steel industry the domestic industry encompassed all types of domestic producers including mini mills, reconstituted mills and integrated producers. If the United States had excluded the more profitable mini mills from the domestic industry and instead treated them as an independent factor effecting an industry made up of only the less profitable integrated producers this would have certainly been the subject of objection by the EC that the United States was not meeting its obligations under Article 4:1. Rather than follow the course now urged by the EC, the United States properly took into account the impact of the mini mills as part of domestic steel industries in a manner fully consistent with the Agreement. The ITC identified and analyzed the mini mills and other low cost domestic producers such as reconstituted mills as a factor and condition of trade in the hot-rolled steel determination where the majority of the ITC found such mills to be a factor affecting domestic prices, as well as in the plate determination, where the majority of the ITC found considerable evidence that even low cost United States reconstituted mill plate producers prices consistently were undercut by dumped plate imports from the EC.

198. The representative of the United States noted the EC's concern regarding the issue of whether ITC's determinations in respect of certain "crucial points" appeared insufficient or unclear, and that Article 8:5 of the Agreement required that there be one opinion by the United States in each flat rolled investigation and that multiple opinions cannot somehow provide adequate public notice of how the ITC resolved the various issues. In the United States' view nothing in the Agreement required any particular organization of the decision-maker in anti-dumping cases. The ITC issues a single

determination supported by one or more opinions of the commissioners, in which the view of each commissioner or group of commissioners is fully discussed and is clearly discernible. Moreover, together the opinions provide clear notice of the ITC's determination.

199. Concerning the allegation that doubt remained about the standard applied for initiation in terms of injury and about the lack of causality in the provisional findings, the representative of the United States questioned whether the phrase "lack of causality and provisional findings" fairly placed the United States on sufficient notice that the EC intended to raise the issue of the ITC's standard for preliminary injury determinations. He understood that the EC agreed with this point. The standard which the ITC applied for injury and causation and preliminary determination was identical to that applied in final determinations, though the evidentiary requirements were lower at the preliminary stage. This was fully consistent with the Agreement which sets a lower standard for provisional measures. Article 10 required only sufficient evidence for provisional measures which was no different for the evidentiary standard required for initiation in Article 5:1.

200. The representative of Finland, speaking on behalf of Nordic countries, noted that the Nordic countries supported the points presented in the statement by the EC. Issues such as application of BIA for determination of dumping margins had been taken up by Finland and Sweden in bilateral meetings with the United States. Also, Finland has asked for consultations with the United States in relation to this matter.

201. The representative of Japan remarked that the massive anti-dumping investigations and final determinations by the United States had put the steel trade in turmoil. Japan was of the view that the determinations could not be justified under the Agreement. Following the preliminary determinations, Japan held bilateral consultations under Article 15:2 of the Agreement with the United States on 15 June 1993. The request for consultations was contained in ADP/100. Japan shared the EC's concerns, in particular those on use of BIA, cumulation and consideration of other factors. Japan reserved its rights under the Agreement to take necessary measures.

202. The representative of Brazil reminded the Committee of Brazil's position in relation to what Brazil considered serious misconceptions in the anti-dumping actions by the United States on steel products, in which the use of Article 6:8 was one of the most worrying features. He was however confused by the EC delegation's reference to the conclusion of consultations, in particular about whether consultations on certain aspects were over. If the consultations were held but failed then it was up to the EC to request the inclusion of the item for conciliation. He said that Brazil also had held consultations with the United States, and agreed with what the EC had said. He noted that the atmosphere of the consultations between Brazil and the United States had been excellent but unfortunately had not produced positive results.

203. The representative of Australia commented that a number of aspects of the EC case were very similar to problems and concerns that Australia had with regard to the treatment of information supplied and the issue of BIA. A large number of companies had done their best to meet onerous reporting requirements in terms of the volume of data, the time period involved, the nature of the information with regard to accounting procedures and the limited flexibility allowed in providing verifiable corrections. The United States set data requirements for both preliminary and final decisions that were too difficult for companies to reasonably meet. This suggested to Australia that the approach taken by the United States nullified and impaired countries' benefits under the Agreement by precluding the reasonable fulfilment of administrative requirements under the Agreement. The Australian delegation strongly urged the United States to address the serious issues raised by the EC not just in the case of the EC but also in the cases relating to other countries.

204. The representative of the United States noted that there had been some confusion in the consultation itself as to the points the EC was raising, so there had been room for doubts as to whether or not they had consulted fully on certain point. He noted the United States had no particular interest in procedural delay in the dispute settlement process, and had agreed with the EC that notwithstanding the confusion it would accept that the consultation had taken place on the point at issue.

205. The representative of the EC noted that following the explanation given by the United States he understood that the case could now go on with conciliation. The request in document ADP/107 did not include one additional point concerning injury that had not been clarified, and a question concerning preliminary findings. Those were the points about which there could have been confusion. He agreed with the United States that there had been a consultation in full on the other points.

206. 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 the dispute, consistent with Article 15:4 of the Agreement. He also noted that the EC will be submitting a written request for conciliation on the additional two points that were mentioned by the delegation of the EC.

T. Other business

(i) Mexico - Foreign Trade Law

207. The Chairman recalled that the legislation of Mexico had been dealt with under item D(iv), and the Committee decided to move on to the next item on the agenda.

