GENERAL AGREEMENT ON
TARIFFS AND TRADE

Committee on Anti-Dumping Practices

MINUTES OF THE MEETING
HELD ON 29 OCTOBER 1990

Chairman: Mr. Maamoun Abdel-Fattah (Egypt)

1. The Committee held a regular meeting on 29 October 1990.

2. The Committee adopted the following agenda:

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

   (i) New Zealand (ADP/1/Add.15/Rev.1/Add.1);

   (ii) Australia (ADP/1/Add.18/Rev.1/Suppl.2 and ADP/W/193, 197, 216, 223, 239, 250 and 267; ADP/1/Add.18/Rev.1/Suppl.3 and ADP/1/Add.18/Rev.1/Suppl.4);

   (iii) United States (ADP/1/Add.3/Rev.4 and ADP/W/199, 220, 221, 230, 233, 241, 242, 243, 244, 251, 253, 263 and Add.1, 270, 271, 272 and 273; ADP/1/Add.3/Rev.4/Suppl.1 and ADP/W/264; ADP/1/Add.3/Rev.4/Suppl.2);

   (iv) Korea (ADP/1/Add.13/Rev.1/Suppl.1 and ADP/W/257, 268 and 269);

   (v) Brazil (ADP/1/Add.26/Suppl.2 and ADP/W/258 and 277);

   (vi) EEC (ADP/1/Add.1/Rev.1 and ADP/W/190, 191, 207, 208, 215, 222, 227, 228, 234, 245, 246, 247, 248, 249, 252, 255 and 260);

   (vii) Canada (ADP/1/Add.6/Rev.3);

   (viii) Other legislation.

B. Semi-annual reports of anti-dumping actions taken by the United States and Mexico during the period 1 July-31 December 1989 (ADP/46/Add.8 and 9)

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1 The term "Agreement" hereinafter means Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade.
C. Semi-annual reports of anti-dumping actions taken by Parties to the Agreement during the period 1 January-30 June 1990 (ADP/48 and addenda)

D. Reports on all preliminary or final anti-dumping actions (ADP/W/274, 275, 278 and Corr.1, and 279)


F. 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/29)

G. United States - Anti-dumping duties on Imports of Anti-Friction Bearings from Sweden (ADP/M/28, paragraphs 88-93)

H. United States - Anti-Dumping Duties on Imports of Urea from Romania (ADP/M/28/, paragraphs 94-95)

I. United States - Procedures for administrative reviews of anti-dumping duty orders (ADP/M/28, paragraphs 97-102)

J. United States - Anti-circumvention inquiry with respect to colour television picture tubes

K. Other business

(i) United States - Anti-Dumping Duties on Cement and Cement Clinker from Mexico - Report by Mexico for consultations with the United States under Article 15:2 of the Agreement

(ii) Korea - Anti-Dumping Duty Investigation of Imports of Polyacrylamide from France, the United Kingdom and the Federal Republic of Germany

(iii) EEC - Anti-Dumping Duty Investigations of Imports of Halogen Lamps and Audio Cassettes and Audio Tapes from Japan

L. Annual review and report to the CONTRACTING PARTIES

A. Examination of anti-dumping duty laws and/or regulations of Parties to the Agreement

(i) New Zealand (Dumping and Countervailing Duties Amendment Act 1990, document ADP/1/Add.15/Rev.1/Add.1)

4. The representative of New Zealand explained that the amendments made by the Dumping and Countervailing Duties Amendment Act 1990 fell into two broad areas. On the one hand, the Act contained amendments necessary to implement the agreement between New Zealand and Australia to remove the application of anti-dumping measures from trans-Tasman trade. On the other hand, the Act contained amendments of a technical nature intended to clarify or correct the provisions of the Dumping and Countervailing Duties Act 1988. With respect to the first category of amendments, she explained that during the review in 1988 of ANZCERTA, Australia and New Zealand had signed the Protocol to ANZCERTA on Acceleration of Free Trade in Goods. Under Article 4 of that Protocol it had been agreed that with effect from 1 July 1990 neither country would take anti-dumping action against goods originating in the territory of the other country. This agreement reflected the view that anti-dumping measures were no longer appropriate from the time of the achievement of both free trade in goods between the two countries on 1 July 1990 and the application of their competition laws to relevant anti-competitive conduct affecting trans-Tasman trade in goods. With respect to the second category of amendments, she noted that these amendments concerned inter alia the definition of the term "domestic industry"; this definition had been amended to take into account comments which had been made by the United States on the original definition of this term in the Dumping and Countervailing Duties Act 1988.

5. The Committee took note of the statement made by the representative of New Zealand. The Chairman said that the Committee would revert to the Dumping and Countervailing Duties Amendments Act 1990 at its next regular meeting.

(ii) Australia


6. The representative of Australia explained that the amendments notified to the Committee in document ADP/1/Add.18/Rev.1/Suppl.3 changed the Australian anti-dumping legislation in two aspects. Firstly, these amendments incorporated the administrative procedures for the application of anti-dumping and countervailing duties into the Customs Act 1901 and the Anti-Dumping Authority Act 1988, while the provisions whereby anti-dumping and countervailing duties were imposed remained under the Customs Tariff (Anti-Dumping) Act. He explained the reason for these amendments by pointing out that under Section 55 of the Australian Constitution taxing laws could only deal with the imposition of taxes and customs duties but could not include any provisions regarding administrative arrangements. A decision in 1989 by the High Court of Australia regarding an arrival tax.

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1 See documents ADP/W/195, 225, 237 and ADP/M/26, paragraphs 15 and 17.
imposed pursuant to the Migration Act had raised concerns about the provisions of the Customs Tariff (Anti-Dumping) Act in light of the requirements of Section 55 of the Constitution. Accordingly, that Act, as well as the Customs Act 1901 and the Anti-Dumping Authority Act 1988, had been amended. These amendments were solely of a procedural nature and did not in any substantive way affect the application of anti-dumping or countervailing duties by Australia. Secondly, the legislative changes made in 1989 had introduced a provision to the effect that, if a constructed value was used because home market sales were made over an extended period of time at prices below cost, the profit margin to be used in such a constructed value had to be zero. In cases where constructed value was used for reasons other than the presence of sales at prices below cost it would still be possible to use a positive margin of profit. These changes had been introduced following a Report prepared by the Anti-Dumping Authority in March 1989 ("Inquiry into Material Injury, Profit in Normal Values and Extended Period of Time"). While so far legislative amendments had been made only with respect to one element covered by this Report - the determination of profit in a constructed value - a Ministerial direction had been issued on 4 September 1990 to the Australian Customs Service and the Anti-Dumping Authority which dealt with the issue of the determination of material injury and the concept of an "extended period of time". His delegation would provide copies of this direction to the secretariat for circulation to the Parties to the Agreement.

