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Committee on Anti-Dumping Practices

MINUTES OF THE REGULAR MEETING HELD ON 20 NOVEMBER 2019

CHAIR: MS LENKA ŠUSTROVÁ (CZECK REPUBLIC)

1. The Committee on Anti-Dumping Practices (the "Committee") held a regular meeting on 20 November 2019.

2. The Committee adopted the following agenda contained in document WTO/AIR/ADP/28:

1 NATIONAL LEGISLATION

1.1 Review of notifications of new or amended legislation or regulations not previously reviewed by the Committee (including supplemental notifications of existing provisions not previously reviewed)[1]

1.1.1 Canada (G/ADP/N/1/CAN/4/Suppl.3)

3. No written questions were posed regarding the notification of Canada.

4. Canada stated that on 27 September 2019, it notified amendments to the Special Import Measures Regulation relating to the conduct of antidumping ("AD") investigations. Changes were made to ensure that an appropriate level of AD duties can be applied to goods that are dumped into Canada, specifically addressing situations where price distortions may affect the foreign producers' cost of production in an AD investigation. The amendments provide Canada Border Services Agency ("CBSA") with the flexibility to address distortions in production costs when inputs are supplied by parties affiliated to producers and with alternative methodologies to determine the cost of inputs if such costs are distorted due to a particular market situation ("PMS") in the country of export. The amendments relating to PMS provide a hierarchy of alternatives to be used to determine the cost of inputs with price adjustments – to be made as necessary – to reflect the actual cost of inputs in the country of export.

5. Korea expressed the view that Canada's amendments pertaining to associated parties and the PMS are inconsistent with the Anti-Dumping Agreement ("AD Agreement"). Article 2.2 of the AD Agreement permits the investigating authority, under certain applicable conditions, to disregard domestic sales and to use the cost of production to calculate the normal value. Article 2.2.1.1 of the AD Agreement further provides the specific conditions under which the investigating authorities may deviate from actual cost records. However, it regarded the Regulation as allowing the investigating authority to deny the actual cost records in a disregard to the requirements stipulated in the AD Agreement. It added that the Korean Government had raised the issue before the amendment process was finalized, yet the amendment took effect. Korea encouraged the Canadian Government to take caution in applying the amendment to avoid the violation of the relevant WTO agreements.

6. The European Union ("EU") requested more information on the hierarchy of alternative sources that Canada can use in case of a PMS to replace costs.

7. China requested more information on the PMS issue and additional elaboration by Canada on the alternative PMS methodologies and how such methodologies would be used.

8. In response to Korea, Canada noted that it is a strong supporter of the rules-based international trading system and has been careful to ensure that the measures taken to improve Canada's trade remedy system are consistent with Canada's rights and obligations under its trade

[1] Relevant deadlines for written follow-up questions and written answers regarding the notifications of legislation reviewed in the November 2019 meeting can be found in section 1 of document G/ADP/W/504 - G/SCM/W/579 - G/SG/W/246.

agreements. Canada emphasized that it follows WTO jurisprudence on PMS closely, as it develops, which has informed Canada's approach.

9. In response to the EU, Canada referred to the regulations where the hierarchy is laid out. Essentially, it starts with price reference points within the country of export; first being, the price of the same or substantially the same input produced in the country of export and sold to the exporter or other producers in that country; the price of the same or substantially the same input produced in the country of export and sold from the country of export to a third country; the price of the same or substantially the same input determined on the basis of published prices of those inputs in the country of export; the price of the same or substantially the same input produced in a third country and sold to the exporter or other producers in the country of export (adjusted to ensure comparability); and the price of the same or substantially the same input determined on the basis of published prices outside the country of export (adjusted to ensure comparability).

10. In response to China, Canada indicated that the alternative methodologies referred to involve the list just read out in response to the EU's question.

1.1.2 Japan (G/ADP/N/1/JPN/1/Suppl.10)

11. No written or oral questions were posed regarding the notification of Japan.

12. Japan explained that prior to the amendment, an implementation requirement of a sampling method for investigations in the Guideline for Procedures Relating to Anti-Dumping Duty was: "the number of known suppliers from the exporting country exceeds 20". In the context of the amendment, the Japanese investigating authority added that a sampling method may still be used in case the number of said suppliers – who have expressed their intention to cooperate in the investigation – exceeds the number of those who can reasonably be investigated even if the number of those suppliers are 20 or less in addition to the said requirements. At the time of the previous amendment in 2014, the number of said suppliers who cooperated was very few compared to the number of all suppliers themselves. The authorities took said circumstances into consideration and made a decision that it would be practicable to reasonably investigate in case the number of all suppliers is 20 or less because it means that the actual subjects to be investigated are within the reasonable number. However, recently, there occurred cases in which the number of the said suppliers who cooperated was beyond the expectation which indicated that there might be a risk not to complete investigations during the predetermined period of investigation. In order to avoid such risk, the authorities added the description which made it possible to use a sampling method in case the number of said suppliers who cooperated exceeds the number of suppliers whom the authorities can reasonably investigate, even if the number of said suppliers is 20 or less in addition to said requirements.

1.1.3 Kenya (G/ADP/N/1/KEN/3 - G/SCM/N/1/KEN/3 - G/SG/N/1/KEN/2)

13. Written questions regarding this notification were posed and can be found in document:

- G/ADP/Q1/KEN/4 - G/SCM/Q1/KEN/4 - G/SG/Q1/KEN/3 – Submitted by the United States ("US")

14. Written answers to the US' written questions were provided and can be found in document:

- G/ADP/Q1/KEN/5 - G/SCM/Q1/KEN/5 - G/SG/Q1/KEN/4 – Replies to the US

15. Kenya explained that it had notified its legislation only. The Institution provided for in the law to implement trade remedies in Kenya is under formation in accordance with Kenya's regulations governing the establishment of new Government Institutions. When the Institution is ready and operational, it would be notified to the Committee.

1.1.4 Lesotho (G/ADP/N/1/LSO/1)

16. No written or oral questions were posed with respect to this notification. No statements were made regarding this notification.

1.1.5 Mauritius (G/ADP/N/1/MUS/3 - G/SCM/N/1/MUS/3)

17. Written questions regarding this notification were posed and can be found in document:

- G/ADP/Q1/MUS/4 - G/SCM/Q1/MUS/4 – Submitted by the US

18. Written answers to the US' written questions were provided and can be found in document:

- G/ADP/Q1/MUS/5 - G/SCM/Q1/MUS/5 – Replies to the US

19. Mauritius indicated that in line with Section 77 of the Trade (Antidumping and Countervailing) Measures Act, some regulations have been drafted with the view to facilitate the implementation of the Act and these pertain to the definition of domestic industry, procedures for post investigations, reliance on information available, new-shipper review, public interest, refunds, sunset review, and definition of subsidy and marginal subsidy. It added that such regulations are still undergoing national procedures for adoption.

20. The Committee took note of the notifications, statements, questions and answers.

1.2 Review of notifications of new or amended legislation or regulations with outstanding written questions

1.2.1 Cambodia (G/ADP/N/1/KHM/2 - G/SCM/N/1/KHM/2 - G/SG/N/1/KHM/2)

21. Written questions were posed regarding this notification and can be found in document:

- G/ADP/Q1/KHM/1 - G/SCM/Q1/KHM/1 - G/SG/Q1/KHM/1 – Submitted by the US

22. Written answers were provided and can be found in document:

- G/ADP/Q1/KHM/2 - G/SCM/Q1/KHM/2 - G/SG/Q1/KHM/2 – Replies to the US

1.2.2 Cameroon (G/ADP/N/1/CMR/1/Suppl.1 - G/SCM/N/1/CMR/1/Suppl.1 - G/SG/N/1/CMR/1/Suppl.1)

23. Written questions were posed regarding this notification and can be found in document:

- G/ADP/Q1/CMR/3 - G/SCM/Q1/CMR/3 - G/SG/Q1/CMR/3 – Submitted by the US

24. **Cameroon was not present at the time**. Oral answers were not provided at the meeting, nor had written answers been received to date.

