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**Committee on Anti-Dumping Practices**

**MINUTES OF THE REGULAR MEETING  
HELD ON 24-25 OCTOBER 2002**

Chairman: Mr. Cristian Espinosa Cañizares (Ecuador)

1. The Committee on Anti-Dumping Practices (the "Committee") held a regular meeting on 24-25 October 2002.

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A. NATIONAL LEGISLATION

3. The Chairman stated that the first item on the agenda was the review of notifications of new or amended anti-dumping legislation and/or regulations, in accordance with the procedures adopted by the Committee at its special meeting in April 1996 (document G/ADP/W/284, 12 February 1996). The Chairman observed that a reminder of all applicable deadlines for submissions for the Spring 2003 meetings of the Committee, as well as for the Working Group on Implementation and the Informal Group on Anti-Circumvention, would be circulated shortly and requested Members to respect these deadlines.

4. The Chairman then turned to the substantive discussion. Questions concerning new notifications of legislation were to have been submitted to the Member concerned and the Secretariat no later than three weeks before the meeting, that is, by 3 October 2002. As provided for in the agreed procedures, Members receiving written questions in time, were asked to respond orally to those questions in the meeting and to respond in writing to all questions received in written form. The Chairman reminded Members that follow-up questions could be asked in the meeting. Such follow-up questions had to be submitted in writing no later than 14 November 2002 if the Member posing the question wished to receive a written answer. Written answers to all written questions submitted were to be submitted to the Secretariat no later than 8 January 2003.

5. The Chairman recalled that a notification submitted by Antigua & Barbuda, G/ADP/N/1/ATG/1, had been on the agenda of the April 2002 meeting. The Chairman noted that the notification on the agenda for this meeting, G/ADP/N/1/ATG/2, had been circulated before the April meeting, but too late to be included on the agenda of that meeting. The Committee had taken note of the circumstances, including the fact that the second notification would be on the agenda of this meeting.

6. The questions regarding the notification of Antigua & Barbuda can be found in the following document:

G/ADP/Q1/ATG/1      Submitted by the European Communities

**NO WRITTEN RESPONSE HAS BEEN RECEIVED TO DATE.**

7. The Chairman recalled that notification G/ADP/N/1/ARG/1/Suppl.5 by Argentina had been on the agenda for the April 2002 meeting, and that several Members had raised questions concerning this notification. Argentina had made a statement at that meeting, in which it indicated that the entry into force of the legislation reflected in the notification in question had been delayed pending the enactment of the necessary implementing regulations. This was the substance of the notification set out in document G/ADP/N/1/ARG/Suppl.6, which was on the agenda of this meeting. No questions were submitted concerning this notification.

8. Argentina stated that the necessary implementing regulations still had not been issued and requested that the Committee defer the review of the legislation contained in document G/ADP/N/1/ARG/Suppl.5, including the questions submitted by Members regarding this notification (G/ADP/Q1/ARG/11, G/ADP/Q1/ARG/12, G/ADP/Q1/ARG/13, G/ADP/Q1/ARG/14, submitted by the United States, Canada, the European Communities, and Turkey, respectively), until after the necessary regulations had been issued.

9. The Committee took note of the statement made by Argentina and agreed to revert to this notification at a later date.

10. The questions regarding the notification of Brazil can be found in the following document:

G/ADP/Q1/BRA/10 Submitted by the United States

Answers to these questions can be found in the following document:

G/ADP/Q1/BRA/11 Replies to the United States

11. The Chairman noted that China had submitted two notifications with respect to national legislation prior to this meeting: (i) document G/ADP/N/1/CHN/1, containing a list of the laws and regulations relevant to the Anti-Dumping Agreement, which was included on the agenda under this item, and (ii) document G/ADP/N/1/CHN/2, which was a notification of relevant legislative text.

12. No questions were posed concerning the first notification

13. The Committee took note of the first notification.

14. The Chairman noted that second notification had not been received in time for it to be circulated in all three WTO languages six weeks before the meeting, and was therefore not included in the agenda of the meeting under the item pertaining to review of national legislation. The Chairman stated that the review of the notification in document G/ADP/N/1/CHN/2 would be undertaken in the normal course of business at the next regular meeting of the Committee, in April 2003, pursuant to the procedures for review of legislation notifications adopted by the Committee in 1996 and set out in document G/ADP/W/284. The delegate of China informed the Committee that 11 administrative laws regarding anti-dumping had been promulgated, that the required translation was in progress and that the English version will be notified in advance of the next regular meeting of the Committee.