7. With respect to the legislation circulated in document ADP/1/Add.18/Rev.1/Suppl.4 and Corr.1 (the Trade Practices (Misuse of Trans-Tasman Market Power) Act 1990), the representative of Australia explained that this legislation gave effect to Article 4 of the Protocol to ANZCERTA signed in 1988 under which New Zealand and Australia had agreed to remove the application of anti-dumping measures in their mutual trade as from 1 July 1990.

8. The representatives of Canada and Singapore reserved their delegations' rights to raise questions on the Australian legislation notified in documents ADP/1/Add.18/Rev.1/Suppl.3, 4 and Corr.1 at a later stage.

9. The Committee took note of the statements made and agreed to revert to the legislation circulated in the above-mentioned documents at its next regular meeting.

B. Anti-Dumping Authority Act 1988, Customs Legislation (Anti-Dumping) Amendment Act 1988 and Customs Tariff (Anti-Dumping) Amendment Act 1988 (document ADP/1/Add.18/Rev.1/Suppl.2)

10. The Chairman recalled that at the regular meeting in April 1990, the Committee had continued its examination of the amendments to the Australian anti-dumping legislation made in 1988 (ADP/M/28, paragraphs 50-56). At that meeting, the representatives of the EEC, Korea and Singapore had raised questions or indicated that they needed more time to study the responses which had been submitted in writing by Australia to questions asked by a number of delegations.
11. The representative of Singapore said that, while she had no further questions at this stage, she would like to have some time to review the legislation in document ADP/1/Add.18/Rev.1/Suppl.2 in light of the amendments recently notified by Australia.

12. The Committee took note of the statement made by the representative of Singapore and agreed to revert to the legislation in document ADP/1/Add.18/Rev.1/Suppl.2 at its next regular meeting.

(iii) United States

A. Anti-Dumping and Countervailing Duties: Interim Final Rule (document ADP/1/Add.3/Rev.4/Suppl.2)


14. No comments were made; the Committee agreed to revert to these regulations at its next regular meeting.

B. Revised anti-dumping duty regulations of the Department of Commerce (document ADP/1/Add.3/Rev.4/Suppl.1)

15. The Chairman noted that, following the regular meeting of the Committee in October 1989, written questions on these revised regulations had been submitted by the delegation of Canada (document ADP/W/264). The Committee had not yet received written responses from the United States to these questions.

16. The representative of the United States said that his delegation had provided the delegation of Canada written responses to the questions raised by Canada in document ADP/W/263 and would make a copy of these responses available for circulation to the Members of the Committee.

17. The Committee took note of the statement made by the representative of the United States and agreed to revert to the revised anti-dumping duty regulations of the Department of Commerce at its next regular meeting.


18. The Chairman recalled that at its regular meeting in April 1990, the Committee had continued its discussion of amendments to the United States anti-dumping legislation resulting from the Omnibus Trade and Competitiveness Act of 1988 and from the United States-Canada Free Trade Agreement Implementation Act of 1988 (document ADP/1/Add.3/Rev.4). The discussion of these amendments at the April meeting was recorded in document ADP/M/28, paragraphs 20-32. After the April meeting the
Committee had received in documents ADP/W/270, 271, 272 and 273 responses from the delegation of the United States to written questions raised by the delegations of Canada, Japan, Singapore and Hong Kong.

19. The representative of Hong Kong thanked the delegation of the United States for the answers it had provided in document ADP/W/272 to questions raised by her delegation in document ADP/W/244. Regarding Section 1317 of the Omnibus Trade and Competitiveness Act of 1988, she said that it was not clear from the provisions in this section what action would be taken by the United States' authorities if a third country was not prepared to take anti-dumping measures on behalf of the United States. In this respect, she emphasized that it was important that the provisions in this section be applied in a manner consistent with Article 12 of the Agreement and Article VI:6(b) of the General Agreement. She expressed concern about the possibility that under Section 1317(e) action might be taken against a country which refused to take anti-dumping measures on behalf of the United States and pointed to the difficulties this would cause for Parties, such as Hong Kong, which did not have an anti-dumping law. With respect to new Section 781 of the Tariff Act, dealing with the prevention of circumvention of anti-dumping duty orders, she said that her delegation still had concerns about the extension of the concept of "like product" and about the fact that the provisions in this section allowing for the inclusion within the scope of an anti-dumping duty order of products assembled in a third country failed to take account of differences between the costs of the product subject to the original order and the costs of the product assembled in the third country. Regarding the amendments in Section 771(7) of the Tariff Act concerning cumulative injury assessment, she reiterated her delegation's position that it was unfair to allow for an automatic cumulation of the effects of imports from various countries. The effects of imports from any exporting country had to be examined on an individual basis, in particular in cases involving countries with small and declining market shares.

20. The representative of Singapore thanked the delegation of the United States for the written answers provided in document ADP/W/273 to questions raised by her delegation in document ADP/W/251. With regard to the third country dumping provisions in Section 1317 of the Omnibus Trade and Competitiveness Act of 1988, she noted that these provisions would seem to be applicable only to Parties to the Agreement and not to contracting parties to the General Agreement which were not Parties to the Agreement. These provisions also seemed to suggest that, in a case a third country refused to take anti-dumping action on behalf of the United States, the United States could take retaliatory measures against such a country, which was inconsistent with Article 12:4 of the Agreement. The first sentence of Article 12:4 provided that "The decision whether or not to proceed with a case shall rest with the importing country". Furthermore, Article 12:4 also provided that when an importing country had decided that it was prepared to take action on behalf of another country, "the initiation of the approach to the CONTRACTING PARTIES seeking their approval for such action shall rest with the importing country". Referring to the answers given by the delegation of the United States concerning the amendment to
Section 773(e) of the Tariff Act on the valuation of inputs in constructed value calculations involving related parties, she expressed a concern that this new provision could be used to increase margins of dumping. This provision was based on the premise that if an input was purchased from a related party at a price less than the cost of production, such a transaction was not "in the ordinary course of trade". While the question of the treatment of home market sales at prices below the cost of production was the subject of negotiations in the Uruguay Round, she stressed that there was presently no agreement that such transactions should automatically be considered as not being "in the ordinary course of trade". Furthermore, it would appear that the basic thrust of the new provision was to ensure that the value of the input would be higher than the prevailing market price of the input.