(ii) United States - Anti-dumping duties on certain corrosion resistant carbon steel flat products from Australia

208. The Chairman recalled that this item had been put on the agenda at the request of the delegation of Australia.

209. The representative of Australia expressed his country's concerns about recent United States' anti-dumping actions against imports of certain corrosion resistant carbon steel flat products. He said that following the final determination of dumping by the Department of Commerce in June 1993, Australia sought consultations with the United States (ADP/104). The United States had recently responded to some of the concerns in writing, but his Government had not had the opportunity to study those as yet. Subsequent to those consultations, in August 1993 the United States International Trade Commission made an affirmative finding against the same products, and an anti-dumping order was imposed on Australian imports. Australia was concerned that the United States' action nullified and impaired the benefits accruing to Australia under the Agreement.

210. The representative of Australia said that he would not repeat all of Australia's particular concerns regarding BIA made under Item S on United States anti-dumping action against imports of EC steel (paragraph 203). However the primary problem was with the refusal by the Department of Commerce to consider evidence submitted by the respondent company. There was also the key issue of the use of the class of so-called corrosion resistant carbon steel flat products. He said that the Department of Commerce had refused to adopt a reasonable approach for the use and verification of data despite the efforts of the company concerned to meet every request for data. Problems had arisen over the provision of very large data sets within very short time-frames in forms quite different from the companies normal procedures. However, he understood that the Department recognized the request was essentially met. Corrected information was available to the Department within a reasonable period and with sufficient time for it to have been taken into account in the final determination. Indeed, in the final determination there had been a recognition that the company had been a co-operative respondent.

Thus, by not considering the evidence submitted by the respondent company, the United States would appear not to have met its obligations under the Agreement, including its obligations under Article 6 of the Agreement. Exporters must have a reasonable chance to provide data and if they provided information it should be used.

211. The representative of Australia also disagreed with the decisions by the Department of Commerce and the ITC in respect of taking the class of so-called certain corrosion resistant carbon steel flat products as the base for the determination of dumping, injury and causal link under the Agreement. Although the ITC did split off a separate class of clad plate, the Australian delegation disagreed with the decision to treat the remaining wide range of products as like products. This arbitrary grouping put forward by the petitioners for the investigation had no parallel commercial usage in the steel industry. Australia sold two products in that class to the United States, i.e. aluminium-zinc alloy coated carbon steel sheet and galvanized steel, which were quite distinct products and consistent with the Agreement should be regarded as distinct and not like products. Also, an assessment of injury and causal link would demonstrate that neither of these products had caused or threatened to cause material injury to the relevant United States industry. The aluminium-zinc alloy coated steel sheet or "zincalume" had quite different chemical and physical characteristics. Zincalume was a unique product and could only be manufactured using licensed, proprietary technology. It was a higher priced product which was primarily used in domestic construction industry as an alternative to non-metallic products. Most of the domestic competition in the United States was between zincalume roofing products and non-metallic roofing materials. Zincalume offered two to four times the corrosion resistance of galvanized steel. Zincalume is unique in terms of its chemical composition and appearance and has its own standards. Unlike galvanized steel, zincalume could be used for high temperature applications and also was especially suitable for painted applications. On the other hand zincalume could not be substituted for galvanized steel, for example, for use in an alkaline environment or for soldering. There was a question mark whether the United States domestic industry producing zincalume in the United States had actually suffered injury and even if it had there was no causal link with imports of zincalume and in particular imports from Australia. The representative of Australia said that Australian sales predominantly went into a thirteen state west coast region, and there was no domestic production of the product in that region. Also, high transport costs made it unviable for domestic producers in other regions to sell the product in the west coast region. Moreover imports of galvanized steel from Australia should not have been cumulated as those imports were negligible when considered properly as distinct products from zincalume. His delegation supported the right of countries to maintain fair and effective anti-dumping regimes, but the United States appeared not to have lived up to obligations to Australia under the Agreement in the conduct of this case and Australia would continue to seek consultations on the anti-dumping actions involved.

212. The representative of the United States noted that consultations took place in July 1993 but due to the short time available for both delegations during that time period, there was no opportunity to discuss the issues of concern to Australia in much detail. As a result the United States replied in writing to the Australian delegation the week of the Committee meeting. He said that from the United States perspective, the Department of Commerce took the unusual step of providing opportunities to submit corrected data after verification in certain selected contexts so as to maximize the possibility of use of the data provided by the Australian company. Unfortunately, certain information was still lacking that was necessary to perform dumping calculations and therefore, it was necessary to resort to best information available to determine a margin. However, in determining that margin the United States took account of the fact that BHP, the company under consideration, did attempt to co-operate in the investigation. Accordingly, the Department assigned a best information available rate that reflected the attempt to co-operate.

213. The Committee took note of the statements made and decided to revert to this item at the next meeting if so requested by any delegation.

(iii) United States - Anti-circumvention action on export of brass plates from Canada

214. The Chairman noted that this item was put on the agenda at the request of the delegation of Canada.

215. The representative of Canada recalled that at the April 1993 meeting the Canadian delegation indicated concerns and requested consultations with the United States with respect to the United States' use of anti-circumvention provisions against Canadian export of brass plate. Consultations were held on 9 July 1993. As Canada's concerns had not been satisfied, his Government would assess the various options available to them to pursue the matter further.

216. The Committee took note of the statements made.

U. Annual Review and the Report to the CONTRACTING PARTIES

217. The Committee adopted its Report (1993) to the CONTRACTING PARTIES (L/7315 and Corr.1)

Date of next regular meeting of the Committee

218. In accordance with the Committee's decision taken in April 1981 (ADP/M/5, paragraph 51), it is proposed that the next regular meeting of the Committee take place in the week of 25 April 1994.