15. The Committee took note of the statements.

16. The questions regarding the notification of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu can be found in the following documents:

G/ADP/Q1/TPKM/1 Submitted by the European Communities

G/ADP/Q1/TPKM/2 Submitted by the United States

Answers to these questions can be found in the following document:

G/ADP/Q1/TPKM/2 Replies to the European Communities and the United States

The Chairman thanked the delegate of Chinese Taipei for having made responses to the questions available as room documents. He encouraged other Members to follow this example and provide at least preliminary written answers in time for the meeting.

17. The Chairman recalled that a notification submitted by Grenada, G/ADP/N/1/GRD/1, had been on the agenda of the April 2002 meeting. The Chairman noted that the notification on the agenda for this meeting, G/ADP/N/1/GRD/2, had been circulated before the April meeting, but too late to be included on the agenda of that meeting. The Committee had taken note of the circumstances, including the fact that the second notification would be on the agenda of this meeting.

18. No questions were posed concerning the notification of Grenada. The Committee took note of the notification.

19. No questions were posed regarding the notification of Japan. The Committee took note of the notification.

20. The questions regarding the notification of Lithuania can be found in the following documents:

G/ADP/Q1/LTU/1	Submitted by the European Communities
G/ADP/Q1/LTU/2	Submitted by the United States
G/ADP/Q1/LTU/3	Submitted by Mexico

Answers to these questions can be found in the following documents:

G/ADP/Q1/LTU/4& Corr. 1	Replies to the European Communities
G/ADP/Q1/LTU/5	Replies to the United States
G/ADP/Q1/LTU/6	Replies to Mexico

The Chairman thanked the delegate of Lithuania for having made responses to the questions posed by the European Communities and by the United States available as room documents, and again encouraged other Members to follow this example in the future.

21. No questions were posed concerning the notification of Turkey. The Committee took note of the notification.

22. The Chairman thanked all delegations for their replies to the questions posed, as well as the Members who had formulated questions. The process of reviewing notifications continued to be a positive one, of benefit to all Members. He reminded Members that follow-up questions were to be submitted in writing to the Member whose legislation was concerned, and to the Secretariat, no later than 14 November 2002 if the Member posing the follow-up question wished to receive a written response. Members were requested to submit written answers to all questions received in writing by that date. Those answers were to be submitted to the Secretariat no later than 8 January 2003.

23. The Chairman reminded Members that, pursuant to the adopted procedures for review of notifications of legislation contained in document G/ADP/W/284, in order for a new notification of legislation to appear on the agenda of the spring 2003 meeting of the Committee, it had to be circulated in three languages no later than 20 March 2003. As a practical matter, in light of the translation requirements, the Chairman informed the Committee that notifications of legislative text received after 20 February 2003 were unlikely to be translated in time to meet the above agreed deadline.

24. He informed Members that the following notifications were expected to be on the agenda for the next regular meeting of the Committee in spring 2003: G/ADP/N/1/CHN/2 (China), G/ADP/N/1/DOM/3 (Dominican Republic), G/ADP/N/1/LVA/2/Suppl.2 (Latvia), G/ADP/N/1/NIC/1/Suppl.1 (Nicaragua), and G/ADP/N/1/PAK/2/Suppl.1 (Pakistan). As was its practice, the Secretariat would inform Members of any additional new notifications to be considered at that meeting. The deadline for submission of questions regarding new notifications of legislation for next spring's meeting would be 10 April 2003.

25. Turning to the last aspect of review of national legislation, the Chairman reminded Members that, in accordance with the agreed procedures for review of legislation set out in document G/ADP/W/284, Members desiring to pose questions about notifications of legislation or regulations previously reviewed by the Committee were to have submitted those questions in writing to the notifying Member and to the Secretariat no later than 12 September 2002. As no written questions had been received by the Secretariat by that date, there was no discussion under this agenda item.

26. The Chairman informed Members that in order for a previously reviewed notification of legislation or regulations to appear on the agenda of the Committee's regular meeting in spring 2003,

questions regarding such notification must be submitted to the Secretariat, and to the Member whose notification is in question, no later than 20 March 2003.

## B. SEMI-ANNUAL REPORTS OF ANTI-DUMPING ACTIONS

27. The Chairman recalled that a request for the semi-annual report for the second half of 2002, to be submitted by 30 August 2002, had been circulated to the Members in document G/ADP/N/92, dated 1 July 2002. He reported that although it appeared that most Members taking actions had submitted semi-annual reports, and that a large proportion of the reports were submitted in a timely fashion, there continued to be some problems with reporting in accordance with the guidelines adopted by the Committee and set out in document G/ADP/1. He pointed to the continued failure of some Members to submit the separate annex tables called for, listing definitive duties and undertakings in force at the end of the period, and measures revoked during the period, or to submit "nil" notifications if no actions were taken during the period.