21. Regarding the provisions in new Section 780 of the Tariff Act as amended, concerning downstream product monitoring, the representative of Singapore said that monitoring systems were not envisaged by Article VI of the General Agreement or by the provisions of the Agreement. She expressed concerns about the possible use of these monitoring provisions in a manner inconsistent with the spirit of the Agreement and referred in this respect to the Understanding reached in the Committee in 1981 on Article 8:4 of the Agreement which indicated that monitoring programmes were undesirable and should not be used as a substitute for the initiation of investigations in conformity with the provisions of the Agreement. Monitoring programmes had a serious trade-distortive effect. She considered that the possibility provided by new Section 780 for the self-initiation of investigations was inconsistent with the requirements of Article 5:1 in that there seemed to be no requirement of sufficient evidence of injury and dumping with respect to the downstream product. With respect to the provisions on the prevention of circumvention of anti-dumping duties in new Section 781 of the Tariff Act as amended, she reiterated the concerns of her delegation regarding the possibility laid down in these provisions to extend the scope of application of an anti-dumping duty order to products which were not like the product originally subject to the order. As such, these provisions disregarded the requirement in Article VI of the General Agreement and in the Agreement that anti-dumping duties only be imposed when it was determined, in an investigation which afforded all interested parties opportunities to defend their interests, that the product in question was being dumped and causing injury. Finally, she shared the concerns expressed by the representative of Hong Kong regarding provisions allowing for an automatic cumulation of imports from various countries. She was in particular concerned about the practice of cumulating imports from countries subject to anti-dumping investigations with imports from countries subject to countervailing duty investigations for which neither the Agreement nor the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement provided any legal basis. She concluded by reserving her delegation’s right to revert at a later date to the amendments to the anti-dumping legislation of the United States.

1BISD 28S/52.
22. The representative of the United States noted that many of the points raised by the representatives of Hong Kong and Singapore were being discussed in the Uruguay Round negotiations. With respect to the comments made on the provisions on third country dumping, he said that Section 1317 did not provide for action to be taken against an importing country which refused to take anti-dumping action on behalf of the United States. The United States would implement its legislation in full conformity with the requirements of Article VI:6(b) of the General Agreement and of Article 12 of the Agreement, and expected that an importing country requested to take action would also observe its obligations under these provisions. In this latter respect he mentioned in particular paragraph 3 of Article 12 which required that such an importing country consider the effects of the alleged dumping on the industry concerned as a whole in the country which made the request for the anti-dumping action. Regarding the question of cumulative injury assessment, he said that cumulation was not automatic under the United States anti-dumping law and that among the amendments made in 1988 was a provision exempting negligible imports from cumulation. On the provisions in the Omnibus Trade and Competitiveness Act on downstream product monitoring, he said that these provisions were in no way intended to be a substitute for the requirements of the Agreement regarding the initiation of anti-dumping investigations. In any instance of self-initiation of anti-dumping investigations the United States would fully abide by the provisions of Article 5:1 of the Agreement. He noted in this respect that the United States had seldom self-initiated an anti-dumping investigation.

23. The Committee took note of the statements made and agreed to revert to the amendments to the United States' anti-dumping legislation at its next regular meeting.

(iv) Korea (Amendment of the Presidential Decree of the Korean Customs Act on Anti-Dumping/Countervailing Duty, document ADP/1/Add.13/Rev.1/Suppl.1)

24. The Chairman recalled that at the regular meeting in April 1990, the Committee had continued its discussion of the recent amendments to the Presidential Decree implementing the anti-dumping duty provisions of the Korean Customs Act (ADP/M/28). The Committee had received in documents ADP/W/268 and 269 responses from the delegation of Korea to questions raised by the delegations of the EEC and Canada.

25. The representative of the EEC noted that paragraph III:1 of document ADP/W/268 mentioned the possibility that in case of affirmative findings of dumping and injury caused thereby, the Minister could decide that the application of a definitive anti-dumping measure "would be undesirable or unnecessary in the light of consumer welfare, possible negative impacts on other industries, etc.". He asked whether such a consideration of public interest factors was also provided for with respect to decisions whether to initiate anti-dumping duty investigations and decisions whether to apply provisional measures.
26. The representative of Korea replied that consideration of public interest factors could be a ground not to initiate an anti-dumping duty investigation but that it was also possible that the consideration of such factors during the course of an investigation resulted in a termination of that investigation.

27. The representative of the EEC asked whether public interest factors were also considered before the possible application of provisional measures and whether there were already concrete examples of cases in which the Korean authorities had refrained from the initiation of an investigation from the application of measures because of these public interest factors.

28. The representative of Korea said that his delegation would submit written responses to the questions raised by the representative of the EEC.

29. The Committee took note of the statements made and agreed to revert at its next regular meeting to the amendments to the Presidential Decree amending the anti-dumping duty provisions of the Korean Customs Act.

(v) Brazil (Customs Policy Resolution No. 00-1582, document ADP/1/Add.26/Suppl.2)

30. The Chairman recalled that at its regular meeting in April 1990, the Committee had continued its discussion of Customs Policy Resolution No. 00-1582 (ADP/M/28, paragraphs 12-16). The Committee had received in document ADP/W/277 responses from the delegation of Brazil to questions raised by the delegation of the EEC in document ADP/W/258.

31. The representative of the EEC recalled that at a previous meeting his delegation had expressed its concern that under the Brazilian anti-dumping legislation there was the possibility for the application of provisional measures at an early stage of an anti-dumping duty investigation. His delegation had studied the responses given by Brazil in document ADP/W/277 but it continued to have this concern. It would appear from these responses that provisional measures could be applied before interested parties had been in a position to adequately defend their interests.