1.2.3 El Salvador (G/ADP/N/1/SLV/3/Suppl.1 - G/SCM/N/1/SLV/3/Suppl.1 - G/SG/N/1/SLV/3/Suppl.1)

25. Written questions were posed regarding this notification and can be found in the following documents:

- G/ADP/Q1/SLV/8 - G/SCM/Q1/SLV/8 - G/SG/Q1/SLV/7 – Submitted by the US

- G/ADP/Q1/SLV/9 - G/SCM/Q1/SLV/9 - G/SG/Q1/SLV/8 – Submitted by Mexico

26. Written answers were provided and can be found in documents:

- G/ADP/Q1/SLV/10 - G/SCM/Q1/SLV/10 - G/SG/Q1/SLV/9 – Replies to the US

- G/ADP/Q1/SLV/11 - G/SCM/Q1/SLV/11 - G/SG/Q1/SLV/20 – Replies to Mexico

27. El Salvador explained that the special law on trade remedies aims to establish the mechanism and procedures of protection and remedy against unfair trade practices and to introduce safeguard

measures to counteract imports of goods in such quantities or under such conditions as to cause or threaten to cause serious or material injury to domestic producers of the like or directly competitive products.

1.2.4 Liberia (G/ADP/N/1/LBR/1)

28. Written questions were posed regarding this notification and can be found in document:

- G/ADP/Q1/LBR/1 – G/SCM/Q1/LBR/1 – Submitted by the US

29. Written answers were provided and can be found in document:

- G/ADP/Q1/LBR/2 – G/SCM/Q1/LBR/2 – Replies to the US

1.2.5 United Arab Emirates (G/ADP/N/1/ARE/2/Suppl.1 - G/SCM/N/1/ARE/2/Suppl.1 - G/SG/N/1/ARE/2/Suppl.1)

30. Written questions were posed regarding this notification and can be found in document:

- G/ADP/Q1/ARE/3 – G/SCM/Q1/ARE/3 – G/SG/Q1/ARE/3 – Submitted by the US

31. Written answers were provided and can be found in document:

- G/ADP/Q1/ARE/4 – G/SCM/Q1/ARE/3 – G/SG/Q1/ARE/4 – Replies to the US

1.2.6 Viet Nam (G/ADP/N/1/VNM/2 - G/SCM/N/1/VNM/1 - G/SG/N/1/VNM/2 & G/ADP/N/1/VNM/2/Corr.1 - G/SCM/N/1/VNM/1/Corr.1 - G/SG/N/1/VNM/2/Corr.1)

32. Written questions were posed regarding this notification and can be found in document:

- G/ADP/Q1/VNM/5 – G/SCM/Q1/VNM/5 – G/SG/Q1/VNM/5 – Submitted by the EU

33. Written answers were provided and can be found in document:

- G/ADP/Q1/VNM/7 – G/SCM/Q1/VNM/7 – G/SG/Q1/VNM/7 – Replies to the EU

34. The Committee took note of the notifications, statements, questions and answers.

2 NATIONAL LEGISLATION – CONTINUING REVIEW OF LEGISLATIVE NOTIFICATIONS PREVIOUSLY REVIEWED BY THE COMMITTEE

2.1 Ecuador (G/ADP/N/1/ECU/3/Suppl.2)

35. Written questions were posed regarding this notification and can be found in documents:

- G/ADP/Q1/ECU/20 – G/SCM/Q1/ECU/20 – Submitted by the US
- G/ADP/Q1/ECU/21 – G/SCM/Q1/ECU/21 – Submitted by the Dominican Republic

36. Written answers were provided and can be found in documents:

- G/ADP/Q1/ECU/22 – G/SCM/Q1/ECU/22 – Replies to the Dominican Republic
- G/ADP/Q1/ECU/23 – G/SCM/Q1/ECU/23 – Reply to the US

37. In response to the US, Ecuador explained that the different procedures for investigations and application of AD measures in the previous regulation did not cover all the procedural, legal and administrative issues for this type of investigation. This is why it was believed it would be necessary to have a new national regulation that covers new investigation procedures to permit the

investigating authority to carry out investigations and protect the domestic industry. Based on these procedures, the investigating authority would determine who must be treated as interested parties. It is also necessary to take into account Article 9.1.2 of the national regulation as well as Article 6.11 of the AD Agreement. Ecuador reiterated that its notified regulations took into account the procedures established by the WTO.

38. In response to the Dominican Republic, Ecuador indicated that the public authorities that are mentioned in Article 56.2 would be, for example, those with information on the different production sectors of the country such as forestry, agriculture, fisheries or other authorities that have statistics that may be useful for the investigation. On the other hand, if it is necessary and depending on the matter in question, Ecuador could have the support of specialized technicians in order to carry out a specific task on the basis of their knowledge so that the investigating authority may be able to confirm that the information given in that investigation is complete and exact. This information would be provided to the companies and the enterprises with respect to which these investigations are being carried out.

2.2 El Salvador (G/ADP/N/1/SLV/3/Suppl.1 – G/SCM/N/1/SLV/3/Suppl.1 - G/SG/N/1/SLV/3/Suppl.1)

39. A written question was posed regarding this notification and can be found in document:

- G/ADP/Q1/Q1/SLV/12 – G/SCM/Q1/SLV/12 – G/SG/Q1/SLV/11 – Submitted by the US

40. The written answers provided can be found in document:

- G/ADP/Q1/SLV/13 – G/SCM/Q1/SLV/13 – G/SG/Q1/SLV/12 – Reply to the US

2.3 Viet Nam (G/ADP/N/1/VNM/2 - G/SCM/N/1/VNM/1 - G/SG/N/1/VNM/2 & G/ADP/N/1/VNM/2/Corr.1 - G/SCM/N/1/VNM/1/Corr.1 - G/SG/N/1/VNM/2/Corr.1)

41. A written question was posed regarding this notification and can be found in document:

- G/ADP/Q1/VNM/6 – G/SCM/Q1/VNM/6 – G/SG/Q1/VNM/6 – Submitted by the US

42. The written answer provided can be found in document:

- G/ADP/Q1/VNM/8 – G/SCM/Q1/VNM/8 – G/SG/Q1/VNM/8 – Reply to the US

43. The Chair informed Members that, pursuant to the Committee's agreed procedures, in order for a new legislative notification to be placed on the agenda of the April meeting of the Committee, the notification should be circulated in all three languages by 16 March 2020. Shortly after this date, the Secretariat will circulate a document informing Members of all legislative notifications to be reviewed at the next Committee meeting in April 2020.

44. The Chair reminded Members that pursuant to paragraph 8 of document G/ADP/W/284/Rev.1, all unanswered written questions pertaining to new legislative notifications reviewed at the meeting, as well as the subject notifications, shall automatically be retained on the agenda of the next Committee meeting and on the agendas of subsequent Committee meetings until written answers are submitted.

45. The Chair noted that a new legislative notification from **Lao People's Democratic Republic**, as well as any others received and circulated by the applicable deadlines[2], would be on the agenda for review at the regular meeting of the Committee in April 2020.

[2] Relevant deadlines can be found in Section 1 of document G/ADP/W/504 - G/SCM/W/579 - G/SG/W/246.

46. The Chair expressed concern that some Members had yet to submit a notification on legislation, particularly where all that would be required is a nil notification. The Chair encouraged Members that had not yet made a legislative notification to do so as promptly as possible.

47. Concerning the revised list of competent authorities contained in document G/ADP/N/14/Add.50, the Chair invited Members that had not done so to submit the information required by Article 16.5 of the AD Agreement and encouraged Members to review and update previously submitted information, where necessary.

48. The US appreciated the fact that most Members submitted a notification with their domestic AD legislation or a one-time notification that they do not have an AD legislation. However, some countries which have not provided a notification of their legislation status have submitted TPR reports indicating whether they have AD laws in effect. In other words, the respective WTO Members have already gone through the effort of informing the WTO of their AD legislation status, albeit in another forum. The US encouraged Members to review their situations and make the appropriate notification promptly. It added that the notification of AD laws and any revisions to those laws are a key element in maintaining transparency in the administration of AD remedy. It encouraged all Members to submit future notifications promptly following the implementation of the relevant legislation and to think creatively as to how compliance with notification requirements could be improved. It indicated that the Council for Trade in Goods ("CTG") continues to consider the proposal entitled Procedures to Enhance Transparency and Strengthen Notification Requirements Under WTO Agreements. The proposal emphasizes that transparency and notification requirements constitute fundamental elements of a properly functioning WTO system, and thus of Members' obligations. Since the most recent CTG meeting, the co-sponsors have continued outreach efforts to obtain additional and substantive feedback from Members. The United States also indicated that it remains willing to discuss this proposal bilaterally with any Member and welcomes all constructive feedback.

