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ON TARIFFS AND TRADE**

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Committee on Anti-Dumping Practices

MINUTES OF THE MEETING
HELD ON 22 OCTOBER 1996

Chairman: Mr. O. Lundby (Norway)

1. The Committee on Anti-Dumping Practices ("the Committee") held a special meeting on 22 October 1996, called at the request of Japan in accordance with the Committee's decision ADP/132.
2. The Chairman noted that, as set forth in GATT/AIR/3719 (26 September 1996) Japan requested this special meeting to discuss the Report of the Panel in the dispute between Japan and the European Community regarding the EC's imposition of anti-dumping duties on audio cassettes originating in Japan. Subsequently the delegation of Mexico had requested that the Committee also discuss the report of the Panel regarding the US imposition of anti-dumping duties on Gray Portland cement and cement plinker from Mexico, as set forth in Addendum 1 to GATT/AIR/3719 (7 October 1996). The delegation of Canada then requested that the Committee undertake conciliation in a dispute between Canada and Mexico involving Mexico's imposition of anti-dumping duties of imports of certain steel from Canada as set forth in Addendum 2 to GATT/AIR/3719 (11 October 1996).

European Community - Anti-Dumping Duties on Audio Cassettes Originating in Japan - Report of the Panel (ADP/136)

3. The delegate of Japan observed that the transition period from the Tokyo Round Code to the WTO Agreement would expire at the end of this year and thus, only two months remained to discuss the adoption of the audio-cassette report. At the previous meeting, almost all Members who spoke supported adoption. Japan wished to remind the Party opposing adoption of the principle that reports should be adopted whenever possible. Japan asserted that a Party that claims itself as an honest supporter of effective dispute settlement mechanism in the WTO should agree to the adoption of the Panel report with no more delay. Japan believed that the Panel had made significant progress in stating rules on the issue of symmetry that were both fair and clear in their meaning. The Committee would be failing in its responsibilities if it simply discarded the Panel's contribution to the elucidation of this complex issue.
4. He noted that, although at the last meeting of the Committee, the Report could not be adopted because of opposition from the EC, Japan continued to request the EC to agree to adoption. In Japan's view, the EC seemed to be concerned not so much about the Panel's conclusions but about the possible implications of those conclusions. If panel reports were examined with a fine tooth-comb, it would always be possible to find points which could, if taken out of context or viewed in the wrong light, appear unsatisfactory. But if that were the basis for decision, no GATT report would ever have been adopted. The appropriate basis in examining Panel reports was commonsense. This was also the basis on which future Panels could be expected to rely when considering the Report of audio-cassette Panel. On that basis, in Japan's view, the EC's fears about the implications of this report were exaggerated and alarmist. Japan therefore requested the EC to withdraw its opposition and called on Members to support its request for the Committee to adopt the Report of the Panel.