32. The Committee took note of the statement made by the representative of the EEC. The Chairman said that the Committee had concluded its examination of Customs Policy Resolution No. 00-1582.


33. The Chairman recalled that at its regular meeting in April 1990, the Committee had continued its discussion of Council Regulation (EEC) No. 2423/88 (ADP/M/28, paragraphs 33-49). Documents ADP/W/207, 208 and 245-249 contained responses by the delegation of the EEC to questions raised by various delegations. Following the regular meeting in
October 1989, the Committee had received further questions and comments from the delegations of Japan, Singapore and Hong Kong in, respectively, documents ADP/W/252, 255 and 260, to which the representative of the EEC had replied orally at the meeting in April 1990.

34. The representative of Hong Kong said that her delegation was disappointed that the delegation of the EEC had not provided written answers to the questions raised by her delegation in document ADP/W/260. At the regular meeting in April, her delegation had expressed its appreciation for the oral replies given by the EEC but had also requested that these replies be submitted in writing. It seemed to her delegation that in its oral responses provided at the April meeting the delegation of the EEC had not fully covered all the points raised in document ADP/W/260. In this context, she mentioned in particular the question relating to the choice between the use of a constructed value and the use of export prices to a third country. She noted that at the April meeting the representative of the EEC had indicated that the use of export prices to a third country as a basis for determining normal value was not excluded. However, it remained unclear what the precise criteria were which the EEC used for deciding in particular cases whether or not to base normal value on export prices to a third country and she requested the delegation of the EEC to provide a further explanation in this regard. She reiterated her delegation's disagreement with the view expressed on previous occasions by the delegation of the EEC that, if an exporter was dumping in one market, it was likely that the exporter was also dumping in markets of third countries. She noted the explanation provided by the delegation of the EEC of the provisions of Article 13;11 of Council Regulation (EEC) No. 2423/88 but her delegation nevertheless continued to doubt that the EEC was entitled to increase anti-dumping duties in situations where the prices at which imported products were resold in the EEC did not fully reflect the amount of the anti-dumping duties imposed. She concluded by reiterating her request for written answers by the delegation of the EEC to the questions raised by her delegation in document ADP/W/260.

35. The representative of Japan expressed his appreciation for the replies provided orally by the delegation of the EEC to the questions asked by Japan in document ADP/W/252; however, in order to enable his authorities to study in greater detail the issues addressed in these answers, he requested the delegation of the EEC to provide its replies in writing.

36. The representative of Singapore requested the delegation of the EEC to provide written answers to the questions raised by her delegation in document ADP/W/255 and reserved her delegation's right to revert to Council Regulation (EEC) No. 2423/88 at the next regular meeting.

37. The representative of the EEC said that the Committee had examined in detail the provisions of Council Regulation (EEC) No. 2423/88, adopted in July 1988. During the course of this examination a number of delegations had submitted questions in writing and his delegation had provided written answers to these questions. In addition, at the regular meeting in April 1990 his delegation had responded orally to further written questions.
which had been asked by a number of delegations. His delegation considered that the Committee had exhausted its discussion of the Regulation under consideration and in this regard he recalled that, while at the regular meeting held in April the Chairman had invited delegations which wished to ask further questions on the Regulation to do so by 15 June 1990, the Committee had not received any further questions.

38. The Committee took note of the statements made and agreed to revert to Council Regulation (EEC) No. 2423/88 at its next regular meeting.

(vii) Canada (Special Import Measures Act, as amended, and Regulations implementing the Special Import Measures Act, as amended, document ADP/1/Add.6/Rev.3)

39. The Committee had before it in document ADP/1/Add.6/Rev.3 a consolidated text of the recently amended Special Import Measures Act and of the Regulations implementing the Special Import Measures Act.

40. The representative of Canada said that the recent amendments to the Special Import Measures Act and to the Regulations implementing that Act resulted from the Canada-United States Free Trade Agreement. These amendments reflected the establishment under the Free Trade Agreement of a dispute settlement mechanism to review final determinations in anti-dumping duty investigations. Under this mechanism a bi-national panel could review final determinations made by the relevant authorities of the two Parties to the Agreement. The panel was required to determine, on the basis of the same standards which would have been applied by domestic courts, whether existing anti-dumping laws were applied correctly. Findings by a panel established pursuant to this mechanism were binding on the Governments of Canada and the United States. Should such a panel determine that the administering authority in question had erred, it could send the matter back to that authority to correct the error and render a new decision. Under this mechanism, only the Governments of the two Parties could request the establishment of a panel, but each Government was required to do so at the request of any private party which was otherwise entitled under the law of the importing Party to commence domestic procedures for judicial review. The recent amendments were only of a procedural nature and did not in any substantive manner affect the application of the Canadian anti-dumping legislation.

41. The Committee took note of the statement made by the representative of Canada and agreed to revert at its next regular meeting to the amendments to the Canadian anti-dumping legislation notified in document ADP/1/Add.6/Rev.3.

(viii) Other legislation

42. No comments were made under this item. The Committee agreed to keep this item on the agenda for its next regular meeting.
B. Semi-annual reports of anti-dumping actions taken by the United States and Mexico during the period 1 July-31 December 1989 (ADP/46/Add.8 and 9)

43. The Chairman said that the above-mentioned two reports were on the agenda of this meeting because they had not been submitted in time for examination by the Committee at its meeting in April 1990.

44. No comments were made on these two reports.

C. Semi-Annual Reports of anti-dumping actions taken during the period 1 January-30 June 1990 (ADP/48 and addenda)

45. The Chairman said that the following Parties to the Agreement had informed the secretariat that they had not taken any anti-dumping actions during the period 1 January-30 June 1990: Brazil, Egypt, Hong Kong, Hungary, Norway, Romania, Singapore, Switzerland and Yugoslavia. Semi-annual reports from countries which had taken anti-dumping actions during this period had been circulated in documents ADP/48/Add.2-8. No semi-annual reports for this period had been received from Austria, Czechoslovakia, India, Japan, Pakistan, Poland and Sweden. The Committee had very recently received a semi-annual report from the delegation of Australia. This report would be circulated in document ADP/48/Add.10 and would be discussed at the next regular meeting of the Committee.