49. The Committee took note of the notifications, statements, questions and answers.

3 SEMI-ANNUAL REPORTS OF ANTI-DUMPING ACTIONS (ARTICLE 16.4) (G/ADP/N/328)

50. The Chair recalled that a request and a reminder for submission of semi-annual reports for the first half of 2019 had been circulated in documents G/ADP/N/328 and G/ADP/N/328/Suppl.1, respectively. Members taking no AD actions should submit a simple letter to that effect twice per year. This would not apply to those Members that had already submitted a one-time notification under Articles 16.4 and 16.5 of the AD Agreement.

51. The Chair noted that a number of Members had not yet responded to the request for semi-annual reports. This notification requirement applied to all Members, whether or not they had taken AD actions during the period in question, except for the 50 Members that had already submitted a one-time notification.[3] The Chair urged Members to comply with this important notification requirement.

52. The Chair raised concerns regarding the late submission of semi-annual reports, technical errors in reports submitted and slow responses to the Secretariat's requests for corrections, which had the cumulative effect of reducing transparency, undermining the ability to maintain an updated and reliable database, and placing an unnecessary burden on the Secretariat's limited resources. The Chair urged Members to comply with announced submission deadlines, to carefully review information in their semi-annual reports prior to submission and to provide quick responses to the Secretariat's queries in this respect.

53. The Chair also explained that being aware of the challenges facing Members in this area, the Secretariat has been - for a number of years - discussing how best to develop an on-line notification interface for semi-annual reports. The first step was to include in the MADRE case-management software a facility for generating these reports. For those Members that would want only to use this feature of MADRE, that is a possibility, and simply requires the one-time exercise of creating an Excel table with the relevant information on the measures currently in force, importing that information and then keeping it updated through the software. The Secretariat is happy to provide

[3] All such notifications are contained in the G/ADP/N/193 series of documents.

further information and explanation about this to any interested delegations. Semi-annual report data generated through MADRE is in a format that could be directly imported into the Rules Division's databases. The Secretariat can provide further information on the possibility of transferring these data from MADRE to interested delegations.

54. In addition, as a separate project which has just been launched, the Rules and the IT Divisions are cleaning up and redesigning the existing trade remedies databases and are developing a facility that Members will be able to use to submit their semi-annual reports on-line. The idea is that the interface will consist of a series of fields to be completed with all of the required information. The interface will be enabled with smart features, to automatically prepopulate data from prior reports for ongoing investigations and other actions, and to populate related fields with data that appears in more than one table in the reports. The interface also will be programmed to try to catch the most common types of reporting errors that give rise to internal inconsistencies, so that data problems would be minimized by the time the report is submitted. The Secretariat would be very interested in hearing views from Members about the sorts of features that would make this interface as user-friendly and useful for Members as possible and will be circulating a note to Members to that effect in due course. The Secretariat will keep the Committee updated on progress as the project proceeds.

55. The Chair finally added that this project for the revamping of the trade remedies databases and the on-line notification facility would fit into the larger context of the so-called Open Trade Initiative ("OTDI"), which is a joint project of the WTO and the International Trade Centre. The broad aim of the OTDI is to make readily accessible as much trade-related information as possible, including on trade remedies. While the full outlines of the OTDI are still under discussion, the need to upgrade the trade remedies databases made this a good fit for the first phase of the broader project. Ultimately, the quality and accessibility of trade remedies information will be significantly improved through these efforts.

56. The Committee reviewed the semi-annual reports for the first half of 2019. No Member raised questions or made comments concerning the reports of Argentina; Australia; Chile; Colombia; Costa Rica; Dominican Republic; Egypt; El Salvador; Israel; Japan; Korea, Republic of; Madagascar; the member States of the Gulf Cooperation Council "GCC" (Bahrain, Kingdom of; Kuwait, the State of; Oman; Saudi Arabia, Kingdom of; Qatar and United Arab Emirates); Malaysia; Morocco; New Zealand; Pakistan; Peru; Philippines; South Africa; Chinese Taipei; Thailand; Trinidad and Tobago; Turkey and Viet Nam.

57. On the semi-annual report of the **member States of the Eurasian Economic Union (Armenia, Kazakhstan, Kyrgyz Republic and the Russian Federation)**, Ukraine expressed its concerns regarding the results of the AD investigation on imports of zinc plated or coated flat-rolled steel products originating, *inter alia,* in Ukraine. Ukraine opined that the conclusions of the investigating authority in the investigation lacked objectivity and credibility. Under the established period of investigation, there was no increase in imports. On the contrary, the share of the imported product decreased while the share of the domestic industry increased. Furthermore, decrease in several indicators pertaining to the domestic industry was caused by other factors, which were not completely taken into account by the investigating authority. Therefore, there was no sufficient evidence of material injury to the domestic industry caused by imports within the meaning of Article 3 of the AD Agreement. Moreover, the investigating authority based its conclusions on the period not included in the initially established period of investigation, which Ukraine considered to be inconsistent with WTO provisions as within this period dumping was not determined. Ukraine requested an explanation as to why the investigating authority had relied in its injury analysis on the data not included in the period of investigation. It urged the member States of the Eurasian Economic Union to abide by the WTO rules when using trade remedies and terminate the investigation without imposition of AD measures.

58. In response to Ukraine, the Russian Federation explained that all the interested parties including Ukrainian importers and producers were given every opportunity to provide comments and gain access to all the information including the conclusions of the investigating authority. All the comments and data provided by the Ukrainian interested parties were taken into account by the investigating authority. The analysis relating to the comments was included in the conclusions which could be found in the respective report. The report with the results was provided to the Ukrainian interested parties and all the comments with respect to the report would also be taken into account in the final determination. It could not agree with all the comments made by the Ukrainian interested parties but underlined that all the information was taken into account and all the information which

was provided by the Ukrainian companies was used for the calculation of dumping. With respect to the injury side, the data from the industry was taken into account not only for the initially established investigation period, but also for the period beyond the investigation period up to the date of the final determination due to the fact that the situation of the market was rapidly changing. The investigating authority has taken the decision to take into account all of this data, but the conclusions were established mainly on the basis of the data for the investigation period.

59. On the semi-annual report of **Brazil**, Ukraine addressed the issue of review of the AD measures on the imports of tyres for passenger cars originating*, inter alia*, in Ukraine. According to the recent Disclosure of the Essential Facts of the investigation, there was a conclusion on the absence of likelihood that Ukraine would resume dumping exports to Brazil if the measures were allowed to lapse. Therefore, Ukraine believed that the AD measures on tyres for passenger cars from Ukraine should be terminated pursuant to Articles 11.1 and 11.3 of the AD Agreement.

60. Brazil explained that this investigation is still ongoing and that the Ukrainian Government and the interested parties still have time to provide the information which would be taken into account in accordance with WTO rules.

61. On the semi-annual report of **Canada**, Korea raised two issues. First, it noted that on 10 September 2019, the CBSA released the result of a normal value review on certain carbon and alloy steel line pipes imported from Korea. Korea expressed the view that the result of the review is inconsistent with the WTO rules. Korea submitted that the Canadian authority did not provide clear reasons for the initiation of the review. The review was on the determination of the original investigation, which was concluded just eight months before the review was initiated. Moreover, the Korean exporter cooperated faithfully in the entire investigation process. However, the CBSA denied all the information submitted by the Korean exporter and applied the dumping margin rate that had been applied to the exporters who refused to cooperate in the original investigation. As a result, the dumping margin rate for the Korean exporter increased from 4% in the original determination to 88% in the review conducted eight months later. Korea believed that such a result of the review is inconsistent with Article 6.8 and Annex II of the AD Agreement. Also, Korea noted that on 19 July 2019, the Canadian authority released a policy memorandum on the normal value review process. However, the memorandum allowed the investigating authority excessive discretion, which undermined predictability vis-à-vis the exporters.

62. Second, Korea expressed concerns regarding the final determination of the two AD investigations on certain hot-rolled steel plate and oil country tubular goods ("OCTG"). The CBSA determined that the Korean exporters of the two products had *de minimis* dumping margins. However, AD measures have been applied to these Korean exporters. As the panel ruled in *Canada-Welded Pipe (DS482)*, applying AD duty on exporters with *de minimis* margin is inconsistent with Article 5.8 of the AD Agreement. However, Canada was of the view that a domestic process is required to terminate the measures which had been determined before the panel ruling. In early June 2019, Korea's Trade Minister sent a letter to the Canadian Finance Minister requesting the initiation of the domestic process. Since then, Korea has not been informed of any updates on the progress. Korea urged Canada to terminate the measure at issue without delay.