5. The delegates of Mexico, Brazil, Singapore, Hong Kong and Korea supported Japan's request.
6. The delegate of Canada expressed concern about the effects the Panel's finding could have, notably in relation to evidentiary requirements, which in Canada's view could lead to an increase in the use of best information available. Nonetheless, Canada would be prepared to join in any consensus in the adoption of the report at this present time.
7. The delegate of the European Community observed that there were no new elements in this discussion since the Committee's last meeting, and reiterated that the EC had difficulties in accepting the Panel report. Although it was in large part favourable to the Community, the EC was concerned mainly that it could be interpreted in a way which, in the EC's view, would be inconsistent with the Code. He noted that the minutes of the 29 April meeting contained, in paragraphs 6-14, a detailed explanation of the EC's concern, which he did not wish to repeat. However, he observed that the discussion in the Committee had shown that the report of the Panel could be interpreted in ways that confirmed the concerns and fears of the Community.
8. He observed that, while the EC's position regarding adoption had not changed, he wished to inform the Committee that the EC was about to amend its legislation, in particular in order to deal with situations which had not been foreseen under the existing legislation relating to the exclusive nature of the list of possible adjustments. The EC believed that the legislative process would be finalized soon, and the changed legislation would be notified and would very likely give rise to discussions.
9. The delegate of Japan thanked the delegate of the EC for explaining the situation, and stated that Japan was not satisfied by the explanation. Japan appreciated the EC's efforts to amend its legislation to bring it in line with the Panel's conclusion, and would carefully analyze the extent to which the EC respected the conclusion of the Panel report when the changed Regulation was notified. Nevertheless, the amendment of the EC's legislation was one thing, and adoption of the Panel Report was another. He reiterated Japan's belief that the Report should be adopted.
10. The delegate of Japan reported that a careful analysis of the points made by the EC at the last meeting of the Committee had been made, and observed that the reasons put forth by the EC did not justify opposition to adoption of the Panel report. The EC had pointed to four paragraphs of the Panel report as the basis for its opposition to adoption of the Panel Report.
11. Regarding paragraph 371, the EC had accepted at the last Committee Meeting that paragraph 371 did not go so far as to say that indirect expenses must always be the subject of an allowance. It just referred to the unreasonable situation that would arise from the complete exclusion of allowances for indirect costs. The fact that paragraph 371 did not give guidance as to the cases where due allowance should be made regarding indirect expenses could not be the reason for rejecting adoption.
12. Regarding paragraph 372, the EC had said that "the Panel appeared to complicate the matter further by advocating a case by case decision on treatment of indirect expenses". The EC went on to say that "suggesting that Members could not develop consistent and transparent policy in this area". In Japan's view, this was arbitrary interpretation of the Panel report by the EC. The Panel Report never suggested this point. The report just said "the Panel concurred that Article 2.6 envisioned a case by case analysis of the normal value and export prices being compared to determine whether adjustments were necessary". The EC's mistaken interpretation of the Panel Report could not be the reason for non-adoption.
13. Third, on paragraph 374 the EC had been concerned that the paragraph seemed to indicate that due allowance was necessary even when differences in indirect costs and profits did not affect price comparability. However, in Japan's view, first the Panel Report did not say this, and secondly

there was no evidence that any Party interpreted the report in this way. For example, both Japan and Hong Kong were of the view that due allowance was necessary only if differences in indirect costs and profits affect price comparability.

14. Lastly, on paragraph 376, the EC had said that in the Uruguay Round negotiations no reference could be found to suggest that differences in profit were ever intended to be considered to be the subject of an allowance. However, the language in Article 2.6 had to be interpreted on its own merits, and the Panel's determination was logical and reasonable.

15. In sum, Japan was of the view that the legal problems the EC referred to at Committee meeting were either irrelevant or already taken care of. Japan again strongly requested the EC not to block the adoption of the Panel Report.

16. The delegate of the EC noted that the Community continued to have concerns with paragraphs 371, 372, 374 and 376 of the report. Regarding paragraph 371, the EC was concerned that the Panel's conclusions were to some degree misleading, by suggesting that there should be an analogy to the constructed value situation. In the EC's view, it would not make sense in Article 2 to put together the various elements of constructed value if afterwards it was adjusted to account for what was done on the other side. The constructed value represents a price, and only after it is determined would the question arise of what has an impact on price comparability. On paragraph 372, even the quote by the Japanese delegate showed that the Panel suggested that there should be a case by case decision on whether the methodology should be applied. This appeared to be what the Canadian delegate had raised as a concern. Such a practice would throw quite some uncertainty on the proceedings and the predictability of the outcome of proceedings would be in question. In paragraph 374, the question was what affects price comparability. One interpretation of what the Panel says was that if it can be shown that there is a difference in cost, that would imply that there must be a difference in price. That was precisely the conclusion the EC did not share. Finally, there had been some discussion on this point in the Uruguay Round negotiations, but no solution. The EC had not been persuaded by the arguments of the Japanese delegate, and had not changed its position. In particular, it appeared from the minutes of the previous meetings the Japanese and Hong Kong delegates had given the Panel report exactly the meaning the Community thought would be a dangerous interpretation.

17. The delegate of Japan expressed surprise at the comments of the EC on the interpretation of paragraph 374. At the last meeting, he believed the EC delegate had said that the Panel's decision in this regard could be interpreted to mean that there was no requirement to show that the difference affected price comparability, which in the EC's view was one of the basic criteria for fair comparison. Japan was of the view that due allowance would be made only when indirect costs and profits affected price comparability. There was thus no difference of view on that point, and therefore no reason for blocking the adoption of the Panel report. Regarding paragraphs 371 and 372, the EC was apparently concerned about the lack of guidelines and also the possibilities for case-by-case analysis. In Japan's view, the EC's point was not enough to block the adoption of the Panel report. Regarding paragraph 376 and the negotiating history, the recollection and interpretation of Japan on this issue was different from that of the EC.