46. The Committee examined the semi-annual reports by the Parties which had notified anti-dumping measures taken during the first half of 1990 in the order in which these reports had been circulated:

- New Zealand (ADP/48/Add.2)
  47. No comments were made on this report.
- Korea (ADP/48/Add.3)
  48. The representative of the EEC made comments on this report under "Other business" (see paragraphs 90-106).
- Finland (ADP/48/Add.4)
  49. No comments were made on this report.
- Mexico (ADP/48/Add.5)
  50. No comments were made on this report.

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1 Subsequent to the meeting, the secretariat received a semi-annual report from Sweden which has been circulated in document ADP/48/Add.9.
51. The representative of Hong Kong made several comments on the anti-dumping proceedings reported on page 6 of document ADP/48/Add.6 regarding sweaters of man-made fibre from Hong Kong. This was one of the proceedings she had referred to in a statement made at the regular meeting in October 1989 concerning the initiation of anti-dumping investigations on products subject to quantitative import restrictions imposed under the Multi-Fibre Arrangement (ADP/M/27, paragraph 159). She reiterated the concerns of her authorities in this respect and noted that the particular product subject to the investigation referred to in document ADP/48/Add.6 had been subject to quantitative import restrictions in the United States since 1971. Her authorities had closely followed this investigation and were in particular concerned about the manner in which the normal value had been calculated and about the problem of the standing of the petitioner upon whose request the investigation had been opened. Her authorities would continue to study these aspects and, if necessary, conduct bilateral discussions with the United States at a later stage. She requested the delegation of the United States to explain why in document ADP/48/Add.6 the volume of trade in the product subject to investigation had been expressed in terms of value, while in the previous semi-annual report by the United States the trade volume for this product had been expressed in terms of units (ADP/46/Add.8, page 5). She noted that for Korea and Taiwan trade volume in document ADP/48/Add.6 had been expressed in value. Finally, she asked whether the percentage mentioned in column 13 on page 6 of document ADP/48/Add.6 concerning sweaters from Hong Kong was a percentage of the value of exports of sweaters from Hong Kong or of the quantities of these exports.

52. The representative of the United States said that his delegation would provide a response to the questions raised by the representative of Hong Kong at a later stage.

53. The Committee took note of the statements made.

Canada (ADP/48/Add.7)

54. No comments were made on this report.

EEC (ADP/48/Add.8)

55. No comments were made on this report.

D. Reports on all preliminary or final anti-dumping actions (ADP/W/274, 275, 278 and 279)

56. The Chairman noted that notifications of preliminary and final anti-dumping determinations had been received from the delegations of Canada, the EEC, the United States and Australia.

57. No comments were made on these notifications.

58. The Chairman said that so far the Committee had not been in a position to adopt the above-mentioned Draft Recommendation, which had been submitted to the Committee in April 1989. He noted that the matter addressed in this Draft Recommendation was among the issues discussed in the Uruguay Round.

59. No comments were made on this item. The Chairman said that the Committee would revert to this matter at its next regular meeting.

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

60. The Chairman said that the Report of this Panel had been the subject of discussions in the Committee at a special meeting held on 25 September 1990 (ADP/M/29). At that meeting a number of delegations had expressed support for the adoption of this Report, while the delegation of the United States had indicated that it needed more time to complete its review of the Report. Although this item had therefore been inscribed on the agenda of this regular meeting, the delegations of Sweden and the United States had made a joint request that the Committee postpone its further discussion of this Report to a later date, possibly on the occasion of a special meeting. The Chairman therefore proposed that the Committee postpone its discussion of this Report. It was so agreed.

G. United States - Anti-Dumping Duties on Imports of Anti-Friction Bearings from Sweden

61. The Chairman recalled that the Committee had discussed this matter in October 1989 and had reverted to it at its regular meeting held in April 1990 (ADP/M/28, paragraphs 88-93). At the request of the delegation of Sweden the Committee had agreed to keep this item on the agenda for this regular meeting.

62. The representative of Sweden emphasized the complexity of the anti-friction bearings case. His delegation had received information from the United States in response to the questions which it had raised but his authorities needed more time to study this information. He therefore requested that the Committee keep this item on the agenda for its next regular meeting.

63. The Committee took note of the statement made by the representative of Sweden and agreed to revert to this matter at its next regular meeting.
H. United States - Anti-Dumping Duties on Imports of Urea from Romania

64. The Chairman said that, at the request of the delegation of Romania, the Committee had agreed at its last meeting to revert to this matter at its next regular meeting.

65. The representative of Romania asked whether the anti-dumping duty order on urea from Romania, mentioned on page 18 of document ADP/48/Add.6, was still in force.

66. The representative of the United States confirmed that this anti-dumping duty order was still in force.

67. The representative of Romania considered that the anti-dumping duty investigation of imports of urea, which had led to the imposition of a definitive anti-dumping duty of approximately 90 per cent, had not been conducted in full conformity with the provisions of the Agreement. He noted that only 1.8 per cent of the production capacity of urea in Romania was exported to the United States, which made it unlikely that the exports of urea from Romania could have caused injury to domestic producers in the United States. The United States' authorities had also made certain errors in the calculation of the normal value, in particular with respect to the price of natural gas. He urged the United States to re-examine the anti-dumping duty imposed in light of the provisions of Article 9 of the Agreement.

68. The representative of the United States said that, if the delegation of Romania considered that the investigation resulting in the imposition of an anti-dumping duty on imports of urea from Romania had not been entirely consistent with the provisions of the Agreement, it could request bilateral consultations with the United States under Article 15 of the Agreement. With respect to the request by the representative of Romania for a review of the anti-dumping duty, he explained that there was under the anti-dumping legislation of the United States the possibility of an annual review upon request of the amount of the anti-dumping duty.

69. The representative of Romania said that his delegation would seek bilateral consultations with the United States on this matter. In light of these consultations, it would decide whether it wished to revert to this matter at the next regular meeting.