63. Canada explained that with respect to the normal value review process, it did provide some information on this process at the last meeting. In June 2018, CBSA began conducting normal review proceedings. These were similar to reinvestigation processes that already existed in Canada which updated normal value, subsidy or export prices and are a necessary process to keep Canadian AD findings up-to-date in Canada's prospective normal value duty assessment system. It explained that normal value reviews were different in two ways from a reinvestigation process; i.e. only normal value is updated, and they are conducted with respect to a single or limited number of exporters rather than all exporters. With respect to the case referred to by Korea, this investigation is currently subject to judicial review at the Federal Court of Appeals and Canada would not wish to comment further at this stage. On the second issue, under Canadian law, the review of determinations and findings made by the CBSA and the Canadian International Trade Tribunal for the purposes of implementing a WTO ruling or recommendation may only be initiated following a request by the Minister of Finance. Canada acknowledged the request made by Korea in this regard and has been in touch with officials regarding progress on that. However, following the recent Canadian election, it is expected that a new cabinet would soon be formed, and the matter would be considered by the Minister of Finance after his appointment.

64. On the semi-annual report of **China**, Korea reiterated its concern on China's practice of refusing to accept the actual cost of self-producing material. This practice was applied again to the recent AD duty investigation on phenol imported from Korea. The Chinese investigating authority refused to use the actual cost for the input that was manufactured by the exporter. Rather, China calculated the costs based on the external purchase price, on the grounds that the cost of self-produced material is below the market price or average sales price. However, such cost had been duly established in accordance with accounting standards. Korea believed that denying the actual cost solely for the reason that it is too low is inconsistent with WTO rules, in particular Article 2.2.1.1 of the AD Agreement. It stated that such conviction is shared by the Appellate Body, as it confirmed in the *EU-Biodiesel* case that the latter part of Article 2.2.1.1 of the AD Agreement does not allow the investigating authority to evaluate the reasonableness of cost.

65. Korea submitted that the Chinese investigating authority has continued to deny the actual cost of self-producing material in a series of China's final determinations on the products from Korea such as Methylisobutul Ketone ("MIBK") of March 2018, Styrene Monomer ("SM") of June 2018 and Acrylonitrile Butadiene Rubber ("NBR") of November 2018. Being concerned that this practice may become permanent, Korea requested the Chinese investigating authority to fully respect and observe the relevant WTO rules in taking any AD measures.

66. Japan expressed its concern on the investigation initiated by China in July 2018 and the preliminary determination made in March 2019 regarding Japan's stainless billets, hot-rolled plates and coils. Throughout the investigation, Japan had continued to express its serious concern that the product under consideration ("PUC") was too broad as the PUC included semi-final and final products, and that the finding of the injury to the domestic industry and causal link between the imports and injury have been made inappropriately because the use and consumers of these products are considerably different. In this light, Japan strongly requested the Chinese investigating authority to make findings and determinations consistent with the AD Agreement. However, the Chinese investigating authority made the final determination without considering any of Japan's concerns. Japan added that it would pay close attention to the impact of the determination and the imposition of the AD duties on the Chinese companies that are users of the subject products as well as on the Japanese exporters. Japan urged the Chinese investigating authority to review the determination in accordance with the AD Agreement.

67. Japan also raised the matter regarding the on-going investigation on its vertical machining centres which was initiated in October 2018 and then extended till April 2020. In this investigation, because there is no competition relationship between the Japanese and the Chinese products, Japan believed that Japanese products should be excluded from the PUC. As Japanese companies manufacture and export both small and large models, and their physical features and use are different, the Chinese investigating authority, in finding the injury and causal link, must take into account the likeness of the products and competition relationship between Japanese and Chinese products, even if Japanese products would be subject to the investigation. Japan requested the Chinese investigating authority to make findings and determinations consistent with the AD Agreement.

68. In response to Korea, China reiterated that it is China's consistent position that trade remedy measures should be applied prudently, and it carried out the investigations in accordance with WTO rules and the related Chinese laws and regulations. The AD cases which Korea referred to, NBR, MIBK and Phenol, are different cases with different circumstances. Even within the same investigation, different exporters have different situations. According to the WTO rules and Chinese domestic laws, the records show costs established in accordance with generally accepted accounting principles and also reasonably reflect the cost associated with the production and sale of the PUC. In practice, the inter- corporate transfer pricing is the same situation as the affiliate sale pricing which may distort the reasonableness of the record. As a consequence, the investigating authority may ask the exporters to provide a complete and detailed accounting record and provide sufficient time and opportunities to submit evidence and comments. In some cases, the exporters did not provide reasonable evidence to demonstrate that inter-corporate transfer pricing reasonably reflected the cost of production and sale of the subject product. So, the investigating authority used alternative methodology to recalculate the cost.

69. In response to Japan's query regarding the steel case, China indicated that it had provided opportunities during the investigation period to consider these questions and have conducted several meetings including hearings to discuss Japan's views and comments. In the case of vertical

machining centres, it stated that the investigation is ongoing, that it would conduct the investigation as per WTO rules and Chinese law and make determinations objectively and impartially.

70. On the semi-annual report of the **EU**, the Russian Federation expressed its concerns regarding the EU's initiation of an expiry review of the AD measure on imports of ammonium nitrate of Russian origin, which has been in force for more than 20 years. In this case, AD measures that should provide temporary relief from imports have been extended almost automatically every 5 years. The Russian Federation requested the EU to carefully review the grounds for the application of this AD measure, and to specifically consider recent findings of the panel and the Appellate Body in the dispute *Ukraine – Anti-Dumping Measures on Ammonium Nitrate* pertaining to the inconsistency of the cost adjustment methodology with Articles 2.2 and 2.2.1.1 of the AD Agreement.

71. The Russian Federation also raised concerns relating to the definitive AD measures on imports of mixtures of urea and ammonium nitrate originating, *inter alia*, in the Russian Federation, Trinidad and Tobago and the United States. The main concern was connected to the use of the cost-adjustment methodology. It noted that the use of such methodology is inconsistent with Article 2.2 of the AD Agreement, which was highlighted in the recently concluded dispute *Ukraine – Ammonium Nitrate*, in particular, in para. 6.83 of the Appellate Body Report.

72. Moreover, the Russian Federation indicated that during the EU investigations into Russian imports, the European Commission does not investigate imports from each and every country with regard to distortions on raw materials for the purpose of lesser duty rule application. Although the lesser duty rule is not mandatory, the Russian Federation submitted that even discretionary rules can be applied in such a manner that could violate WTO obligations of a Member and that this is what actually happened in this case. Moreover, it added that in the application of its AD methodology, the EU may pick and choose the countries and limit imports from them as the EU itself wishes. As a result, goods from one WTO Member can be allowed to access the EU market, and products from another Member can be deprived from fair access to it. Thus, by means of these methodologies the EU can deprive a WTO Member from its due benefits accrued under the most-favoured-nation treatment obligation. The Russian Federation failed to see any provisions in the AD Agreement or in the GATT enabling the use of AD measures in such a way and for such purpose.

73. In addition, the Russian Federation reiterated its systemic concerns regarding the application of AD measures by the EU which has deviated far from its original goal of remedying injury to domestic industry caused by dumped imports. The first amendment introduced by Regulation 2017/2321 introduces the concept of the so-called "significant distortions", which enables to use the data on costs acquired from countries other than the country of origin of the exported product. The European Commission enjoys a very large discretion determining the presence of significant distortions. Moreover, the European Commission intends to publish reports on significant distortions in the exporting countries, but it is still unclear when it will be published with respect to the Russian Federation, and whether the Commission intends to publish reports concerning other countries as well.

74. The Russian Federation added that the second amendment introduced to the Basic Regulation by Regulation 2018/825 envisages the right of the European Commission not to apply the lesser duty adequate to remove injury. In practice, it is worth to mention that some of the examples of such raw material distortions may equally fall under the definition of significant distortions established in the first amendment. Thus, in certain cases the Commission may decide to punish the exporters twice for the same thing. It emphasized that although the AD investigations are designed to look into pricing behaviour of exporters, the EU blurs these fundamental aims. Neither Article VI of the GATT, nor the AD Agreement were intended to address pricing policies of States. It called upon the EU to eliminate any unfair or discriminatory approach to Russian exporters, based on those new items of its AD legislation, and to adhere to its WTO obligations.