18. The Committee took note of the statements made.

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

19. The delegate of Mexico observed that Mexico had repeatedly requested the inclusion on the agenda of the Panel Report on the US imposition of anti-dumping duties on imports of Gray Portland cement and cement clinker from Mexico. The Panels report, AD/82, was issued on 9 July 1992 and

Mexico was still experiencing the consequences of an investigation that was improperly carried out from the beginning. Parties would recall that the Panel recommended that the US repeal the anti-dumping duty order and return whatever money had been collected under that order. The decision of the Panel was based, *inter alia*, on a lack of representativity for the investigation to be started, non-compliance with the requirements for determining regional injury, flaws in the accumulation of imports from Mexico and Japan to evaluate injury, and defects in the assessment of prices. As the Committee was aware, Mexico had held a series of consultations and negotiations with the US, in an attempt to find an acceptable solution for both parties. Unfortunately, although this matter had been aired between the Mexican and US authorities on many occasions and at almost all levels it had not been possible to arrive at an arrangement that properly takes into consideration the Mexican exporters interests.

20. Despite good faith efforts, Mexico remained in a situation in which the Party that had prevailed before the Panel had not only not received satisfaction as regards legitimate claims, but had seen that the US, which failed to honour its obligations under the Code, had increased the anti-dumping duty amount in subsequent administrative reviews.

21. In view of all the above, and bearing in mind that this might be Mexico's last chance to request adoption of the report of the Panel, the delegate of Mexico requested that the Committee adopt the report contained in document AD/82.

22. The delegates of Japan and Hong Kong expressed their continued support for adoption of the report.

23. The delegate of the United States noted that, as the Ambassador of Mexico had stated, the US Government had worked with the Government of Mexico at unprecedented length to reach a mutually agreeable solution in this case. However, she regretfully informed the Committee that the Parties had not been able to reach a solution that was satisfactory to all and that was consistent with US law and international obligations. She assured the Committee and the Chairman that the United States would continue to work to find a solution. However, in the case of this Panel Report the US concerns with the findings of the Panel had been stated on numerous occasions. The very reasons that led Mexico to believe that the Panel Report should be adopted were specific reasons that concerned the US. Specifically, the US believed that the Panel had found certain obligations in the Agreement that the US did not believe were there. The US had long held the view that it was inappropriate for a Panel to recommend specific and retroactive remedies, as the Panel did in this case. For those reasons the United States was not in a position to adopt the report at this time.

24. The delegate of Mexico reiterated for the record that Mexico was dissatisfied with the non-adoption of this Panel Report, and stated that Mexico reserved its right under WTO as regards the improper application of the anti-dumping duties.

25. In Mexico's view, while the US had the right to object to adoption of the report, taking advantage of the weakness and gaps in the dispute settlement procedures that applied to the case, this did not mean that the investigation on that basis became a legitimate investigation. The investigation carried out by the US about cement imports from Mexico was seriously flawed both procedurally and substantively. It was flawed from the beginning. These defects would not be resolved nor would they be made legitimate simply because the US objected to the adoption of the Panel Report.

26. The delegate of the United States expressed regret at the dissatisfaction of Mexico, which she understood. She reminded the Committee that, as Parties were aware, under the Tokyo Round Codes, a country was fully within its right to block the adoption of a Panel report. The US fully supported the change in the dispute settlement system, however that change was for WTO disputes, and did not

apply retroactively to Tokyo Round disputes, and therefore the US maintained its rights under the Tokyo Round to block adoption.

27. The Committee took note of the statements made.

Mexico - Imposition of Anti-Dumping Duties on Imports of Certain Steel from Canada - Request for Conciliation

28. The delegate of Canada reminded the Committee that Canada had raised this matter at the last meeting of the Committee on 29 April 1996. Background information was available and contained in document G/AD/143, which was available in the room.