70. The Committee took note of the statements made.

I. United States - Procedures for administrative reviews of anti-dumping duty orders

71. The Chairman recalled that the Committee had discussed this matter at its regular meeting in October 1989 at the request of the delegation of Canada and had reverted to it at its regular meeting in April 1990 (ADP/M/28, paragraphs 97-102).
72. The representative of Canada reiterated that the problem of the delay in the completion of administrative reviews in the United States was of great importance to his authorities as it entailed uncertainty for Canadian exporters regarding their liability for payment of anti-dumping duties. His delegation had noted the statement made by the representative of the United States at the last regular meeting of the Committee that steps were being taken to address this matter. While several administrative reviews had been completed by the United States' authorities over the last year, there was still a significant backlog in the number of outstanding review procedures. This resulted in a heavy financial burden for Canadian exporters, who were required to make cash deposits, even though their actual margin of dumping might be lower than estimated or non-existent. His delegation had in the past made several suggestions to the United States regarding possible solutions to this problem. One such possible solution was the adoption of a sunset clause by the United States. He noted in this respect that Canada's experience with the sunset clause in its anti-dumping legislation had been very satisfactory for all parties involved. During the first six months of 1990, twenty-four anti-dumping measures had been terminated on the basis of this sunset clause. As shown by the most recent semi-annual report submitted by the United States (ADP/48/Add.6), there were currently some 192 anti-dumping measures in force in the United States, which inevitably made it very difficult for the United States' authorities to complete the administrative reviews in a timely fashion. His delegation might wish to revert to this matter at the next regular meeting of the Committee.

73. The representative of the United States said that he had taken note of the concerns expressed by the representative of Canada. His authorities had taken steps to ensure that administrative review procedures would be accelerated and the more recent reviews were completed within the one-year time limit. Regarding the suggestion by the Canadian representative that the United States should adopt a sunset provision, he noted that the United States already had such a provision and that a possible modification of this provision was the subject of discussion in other fora.

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

J. United States - Anti-Circumvention Inquiry with respect to colour television picture tubes

75. The Chairman said that this matter was on the agenda of this meeting at the request of the delegation of Canada. He noted in this connection that the delegations of Canada and Mexico had requested bilateral consultations under Article 15:2 of the Agreement with the United States on this matter (see, respectively, documents ADP/50 and 52).

76. The representative of Canada said that his delegation had requested the inclusion of this matter on the agenda of this meeting to bring to the Committee's attention the serious concerns of Canada regarding the initiation by the United States Department of Commerce on 27 August 1990 of
an inquiry respecting the alleged circumvention of the existing anti-dumping duty order on colour picture tubes from various countries, including Canada. The United States' authorities were investigating whether the shipment of colour picture tubes to Mexico, their assembly into colour television sets, and the exports of these television sets to the United States constituted a circumvention of the anti-dumping duty order imposed in 1987 on colour picture tubes from Canada, Japan, Singapore and Korea. If, as a result of this inquiry, the existing anti-dumping duty order on colour picture tubes was extended to include colour television sets from Mexico, Canadian exports of colour picture tubes to Mexico would be adversely affected. The Canadian authorities considered this anti-circumvention inquiry unwarranted and unjustified. The important question of circumvention of anti-dumping measures was the subject of discussions in the Uruguay Round. However, at this time anti-circumvention measures were not provided for in the Agreement or in the General Agreement. If it was believed that the domestic industry producing television sets in the United States was being injured by allegedly dumped imports of television sets, the appropriate course of action for the United States would be to initiate a new investigation of the imports of those allegedly dumped television sets. His delegation had requested bilateral consultations with the United States on this matter under Article 15:2 of the Agreement and under Article XXII of the General Agreement. Depending upon the outcome of those consultations, his delegation might wish to request the Committee to revert to this matter at a future meeting.

77. The representative of Mexico said that the initiation on 27 August 1990 by the United States Department of Commerce of an inquiry to determine whether circumvention of anti-dumping duties on imports of colour picture tubes occurred as a result of assembly operations in Mexico was a cause of serious concern for his authorities. Neither the Agreement nor the General Agreement provided for this type of action and the provisions in the legislation of the United States under which this action was taken were not in conformity with the definition of the term "like product" in the Agreement. This action was not the only action recently taken by the United States with respect to Mexican television sets; since 1988 the United States had been monitoring imports of television sets from Mexico with a view to determining whether grounds existed for the initiation of an anti-dumping duty investigation. These actions had had a negative impact on an industry which was very important for Mexico. His delegation had requested bilateral consultations with the United States on this matter under Article 15:2 of the Agreement. He expressed the hope that these consultations would be successful, but reserved his delegation's right to take any further steps which might be necessary.

78. The representative of Japan said that on the basis of a preliminary examination, his authorities considered that the inquiry initiated by the United States into the alleged circumvention of anti-dumping duties on imports of colour picture tubes through assembly operations in Mexico was contrary to the provisions of the Agreement and of the General Agreement. This action also conflicted with provisions of the anti-dumping legislation
of the United States and was unsupported by the facts known to the Department of Commerce at the time of the initiation of this inquiry. This inquiry should therefore be terminated immediately. The General Agreement and the Agreement clearly prohibited the imposition of an anti-dumping duty absent a determination that imports of the product in question were being dumped and causing injury to the domestic industry producing the like product in the importing country. However, the United States International Trade Commission (USITC) had found that the product subject to the outstanding anti-dumping duty - colour picture tubes - were not like the product imported from Mexico - colour television sets. Thus, if an anti-dumping duty were imposed on the colour television sets from Mexico, this duty would be imposed without there being a finding that injury was being caused by those imports to a domestic industry in the United States producing the like product. This would be in violation of the obligations of the United States under the Agreement. Furthermore, at the time of the initiation of the inquiry the facts known to the United States' authorities showed that, even under the most extreme interpretation of the relevant provisions of the anti-dumping legislation of the United States, there was no basis for this action. The relevant provision of the United States legislation provided that an anti-dumping duty order could be extended to a product only if the difference between the value of that product and the value of the product subject to the original anti-dumping duty order was small. However, the request for the initiation of the inquiry with respect to the assembly operations in Mexico contained data showing that in this case this difference in value varied between 40 and 65 per cent. The fact that the difference in value was so large should have been a sufficient basis for the Department of Commerce to decline to initiate this inquiry. His authorities considered that the initiation of this inquiry constituted a form of harassment of television manufacturers and their suppliers and strongly objected to the continuation of this inquiry. He concluded by reserving his delegation's rights under the Agreement, including the right to request the establishment of a panel under Article 15 to examine whether this action by the United States was in conformity with the obligations of the United States under the Agreement.