75. In response, the EU explained that in case of the expiry review, the review has just been initiated, the Russian Federation will have a chance to make submissions, and the EU will take them into account. On the other set of questions, it indicated that it had already provided replies on the compatibility of the new methodology and also on the so-called modernization package with the WTO rules. It restated that the lesser duty rule still applies and is still mandatory in all cases. The only difference is that there is a modulation in the application of this rule in cases of raw material distortions in the exporting country and these distortions are sanctioned in the OECD list of export restrictions. In these cases, there is a modulation in the application of the rules which is linked to

this factor. Thus, there is no discrimination as discrimination only arises where the situations are the same or similar and the EU treats them differently or vice-versa when the EU treats different situations as alike, which is not the case when there are export restrictions in raw materials in only one exporting country which is the object of the investigation.

76. On the report concerning the Russian Federation, the EU explained that the new AD methodology provides the possibility that the investigating authority may issue reports that address the issue of whether there are significant distortions in a certain exporting country. It added that Commissioner Maelstrom announced in December 2017 that when issuing a report about a country, the Commissioner would look into whether there are distortions. The analysis is still ongoing, and it is not clear in practice, when a report on the Russian Federation will be released. When the report is released, the Russian Federation and all parties will have full opportunity to submit comments, rebut the evidence, findings and conclusions in the report because the report will be published on the website and will be open to all parties. So, the Russian Government will have the option to make its voice heard in general and also in specific investigations should these reports conclude that there are significant distortions.

77. On the semi-annual report of **India**, Japan expressed concern regarding the on-going investigation on Japan's coated/plated tin mill flat rolled steel products, which was initiated in June 2019. Japan indicated that it would be paying close attention to this proceeding and future determination so that this AD investigation and its results would comply with the relevant provisions under the AD Agreement. In particular, Japan requested the Indian investigating authority to include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry in accordance with Article 3.4 of the AD Agreement and to carefully examine any known factors other than the dumped imports which at the same time are injuring the domestic industry in accordance with Article 3.5 of the AD Agreement. Furthermore, as Article 3.3 of the AD Agreement stipulates that a cumulative assessment of the effect of the imports must meet the prerequisite that there is a competitive relationship between the imported products and the like domestic products, Japan requested the Indian investigating authority to appropriately examine whether there were a relationship and conditions of competition and to provide reasoned and adequate explanation on the appropriateness of a cumulative assessment.

78. India indicated that it is aware of the concerns raised by Japan in this investigation and that it is planning, in December 2019, to conduct on-site exporter verification and look into all the issues raised. It assured Japan that its concerns will be properly addressed.

79. On the semi-annual report of **Mexico**, Kazakhstan expressed its serious concerns over continued application of an AD measure by Mexico on cold-rolled sheets originating in Kazakhstan. The original AD measure entered into force on 30 June 1999 and a first decision to extend it for five more years was already taken on 30 November 2005. Since the initial application of the AD measure, Mexico carried out 2 five-year reviews of the measure and an extension based on the results of such reviews. The AD measure that has been applied for 20 years in relation to cold-rolled sheet originating in Kazakhstan raises certain serious concerns.

80. First, Kazakhstan submitted that in the original investigation on cold-rolled sheet, Mexico applied a non-market economy methodology against producers and exporters of Kazakhstan by using surrogate values pertaining to Spain in its determination of normal value. In subsequent sunset reviews, Mexico continued to apply discriminatory treatment and calculated normal value on the basis of data pertaining to Brazil as a surrogate country. Kazakhstan highlighted that this approach lacks any legal foundation under the WTO Agreement, since nothing in the AD Agreement provides legal justification to disregard the data of the exporter or exporting country, using a completely different country's data. It pointed out that in cases where domestic sales prices could not be used for the purposes of determining dumping, the only provision in the AD Agreement that allows the investigating authority to determine the normal value based on other than the data of the exporter is Article 2.2 of the AD Agreement.

81. Thus, Article 2.2 of the AD Agreement allows the investigating authorities to determine the normal value on the basis of either: (i) the cost of production in the country of origin plus a reasonable amount for "selling, general and administrative costs and profits"; or (ii) the export prices to an appropriate third country, so long as those prices are representative. However, even under each of these two circumstances normal value is still determined using home market costs or prices – either the producer's own cost of production (or the cost of production in the home market of the

exporting country), or the producer's own export prices to a third country. The Appellate Body in *EU – Biodiesel (Argentina)* also stated that the obligation under Article 2.2.1.1 of the AD Agreement was narrower than that under Article 2.2. Therefore, the obligation to calculate the cost of production in the country of origin continued to apply even if the investigating authority did not have information from the investigated exporter[4]. In this connection, Kazakhstan strongly stressed that the methodology for determining normal value, therefore, should be grounded in an assessment of the prices and costs in the exporting country, or, in other words, the producer's home market prices or costs.

82. Second, Kazakhstan indicated that in the original investigation, Mexico had made its determination on the basis of threat of injury that was supported by the information that the "combined effect of market closures and the financial crisis in Kazakhstan is forcing the country's metallurgical industry, which is under investigation, to strengthen unfair trade practices in order to penetrate alternative export markets, including the Mexican market." To confirm, a copy of the editorial notes "Production falls on Ispat Karmet-Asia" of 10 December 1998; "Kazakhstan is considering new proposals for quotas in the EU" of 15 October 1998; was provided for the investigating authority's attention. It should be noted that this is the main information on the basis of which the investigating authority of Mexico made its final determination of the threat of injury in the original investigation. Although the situation in Kazakhstan is absolutely different now, Mexico is still continuing to apply AD measures based on the possible threat of injury. Kazakhstan recalled that Article 3.7 of the AD Agreement establishes that "a determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent".

83. Kazakhstan added that even if at the initial investigation the existence of threat of injury was proved with necessary evidence, it inquired whether the domestic industry of Mexico, after 20 years of protection, is still experiencing the likelihood of continuation of alleged dumping and injury. In this connection, it referred to the panel in *US – DRAMS* which described the requirement in Article 11.1 of the AD Agreement whereby AD duties "shall remain in force only as long as and to the extent necessary" to counteract injurious dumping, as "a general necessity requirement"[5]. It also referred to what the same panel said with respect to assessing the essential character of the necessity involved in Article 11.1[6]. From this perspective, Kazakhstan indicated that the original AD measure was imposed under the determination of threat of injury. In this respect, it is important that actual material injury has never been caused by imports originating in Kazakhstan. In fact, any injury to the domestic industry of Mexico could not have been caused by imports originating in Kazakhstan due to the sporadic and insignificant volumes of imports from Kazakhstan in 1996 and 1998. In this regard, Kazakhstan believed that this situation in itself begs to conclude that other factors besides the alleged dumped imports and the alleged threat of injury affecting the domestic industry in Mexico were not adequately considered and studied in the framework of all reviews and the initially imposed measure, if Mexico's domestic industry, after 20 years of protection, is still experiencing the likelihood of continuation of alleged dumping and injury.

84. Third, the Mexican authorities – on 20 June 2019 – had meanwhile initiated a sunset review of the definitive AD duty imposed on imports of the subject goods from Kazakhstan and the Russian Federation. However, Kazakhstan was never notified by the Mexican investigating authority of the initiation of this review. This, among other things, violates the fundamental obligations of transparency, as stipulated in Article 5.5 of the AD Agreement. Moreover, Article 53 of the Mexico's Foreign Trade Act requires that "Starting from the day following the publication in the Diario Oficial de la Federación of the resolution to initiate an investigation, the Ministry shall notify the interested parties of which it is aware, so that they may appear in order to make whatever statement they see fit." Article 84 of the same Act establishes that "the notifications referred to in the Act shall be transmitted to the interested party or his representative personally at his domicile by registered mail with acknowledgement of receipt or by any other direct means such as a specialized messenger service or electronic mail. The notifications shall enter into force on the working day following the day on which they were issued". In this regard, in *Thailand – H-Beams*, the panel considered that a notification required under Article 5.5 can be made orally. However, Kazakhstan did not receive notification of the initiation of the five-year review, either orally or in writing, and was thus unable

[4] Appellate Body Report, *EU – Biodiesel (Argentina)*, para. 6.73.
[5] Panel Report, *US – DRAMS*, para. 6.41.
[6] Panel Report, *US – DRAMS*, para. 6.42.

to defend its interests in a timely and full manner, in the sense of Article 6.2 of the AD Agreement. With these considerations in mind, Kazakhstan requested Mexico to terminate the five-year review of the AD measure on cold-rolled sheets from Kazakhstan without extension of this measure.