29. Since the meeting in April, Canada had held formal consultations under Article 15 of the Code with Mexico regarding the December 1995 imposition by Mexico of Anti-Dumping duties on imports of certain steel products from Canada. During these consultations there was no progress made to resolve the issue which had been raised by Canada during the informal bilateral meetings held in Mexico on 19 March 1996 and during the meeting of this Committee last April.

30. Canada continued to believe that a number of elements of the Mexican anti-dumping duty decision which led to the imposition of these anti-dumping duties were inconsistent with the GATT AD Code. These included the excessive duration of the investigation, which was initiated in October 1993 and was not concluded until December 1995, the decision by Mexican authorities not to assign an individual company margin to the principle distributor of Canadian hot rolled steel to Mexico, the calculation and imposition of "all other" duty rates, and certain elements of the injury determination made by Mexican authorities. Further it was Canada's position that, had Mexican authorities concluded the investigation within the 12-month time period called for under Article 5.5 of the GATT AD Code, Canada would have had ample time to pursue the matter of these anti-dumping duties in this forum. In view of the delay however, Canada's ability to pursue this matter within the appropriate form had been seriously constrained.

31. Nevertheless, Canada wished to refer the matter to the Committee for conciliation as provided for under Article 15.3 of the GATT AD Code, given the apparent inconsistency between Mexico's application of these AD duties and the provisions of the Code.

32. In addition to the facts already stated, Canada wished to note that the Canadian steel industry had requested that panels be established under Chapter 19 of the North American Free Trade Agreement to review these decisions by Mexico. The Panels, one of which has already been established and was underway, would consider whether Mexican authorities acted in accordance with their own laws and regulations in making these determinations. Many of the aspects of the investigation which would be reviewed by these panels were similar to the issues raised by Canada during the GATT consultations with Mexico.

33. Canada also noted that at the request of the US steel industry, NAFTA panels had already considered Mexican dumping decisions against imports from the US, and had directed that they be reconsidered. In one case, duties were removed while in the other Mexican authorities were currently reconsidering elements of one of their findings. In view of these factors and in view of the termination of the AD Code at the end of this year, Canada asked Mexico to reconsider particular elements of its previous decision and ensure that in making any future anti-dumping duty finding it took full account of its international trade agreement obligations. Canada looked forward to hearing from Mexico on this matter and would welcome observations from any other interested Parties.

34. The delegate of Mexico observed that, although it was a very recent document, his delegation had read with attention AD/143. In this connection he pointed out that in the consultations held on 10 July between Canada and Mexico, the Mexican experts who came to Geneva for this purpose had the opportunity of clarifying to the Canadian representatives each one of the points of concern put forward by Canada, and reasons why in Mexico's opinion the totality of the investigation was completely compatible with Mexico's obligations under the AD Code. He did not want to repeat each one of these elements at this juncture. However, to demonstrate the good will of Mexico and its attachment to the fulfilment of its obligations under the AD Code of the Tokyo Round in this forum, he wished to state that Mexico was not opposed to the Canadian request to initiate the conciliation procedure under the Anti-Dumping Code of the Tokyo Round.

35. The delegate of Canada took note of Mexico's willingness here to discuss this matter. Reference had been made that information provided last July should have helped convince Canada that the procedures used and application of anti-dumping duties on Canadian steel products were consistent with the AD Code. Unfortunately all the information that was provided at that time did not fully persuade the Canadian authorities, therefore the matter was still pending. Canada would endeavour to make best efforts to try to achieve a satisfactory outcome and appreciated the goodwill of Mexico in being willing to further discuss this.

36. The Chairman added his own words of encouragement to the two parties to make further efforts to find a mutually satisfactory solution to the dispute in consistency with Article 15.4 of the Agreement.

37. The Committee took note of the statements made.

38. The delegate of Japan stated that Japan reserved its right to request a special meeting to request adoption of the report of the Panel in audio-cassettes in the near future.

39. The delegate of Korea sought to raise a matter under "Other Business".

40. After consultation with the Committee and hearing from the delegation of Korea, the Chairman observed that the Committee existed exclusively for dispute settlement purposes, and that the matter Korea wished to raise did not involve dispute settlement. Therefore, the Chairman stated that the statement Korea proposed to make was outside the terms of reference of the Committee and could not be allowed on that basis.

41. The Committee so decided.

42. The meeting was adjourned.