79. The representative of Singapore shared the concerns expressed by other delegations regarding the initiation of an anti-circumvention inquiry by the United States with respect to colour picture tubes assembled in the United States. The provisions of the Agreement required that a determination be made that an imported product was being dumped and causing injury to a domestic industry producing a like product before an anti-dumping duty was applied. The action taken by the United States was in conflict with this requirement in that it could result in the extension of the scope of application of an existing anti-dumping duty order to a product which was not like the product subject to the original anti-dumping duty without a new investigation to determine dumping and injury. This inquiry constituted a very dangerous precedent for similar proceedings against fairly traded products which might incidentally contain inputs subject to an anti-dumping duty in the United States. She urged the United States to terminate this inquiry.
80. The representative of Hungary said that, as a host country for foreign investment, his country was concerned that at this delicate stage of the negotiations in the Uruguay Round there was a proliferation of anti-circumvention proceedings. He expressed in particular concern about such proceedings against alleged circumvention through operations in third countries. His authorities would therefore follow with great attention the anti-circumvention inquiry initiated by the United States with respect to colour television receiver sets assembled in Mexico.

81. The representative of the EEC said that the problem of circumvention of anti-dumping measures had been the subject of debate for some time. This matter was being discussed in depth in the Uruguay Round but these discussions had unfortunately not yet led to a satisfactory result. His delegation fully understood the concerns of the authorities of the United States in cases such as the one now being discussed by the Committee. While his delegation was not in a position to pronounce itself on the precise facts involved in the action taken by the United States, he stressed that it was of the utmost importance for investigating authorities to be able to take effective measures in case of circumvention of an existing anti-dumping measure.

82. The representative of Mexico said that it was interesting that the EEC did not have a provision in its anti-dumping legislation addressing the question of possible circumvention of anti-dumping duties through assembly operations in a third country.

83. The representative of Hong Kong said that her delegation shared the concerns expressed by other delegations regarding the anti-circumvention inquiry initiated by the United States with respect to colour television receivers from Mexico.

84. The representative of Korea said that his delegation shared the concerns expressed by the representative of Canada.

85. The representative of the United States said that inherent in the authority provided by the Agreement and by the provisions of Article VI of the General Agreement to apply anti-dumping measures was the ability to protect the integrity of such measures. Evasion or circumvention of anti-dumping measures, applied in a manner consistent with Article VI of the General Agreement and with the Agreement contravened the purpose of these provisions, undermined the objectives of the General Agreement and the Agreement and provided an appropriate basis for further action to prevent injurious dumping. The text and interpretative history of Article VI of the General Agreement indicated that a contracting party could legitimately safeguard the effect of a properly applied anti-dumping measure through the establishment and administration of an anti-circumvention mechanism consistent with the General Agreement. Referring to the comments made by the representative of Hungary, he noted that a Report of a GATT Working Party had specifically addressed the problem of "indirect" dumping through a third country. In enacting the anti-circumvention provisions of the United States' anti-dumping law,
Congress had ensured that these provisions would be consistent with the General Agreement. In particular, Congress had provided for advice by the USITC on the injury aspect. Thus, the USITC could provide its opinion as to whether a proposed extension of the scope of application of an anti-dumping duty order was consistent with its injury determination in the original investigation which had led to that order. With respect to the specific case of the anti-circumvention inquiry involving colour television sets from Mexico, he emphasized that the initiation of this investigation had not led to a suspension of liquidation of the products involved. Furthermore, the Department of Commerce had taken the necessary steps to ensure that this inquiry would be conducted in as rapid a manner as possible. Finally, he noted that there had not been any comments in the Committee regarding the methodology and procedures followed by the Department of Commerce in an earlier anti-circumvention inquiry, concerning forklift trucks from Japan. He concluded by saying that his delegation looked forward to the bilateral consultations with the delegations of Canada and Mexico.

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

K. Other business

(i) United States - Anti-dumping duties on cement and cement clinker from Mexico - Request by Mexico for consultations with the United States under Article 15:2 of the Agreement

87. The representative of Mexico drew the attention of the Committee to final determinations made by the USITC and the United States Department of Commerce on 23 and 27 August 1990, respectively, with respect to imports of cement and cement clinker from Mexico. The dumping margin established in this case was approximately 60 per cent. His authorities had problems with certain aspects of these determinations; he mentioned in particular the manner in which the USITC had applied in this case the provisions of the Agreement concerning the determination of injury to an industry in a particular region. He emphasized the importance of the cement industry for the Mexican economy. His authorities had requested bilateral consultations on this matter with the United States under Article 15:2 of the Agreement (document ADP/51).

88. The representative of the United States said that his delegation was looking forward to having bilateral consultations with Mexico at a mutually convenient time.

89. The Committee took note of the statements made.

(ii) Korea - Anti-dumping investigation of imports of polyacrylamide from France, the United Kingdom and the Federal Republic of Germany

90. The representative of the EEC, referring to document ADP/48/Add.3, said that recently the exporting firms involved in the investigation of imports of polyacrylamide from France, the United Kingdom and the Federal
Republic of Germany had recently been informed by the Korean authorities that they would include non-governmental experts in the team which would conduct on-site verifications. These non-governmental experts were accountants employed by a Korean subsidiary of a large auditors company. His delegation did not object to this in principle, but considered that a strict observance of the relevant paragraphs of the Recommendation adopted by the Committee in 1983 was necessary. He therefore requested the Korean delegation to explain what were the exceptional circumstances which had made it necessary to include non-governmental experts in the investigation team and how the Korean authorities would ensure that no breach of confidentiality requirements would occur.

91. The representative of Korea said that non-governmental experts had been included in the team because of a lack of expertise available in the Korean Government. He noted that the exporting companies concerned had agreed to this procedure. These experts had in the meantime acquired the status of civil servants. His authorities would fully observe the provisions of the Committee Recommendation referred to by the representative of the EEC and adequate protection would be provided to confidential information.