85. In response, Mexico took note of the concerns mentioned by Kazakhstan and indicated that the aforementioned investigation was carried out in line with the AD Agreement. It confirmed that comments made by Kazakhstan would be relayed to the investigating authority to give a more detailed explanation regarding this investigation.

86. On the semi-annual report of **Ukraine**, Kazakhstan stated that Ukraine has launched and is conducting an AD investigation regarding rolling bearings originating in Kazakhstan. Kazakhstan, having studied the essential facts regarding this investigation, expressed a number of concerns. In the essential facts released by the investigating authority of Ukraine, rolling bearings identified as the object of investigation are divided into four types of symbols (PCN 1 - PCN 4). Meanwhile, in section 4.3.2 of the essential facts, the investigating authority of Ukraine determines the normal value of the products on the basis of production costs in Kazakhstan, with an increase by a reasonable amount for administrative, selling and general costs and a reasonable amount of profit, referring to the provision of Article 7 of the Law of Ukraine, where it is established that the normal value is determined on the basis of prices established during ordinary course of trade between independent buyers in the country of export, and the volume of domestic sales is not less than 5% of sales in Ukraine. At the same time, in order to determine the normal cost, the authorized body of Ukraine took into account only the volumes of products sold by EPK-Stepnogorsk JSC ("EPK") in the domestic market of Kazakhstan, conditionally designated as PCN 1 and PCN 3. Taking into account only PCN 1 and PCN 3 is justified by the fact that EPK exports only such products to Ukraine. It noted that the use of information to determine the normal value of the products with PCN 1 and PCN 3 symbols, while proving material injury to the domestic industry of Ukraine and its causal link with the alleged dumping imports by using data on products with symbols PCN 1, PCN 2, PCN 3 and PCN 4 is unreasonable and unlawful according to the requirements of the AD Agreement, in particular its Article 3.6.

87. Moreover, the panel in *Mexico – Corn Syrup* addressed the issue of allowing the determination of injury on the basis of the portion of the domestic industry's production sold in one sector of the domestic market[7]. So, the evidence presented in the essential facts of the alleged material injury to the Ukrainian industry and the causal link between the alleged dumped imports and the material injury suffered by the Ukrainian industry as a result of such imports cannot be supported, since the products for which information was taken when exporting from Kazakhstan to Ukraine (PCN 1 and PCN 3) and the products for which the data are presented in order to demonstrate the existence of injury to the domestic industry of Ukraine (PCN 1, PCN 2, PCN 3 and PCN 4) are different. Thus, the use of data on similar products produced by the domestic industry on a wider nomenclature (type) than the exported products is inconsistent with the requirements of the AD Agreement.

88. In this regard, Kazakhstan added that the investigating authority of Ukraine needs to bring calculations or data on injury in line with WTO standards. In particular, if the investigating authority of Ukraine - in determining the normal value - based its determination on data provided by the EPK for the same products for which injury was determined, then the margin level would be indicated at the level of *de minimis*. Also, if the applicant's data in determining the existence of injury was taken into account for the same products that are exported to Ukraine from Kazakhstan, the figures presented would change significantly. Thus, the incorrect use by the investigating authority of Ukraine of products for which data are used to determine the existence of material injury casts doubt on the reasonableness or objectivity of the assessment required by Article 3.4 of the AD Agreement[8].

89. Kazakhstan concluded that the data presented in the essential facts demonstrate that the investigating authority of Ukraine made errors in determining the normal value. This error directly affects the evidence of material injury, and accordingly the causal link between dumped imports and material injury in the understanding of the AD Agreement. Kazakhstan urged Ukraine to terminate this investigation without taking any action.

[7] Panel Report, *Mexico – Corn Syrup*, para. 7.157. With respect to the issue of a market segment analysis under the Safeguards Agreement, see the Section on Article 5 of the Agreement on Safeguards.

[8] Panel Report, *Russia – Commercial Vehicles*, para. 7.115.

90. The Russian Federation expressed concern regarding the definitive AD duty on imports of cement and the emerging practice of Ukraine to conclude the AD investigations in a manner favourable to the Ukrainian industry in violation with the WTO rules. During the AD investigation on imports of cement, the Russian exporters cooperated to the best of their ability throughout the procedure, fulfilled questionnaires and arranged for verification visits. However, information of the exporters was disregarded in whole or in part and the AD duties were established at the level of 114.95%. To begin with, at various stages of the investigation, the Ukrainian authorities inconsistently used data for two different types of goods – cement and clinker, the latter of which was used as a material for the production of the former. Use of the data for these two different products for dumping and injury determinations has led the Ukrainian authorities to violation of different provisions of Articles 2 and 3 of the AD Agreement. Moreover, the normal value was calculated inconsistently with Articles 2.2 and 2.2.1.1 of the AD Agreement. Ukraine disregarded the actual gas prices paid by the investigated producers, despite the fact that these prices were in accordance with the GAAP and reasonably reflected in the records and replaced them by the price data from outside the country of origin. It should be noted that inconsistencies with Article 2 of the AD Agreement led to an excessive dumping margin. Since the level of duties were determined on that basis, Article 9.3 of the AD Agreement was also violated. Additionally, evaluation of the impact of Russian imports on Ukrainian industry was flawed. Most financial and economic factors and indices having a bearing on the state of the industry demonstrated significant growth. Nevertheless, Ukrainian authorities made affirmative determination of material injury, inconsistently with Articles 3.1 and 3.4 of the AD Agreement. The Russian Federation urged Ukraine to reconsider its approach and to conduct AD investigations and impose measures in strict compliance with its WTO obligations.

91. In response to Kazakhstan, Ukraine indicated that the investigation referred to has been conducted in accordance with the relevant legislation of Ukraine and the relevant WTO provisions. The investigation is still ongoing. During the investigation, the Ukrainian investigating authority has carried out on-site verification of Ukrainian producers and all interested parties were given the opportunity to express their views. The main findings and conclusions of the Ukrainian investigating authority will be sent to all interested parties including the competent authority of Kazakhstan.

92. In response to the Russian Federation, Ukraine stated that on 2 July 2018, Ukraine took a decision on the application of AD measures on imports of cement originating in Belarus, Moldova and the Russian Federation into Ukraine. During the investigation, all interested parties were given the opportunity to participate and express their views including the competent authorities of the Russian Federation. On the requests of the interested parties, public hearings were held. The main findings and conclusions of the investigating authority were sent to all interested parties including the competent authorities of the Russian Federation. During the investigation, the fact of dumping that caused injury to the domestic industry was established. Thus, Ukraine acted in compliance with the AD Agreement.

93. On the semi-annual report of the **US**, Korea raised two different regulations or practices adopted by the US investigating authority, namely PMS and adverse facts available ("AFA"). Korea indicated that it had raised these issues several times at previous Committee meetings, but such concerns have not been addressed. Rather, with regard to PMS, the US recently adopted a new and WTO-inconsistent analysis which has aggravated these concerns.

94. With respect to the issue of PMS, Korea expressed its concerns on PMS since its application by the US investigating authority in April 2017 to the case of the first annual review of OCTG. Despite such concerns, the US investigating authority subsequently expanded the application of PMS to various cases, including a follow-up review on OCTG, circular welded non-alloy steel pipe, welded line pipe, heavy-walled rectangular welded carbon steel pipes and tubes, large diameter welded pipe, and corrosion resistant steel. Furthermore, the US petitioners recently requested the application of PMS based on a global regression model, and the US investigating authority accepted the petitioners' regression analysis in the recent preliminary determinations on heavy-walled rectangular carbon steel pipes and tubes, cold-rolled flat steel and OCTG. However, by relying on a global regression model, the US industry's analysis essentially concedes that there is nothing particular about the market situation in Korea. By applying a global regression model to adjust the cost of steel, the analysis of the US industry does not remedy any issue unique to Korea, but instead calculates a theoretical global hot-rolled steel value. This analysis would appear to be applied to all countries and the entire global industry, contrary to the fundamental concept that the market situation needs to be particular to a specific market. Korea believed that the Korean steel market is

not particular enough to justify the determination that PMS exists. In Korea's view, applying the PMS while denying the evidence provided by Korean exporters is inconsistent with Article 2.2 of the AD Agreement. Furthermore, this could be regarded as a de-facto discriminatory measure with no substantiated legal ground. In this vein, Korea requested the US authority to review the evidence from all interested parties in an objective manner and to make a reasonable determination with regard to PMS.