92. The representative of the EEC asked as of when the experts had become civil servants.

93. The representative of Korea said that these experts were being employed as civil servants on a temporary basis.

94. The representative of the EEC reiterated his request that the delegation of Korea explain why there were in this exception circumstances which made it necessary to include non-governmental experts in the investigation team.

95. The representative of Korea said that his delegation would provide a response to this question in further bilateral consultations with the delegation of the EEC.

96. The representative of the EEC asked whether the exporting firms involved in this investigation would have a possibility to make an additional submission, in particular with respect to the question of injury, and how the Korean authorities would make a determination of injury. He also asked whether, in case an affirmative determination of dumping and injury were made, the Korean authorities would calculate a level of duty sufficient to remove the injury.

97. The representative of Korea said that his delegation would respond to these questions in writing.

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98. The representative of the EEC asked when the Korean authorities expected to be able to issue preliminary determinations in this case.

99. The representative of Korea said that preliminary determinations would be made by the end of November 1990.

100. The representative of the United States echoed the comments made by the representative of the EEC regarding the inclusion of non-governmental experts in investigation teams for on-site investigations and asked whether it was the intention of the Korean authorities to continue this practice in future cases.

101. The representative of Korea said that there was no clear provision in the Agreement that non-governmental experts could not be part of investigation teams for on-site verifications. However, his authorities would reconsider this matter.

102. The representative of the United States said that he understood the difficulties which might be encountered by countries which started to apply anti-dumping measures. His authorities were ready to offer technical assistance to such countries.

103. The representative of the EEC said that his previous comments should not be interpreted to mean that his delegation considered that the inclusion of non-governmental experts in a team for an on-site verification was inconsistent with the Agreement. However, this should only be done in exceptional circumstances. His delegation was concerned about the Korean practice in this regard, especially in view of the rumours that approximately 200 anti-dumping investigations were about to be opened by the Korean authorities.

104. The representative of Canada hoped that, in the interest of transparency, the delegation of Korea would keep the Committee informed of any further developments with respect to the issues discussed.

105. The representative of Korea said that he would convey to his authorities the statements on this matter. He reiterated that in the case referred to by the delegation of the EEC, the exporters involved had agreed to the procedures adopted by the Korean authorities.

106. The Committee took note of the statements made.

(iii) EEC - Anti-dumping duty investigations of imports of halogen lamps and audio cassettes and audio tapes from Japan

107. The representative of Japan made a number of comments on two recent anti-dumping duty investigations conducted by the EEC. One of these investigations concerned imports of halogen lamps from Japan, while the other investigation concerned imports of audio cassettes and audio tapes from Japan.
108. Regarding the proceeding involving imports of halogen lamps, the representative of Japan noted that a provisional anti-dumping duty had been imposed by the EEC on 17 July 1990, the lowest rate of which was 71.7 per cent ad valorem while the highest rate of duty was 85.4 per cent ad valorem. His authorities had a number of problems with the determination on which these duties were based. Firstly, nine models produced and exported by three Japanese firms were covered by the investigation. Only one firm had been found to have sufficient sales on the domestic market of two of these models to serve as the basis for the establishment of the normal value. On the basis of these sales, the EEC had found a margin of dumping of 146.9 per cent ad valorem. It had also used data relating to these sales in the calculation of dumping margins for the other models sold by that firm and for all models sold by two firms. The result had been extremely high margins of dumping. While reasonable information was available on domestic prices and export prices to third countries of other products, the EEC authorities had completely ignored this information. His authorities believed that the methodology used by the EEC was inconsistent with Article 2:4 of the Agreement which provided inter alia that in a constructed value calculation the amount for profit "shall not exceed the profit normally realized on sales of products of the same general category in the domestic market of the country of origin". Secondly, while the EEC, in constructing the normal value, had used data on profits realized by other producers, the firms for which the normal value had been constructed had not been in a position to examine those data because of confidentiality requirements. His delegation considered that, if in a constructed value calculation profit data of other producers were used, the firms for which the normal value was constructed had to have at least some access to such data in order to be able to defend their interests. He requested the EEC to reconsider the measure it had taken in this proceeding in light of the above-mentioned issues.

109. Regarding the investigation of imports of audio tapes and audio cassettes, the representative of Japan said that it was reported that provisional measures would be applied in this proceeding in the very near future. With respect to the audio cassettes, he expressed his concern that despite the fact that there was hardly any price undercutting and that the market share of the imports was even declining, an affirmative injury determination could be made. His authorities considered that this would be inconsistent with Article 3:4 of the Agreement which indicated that the examination of factors other than the allegedly dumped imports which might be causing injury to the domestic industry was an essential element in an injury determination. With regard to audio tapes, he said that the initiation of an investigation in the absence of any evidence of injury violated Article 5:1 of the Agreement. The EEC had attributed the injury caused by the imports of audio tapes to the injury caused by the cassettes. However, audio tapes and audio cassettes could not be considered to constitute one single like product. Consequently the manner in which the EEC had examined the existence of injury caused by the imports of audio tapes conflicted with the provisions of Article 3 of the Agreement, which required that the existence of injury be examined in relation to the
domestic industry producing the like product. He concluded by requesting the 
EEC to reconsider this matter and to take account of the 
above-mentioned issues.

110. The representative of the EEC said that in the final stage of the two 
investigations referred to by the representative of Japan his authorities 
would review the findings reached in the preliminary determinations. He 
noted that, in accordance with normal practice of the EEC, the firms 
involved would be provided with all the necessary information before final 
determinations were made and that these firms would have the opportunity to 
make any further relevant comments. His authorities would take into 
account the comments made by the representative of Japan.

111. The representative of Japan reserved his delegation's right to revert 
at a later stage to the investigations concerning halogen lamps and audio 
tapes and audio cassettes.

112. The Committee took note of the statements made.

L. Annual Review and Report of the CONTRACTING PARTIES

113. The Committee adopted its Report (1990) to the CONTRACTING PARTIES 
(document L/6467).

Date of the Next Regular Meeting of the Committee

114. The Chairman said that, in accordance with the decision taken by the 
Committee in April 1981, the next regular meeting of the Committee would 
take place in the week of 29 April 1991.