95. On the issue of AFA, Korea submitted that the US investigating authority has often resorted to the use of facts available, which, in Korea's view, is inconsistent with Article 6.8 and Annex II of the AD Agreement. When the required information is allegedly not provided by the exporters, the US investigating authority has used the available facts which is adverse to the exporters, rather than using the best information available. This AFA practice has a punitive nature and causes heavy administrative burden on Korean exporters to supply necessary documents as there seems to be no objective criteria on under which circumstances and how AFA is applied. Recently, the exporters wished to provide the US authority with as much evidence or information as possible to avoid the use of AFA. However, the US authority in some cases has failed to give sufficient opportunities to the exporters to defend their interests, which is contrary to the AD Agreement. Korea requested the US investigating authority to be WTO-consistent when applying AFA particularly as stipulated in para. 5 of Annex II of the AD Agreement. Korea indicated that AFA which fails to meet reasonable expectations should not be applied to those Korean exporters who have cooperated to their full ability with the authority in the process of the investigation. Also, sufficient opportunities, as required by the AD Agreement, should be provided to the exporters to have their voices heard, so as to avoid the use of AFA.

96. In response to Korea, the US expressed disappointment with Korea's intervention. It indicated that it is the long-standing practice of the Committee that items subject to litigation are not raised by Members. It added that Korea is aware of this practice and is also aware of the litigation since the Korean respondents and the Korean Government are litigating. The US emphasized that it has no intention to violate this long-standing practice and therefore cannot comment further on this issue.

97. No comments were made with respect to semi-annual reports that the Committee had not previously reviewed due to late circulation.

98. The Committee took note of the semi-annual reports, the statements made, the questions posed, and the answers provided.

4 PRELIMINARY AND FINAL ANTI-DUMPING ACTIONS: NOTIFICATIONS

99. The Chair referred to the notifications of preliminary and final AD actions submitted by Members since the Committee's last meeting listed in documents G/ADP/N/327, 329, 330, 331, 332, 333 and 334. During this period Argentina; Armenia; Australia; Brazil; Canada; Chile; China; Egypt; El Salvador; European Union; India; Indonesia; Israel; Japan; Kazakhstan; Korea, Republic of; Kyrgyz Republic; Madagascar; Mexico; Morocco; Pakistan; Peru; Russian Federation; South Africa; Chinese Taipei; Turkey; Ukraine; United States and Viet Nam notified preliminary and/or final AD actions, which were listed in these documents. Since document G/ADP/N/334 was circulated, Argentina; Australia; Egypt; Morocco and Viet Nam had submitted such a notification, which would appear in the next list circulated by the Secretariat.

100. The Chair drew attention to the continued apparent lack of full compliance with this notification requirement. These reports are a key element of the required transparency concerning Members' AD actions, and the Committee could not effectively carry out its monitoring and discussion functions if Members did not fulfil their obligations in this regard. The Chair strongly urged all Members taking AD actions to provide these notifications of preliminary and final actions, consistently and in a timely fashion. The minimum information format for these notifications adopted by the Committee in October 2006 and revised in October 2009 (document G/ADP/2/Rev.2), contains important guidance as to the kinds of actions that should be notified and the information that should be provided.

101. Ukraine expressed its concern regarding the ongoing review of AD measures on forged work-rolls from Ukraine, where the AD measures are maintained by the **member States of the Eurasian Economic Union (Armenia, Kazakhstan, Kyrgyz Republic and**

Russian Federation). According to the case records, significant part of the domestic producers refused to cooperate with the investigating authority and have not duly submitted answers to questionnaires. Moreover, given the lack of sufficient disclosure of information it is not substantiated that the petitioner has met the criteria of standing; i.e. represents 25% of total production in the Union. In the absence of the domestic industry interest, Ukraine believed that it is hardly possible to establish continuation or recurrence of injury that is a mandatory precondition for extension of AD duties according to Article 11.3 of the AD Agreement. It requested a clarification as to how the investigating authority is going to analyse injury in this sunset review.

102. In response to Ukraine, the Russian Federation explained that the investigation is ongoing. The interested parties from Ukraine have been given the full ability to defend their rights to provide comments, have access to information, etc. With respect to the standing of the domestic industry, it underlined that the domestic industry and the complainant have provided the investigating authority with the requested information and that the results of this analysis would be included in the final determination which would be available to the Ukrainian interested parties.

103. The Chair noted that some Members are still submitting the same Ad hoc notifications pertaining to certain antidumping actions via different means; i.e. electronically, by fax and post. In certain instances, certain Members, while submitting new Ad hoc notifications, also tend to resubmit previously notified actions and in some cases provided electronic links that did not correspond to the notification the Member submits. In addition, some of these notifications are not submitted to CRN directly, but to the Rules Division Secretariat which had to resend it to CRN for registration. The Chair reminded all Members that a given Ad hoc notification, as in case of all other notifications, should be sent electronically and only once to CRN with a copy to the Secretary of the Committee and that any previously submitted notifications should not be resubmitted. The Chair also requested Members, instead of providing electronic links to general websites, to attach directly the relevant document containing the action they wish to notify in WORD or PDF formats. The Chair stressed the need to avoid any confusion, repetition or duplication as these notifications were the source of necessary information contained in Annex D of the Committee's annual report.

104. The Committee took note of the statements made, questions posed, and answers provided.

5 CHAIRPERSON'S REPORT ON THE MEETING OF THE INFORMAL GROUP ON ANTI-CIRCUMVENTION

105. The Chair recalled that the Informal Group on Anti-Circumvention met on 20 November 2019. The US made a presentation regarding its recent duty evasion investigation. A discussion followed with Members posing questions and offering comments. As for the Spring of 2020 meeting, the approach agreed in the Spring of 2015 would be applied in deciding whether the Informal Group will meet in the Spring.

106. No statements were made by any Member.

107. The Committee took note of the report made.

6 CHAIRPERSON'S REPORT ON THE MEETING OF THE WORKING GROUP ON IMPLEMENTATION

108. The Chair indicated that the Working Group on Implementation met on 2 May 2019 back-to-back with the May Committee meeting at which the Group discussed issues relating to gathering and examining of evidence for the determination of a causal relationship between the dumped imports and the injury to the domestic industry and assessment of domestic industry's economic indicators in threat of injury analysis. Ms. Christina Bas from Chile served as discussant and circulated a roadmap of issues to officials before the meeting to assist delegations in their work. A good discussion took place at which representatives of many investigating authorities shared their practices and asked questions to each other about their experiences.

109. The Chair reminded Members that the Working Group would hold a meeting on 21-22 November 2019, to discuss issues relating to: (i) verification procedures; (ii) treatment of financial expenses and financial income in dumping margin calculation/sales below cost test; and

(iii) determination of base price for the below cost test. Ms. Jill Pollack of the US, serving as discussant, circulated an outline of issues for discussion in document RD/ADP/WTI/14.

110. Finally, the Chair noted that the topics and discussant of the next Working Group have not yet been determined by Members. The Chair will contact Members in the next few weeks in order to identify the next topics and a discussant to assist the Group in its Spring 2020 meeting.

111. No statements were made by any Member.

112. The Committee took note of the report made.

7 TURKEY – ANTI-DUMPING MEASURES ON UNBLEACHED KRAFT LINER PAPER – ITEM REQUESTED BY BRAZIL

113. Brazil submitted that on 7 June 2019, through the publication of Communiqué No. 2019/19 in the Official Gazette No. 30794, the Turkish Ministry of Trade made effective the suspension, for at least 9 months, of the definitive AD measure applied to certain imports of Kraft liner paper originating in the US. Brazil recalled that, through the Communiqué No. 2018/12, published in the Official Gazette No. 30396 of 19 April 2018, a similar AD measure entered into force against imports of Kraft liner paper originating in Brazil, Finland, Poland and the Russian Federation, based on the assumption that imports from these countries represented a threat of injury to the Turkish domestic industry. The Government of Brazil expressed its concern with the suspension of the applied measure only for the imports from the US and not for those from other origins that are also subject to AD measures. Brazil expressed the view that such conduct is in contradiction with the dispositions of Article 9.2 of the AD Agreement. The suspension of the measure only for the US discriminates against other producers/exporters in the Turkish paper market and are subject to similar measures. The Turkish Ministry of Trade argued that the suspension of the measure applied to imports originating in the US is due to changes in market conditions. In this regard, the Government of Brazil pointed out that such changes are valid not only for imports from the US, but also for imports from other sources, including Brazil. Despite the application of an AD measure, the US has remained the main supplier of Kraft liner paper to the Turkish market, representing a 54.4% share of the total imports of the said product by Turkey in 2018, according to data collected by the Turkish Statistical Institute (TÜIK). Imports of Kraft liner paper originating in Brazil, in contrast, represented 3.5% of total Turkish imports of the product. Brazil requested the Turkish Ministry of Trade to suspend the application of the AD measure imposed on imports of Kraft liner paper originating in Brazil, thus extending to Brazil treatment as favourable as that accorded to the US, pursuant to the principle of non-discrimination enshrined in Article 9.2 of the AD Agreement. Finally, Brazil commended the Turkish investigating authority for its openness to clarify such concerns in the context of bilateral meetings and further conversations.

114. In response to Brazil, Turkey explained that it does not consider that suspension of measures against only US paper violates the non-discrimination principles of Article 9.2 of AD Agreement. During the implementation of the measures, additional financial liability has been imposed only on US' Kraft liner paper which changed the market condition for the US, but not for others; i.e. it eliminated injury caused by the US' imports as long as it remained in force. In order to clarify changes in market condition, it is necessary to look at the implementation of measures over time. AD measures on US paper and Brazil paper are imposed at different times by means of different investigations. Turkey first started to implement AD measures on US' Kraft liner paper on 14 July 2015 (Communiqué 2015/28). Following an interim review in 2016, measures were amended accordingly on 7 March 2017 (Communiqué 2017/1). Amended measures were between 12,24% and 19.96%. AD measures were then imposed on Kraft liner paper originating in Finland, the Russian Federation, Poland and Brazil on 19 April 2018.

115. Turkey added that while all AD measures were in force, the US started to implement additional duties on Turkish iron and steel based on national security reasoning. In order to react to this under the relevant WTO rules, by means of Decree on the "Application of Additional Financial Liabilities on the Importation of Certain Products of US Origin" published in the Official Gazette on 25 June 2018, Turkey began to implement an additional 10% financial liability for Kraft liner paper originating in the US, together with other products which are still in force. Turkey's domestic legislation "Decree on The Prevention of Unfair Competition in Imports" allows suspension of the measure due to temporary changes in the market conditions. Based on the examination, it is concluded that there

is a temporary change in market conditions due to additional financial liability of 10% for US origin papers. AD measures on US origin Kraft liner paper have been temporarily suspended for 9 months, effective 7 June 2019 by the Communiqué 2019/19 published in Official Gazette on 7 June 2019. According to this Decree, suspension can only be extended for a further 1 year. Measures may be reinstated if the reason for suspension is no longer applicable; which in this case was the imposition of financial liability for paper originating in the US. The temporary change in market conditions is only valid for US products due to the additional financial liability imposed by Turkey. Therefore, suspension of the measure is only applicable to the US in this case.

116. Brazil indicated that it would continue this discussion bilaterally with Turkey.

8 OTHER BUSINESS

117. The Chair encouraged Members that had issues to raise with other Members under other business to provide sufficient notice to the Member concerned prior to the meeting in order to ascertain whether or not an answer could be obtained at the meeting.

118. Turkey submitted that **Canada** has initiated an AD investigation against imports of certain OCTG originating in Turkey on 21 July 2014. In its final determination dated 18 March 2015, Canada calculated zero percent dumping margin for one of the respondent companies in that investigation. However, contrary to Article 5.8 of the AD Agreement, Canada did not terminate the investigation for that specific respondent company. This practice was challenged before the Dispute Settlement Body ("DSB") by Chinese Taipei, and the panel in *Canada - Welded Pipe* decided that: "*Canada violated the second sentence of Article 5.8 by failing to immediately terminate the investigation in respect of two Chinese Taipei exporters with de minimis margins of dumping.*" Later, Canada terminated the measure with respect to certain Chinese Taipei exporters who were found to have *de minimis* margins of dumping in the original investigation. On 10 January 2018, Canada informed the DSB that it had complied with the DSB's recommendations and rulings through legislative amendments. However, Canada still expects Members to make a special request for terminating the investigation with respect to companies for which *de minimis* dumping margins are calculated. It added that although Turkey has made this request by letter dated 13 February 2019, no response from Canada regarding this issue has been received. Turkey underlined that it would closely follow this issue and reserved all its rights stemming from the relevant WTO Agreements.

119. In response to Turkey, Canada explained that under Canadian law, the review of determinations and findings made by the CBSA and the Canadian International Trade Tribunal for the purposes of implementing a WTO ruling may only be initiated after a request by the Minister of Finance. Finance has engaged with the Turkish Government on the issue since the request was made for such a review. Following the Canadian election, the Cabinet would be sworn in and the matter would be considered by the Finance Minister after the appointment of the new cabinet.

120. Turkey also indicated that **Malaysia** has initiated an AD investigation against imports of steel concrete reinforcing bar products from Turkey and Singapore on 26 April 2019. In its preliminary determination report that was published on 23 September 2019, the Malaysian investigating authority decided to impose a provisional duty based on an affirmative finding of dumping, injury and causal link between dumping and injury. The investigating authority is expected to release its final decision around December 2019. It requested consultations with the Malaysian authorities in the coming days. Considering that almost all of the injury factors show a positive trend and that imports of the subject merchandise decreased by 52.5% during the period of the investigation according to the preliminary determination report, Turkey expected the investigating authority to carefully examine the conditions for applying an AD measure as well as other factors that may cause injury to the domestic industry. Moreover, for non-cooperating producers/exporters, the Malaysian investigating authority decided to impose the rate that was proposed by the petitioners. It referred to paragraph 7 of Annex II of the AD Agreement which requires investigating authorities to use special circumspection when they base their findings on information from a secondary source. Turkey expected the Malaysian investigating authority to show that in determining the dumping rate for non-cooperating producers/exporters, it used the information that was provided by the petitioners with special circumspection and to give details about how it calculated the rate.

121. In response to Turkey, Malaysia took note of the request for consultations by Turkey. In fact, based on the notices of affirmative preliminary determination of the AD investigation gazetted on

22 September 2019 as well as the non-confidential preliminary determination report submitted to the Turkish Embassy in Malaysia, the reasons for the affirmative preliminary determination were provided. In this connection, the investigating authority is satisfied that dumping of the subject merchandise from the alleged countries has caused material injury to the domestic industry in Malaysia through the volume, price and profitability effects. The dumping margin is found to exist through the dumping activities by producers and exporters from the alleged countries; i.e. Singapore and Turkey and there is sufficient evidence to continue with further investigation on the importation of subject merchandise from the alleged countries as provided under Section 23 of Malaysia's Countervailing and Antidumping Duties Act of 1993. It added that the notice of essential facts that form the basis for the final decision will be made by the end of December 2019 while the final determination will be made no later than 21 January 2020. With regard to the decrease of imports of the subject merchandise by 52.5%, Malaysia clarified that the decrease in imports is for a period of 3 years and it involved global imports of the subject merchandise; i.e. it consisted of imports of subject merchandise from 9 alleged countries and that this information is outlined in the preliminary determination report. Overall imports of the subject merchandise from the alleged countries which are Singapore and Turkey have increased by 335.94%, from year 1 of the period of investigation. Regarding the determination of the dumping margins for non-cooperating producers and exporters, Malaysia indicated that it would provide the explanation during the bilateral consultations with the Turkish side.

122. The Committee took note of the statements made.

9 DATE OF THE NEXT REGULAR MEETING

123. The next Regular meeting of the Committee would be held in the week of 27 April 2020.

10 ANNUAL REPORT OF THE COMMITTEE ON ANTI-DUMPING PRACTICES TO THE COUNCIL FOR TRADE IN GOODS (ARTICLE 18.6)

124. The Committee adopted its 2019 Annual Report to the CTG. The Chair indicated that as the CTG has already held its last meeting for the year 2019, the Committee shall send its adopted report directly to the General Council.