28. The Chairman also reminded Members that item 19 of the "Guidelines for Information Provided in Semi-Annual Reports", as reflected in document G/ADP/1, required that information on all cases pending at the end of the period should be reported, even if there was no action taken during the period for which the report was submitted. The Chairman noted that the Secretariat was always prepared to assist Members in applying the requirements for completing semi-annual reports. He also urged Members to bring to the attention of the Committee any problems they were experiencing with the notifications of other Members, as peer pressure might lead Members to more fully comply with their notification obligations, and would provide an incentive for Members to seek the assistance of the Secretariat in this respect, if necessary.

29. The Chairman stated that Members who had submitted semi-annual reports were identified in paragraph 1 of document G/ADP/N/92 Addendum 1, dated 14 October 2002. To the extent possible, the semi-annual reports had been translated and circulated to the Committee, and were included in the documents made available for the meeting. In addition to those Members listed, India, Indonesia, Lithuania and Malaysia had submitted semi-annual reports, too late to be included in that document. Those reports had been made available as room documents for the meeting.

30. In addition to the Members who submitted semi-annual reports, a number of Members, listed in paragraph 2 of document G/ADP/N/92 Addendum 1, had notified the Committee that they had not taken any anti-dumping actions during the period in question. In addition, Croatia had submitted such a notification too late to be included in that document.

31. The Chairman noted that while there appeared to be a degree of general compliance with the obligation to submit semi-annual reports, or reports of no actions taken, there remained a significant number of Members who had not submitted either type of report. With respect to notifications of no action, there was no good explanation for some Members' failure to make this notification in a timely fashion. The Chairman reiterated that all that was required if a Member took no action during a given period was a one sentence letter stating that fact sent to the Chairman or the Secretary of the Committee before the end of February, and another such letter before the end of August. Particularly for Members who did not conduct anti-dumping investigations, it seemed that this should be a relatively simple task. Members who had not filed a semi-annual report for the second half of 2002 were identified in document G/ADP/N/92 Addendum 1 at paragraph 3.

32. The Chairman strongly urged all Members to comply with the requirement to submit semi-annual reports in a timely fashion in the future. The Chairman noted that any Member who submitted a semi-annual report in written form before the close of business on the last day of the meeting would be identified as having done so in Annex B of the Committee's Annual Report.

33. The Chairman then turned to the review of the semi-annual reports submitted.

34. The delegate of the United States, with reference to the semi-annual report submitted by China, referred to the agreed procedures for semi-annual reports, which provided that all cases pending at the end of the period should be reported, even if there was no action taken during the period for which the report was provided. He noted that the United States was aware of a number of pending investigations which were not reflected in China's semi-annual report, such as the initiation of an investigation in February 2002 concerning coated art paper from the United States and also the investigation concerning imports of lycine from the United States, which was pending. He stated that the United States was aware of several other cases involving imports from the United States, as well as from other Members, which did not appear in the report provided by China. The United States requested China to review these cases or at least to provide some information on the status of the investigations.

35. The delegate of China stated that the reason no information on the investigations in question was provided was that no preliminary measures were taken during the period.

36. The delegate of the United States stated that he believed that it was important that Members be aware of and report on all pending cases, even if no action was taken during the period for which the report was provided.

37. The delegate of Mexico supported the statement by the United States.

38. The delegate of the United States, with reference to the report submitted by India, noted that in Column 12 of the report, India reflected dumped imports as a percentage of domestic consumption, but in the case of iso-propyl alcohol, the percentage figure was stated in terms of share in demand. He requested India to provide some explanation as to the difference, particularly what proportion of domestic consumption might not be reflected in the figure reported in the table.

39. The delegate of India stated that he would refer the matter to his capital for clarification.

40. The delegate of Thailand informed the Committee that his authorities had noticed some erroneous entries on page 3 of its report, document G/ADP/N/92/THA, and stated that Thailand would inform the Secretariat on rectifications to be made.

41. The delegate of Indonesia made a correction to its report regarding the misplacing of certain dates. Specifically, under item 10, the second date of initiation of an investigation against ferro manganese and silicon manganese imported from Korea actually referred to the initiation of an investigation against phthalic anhydride imported from Korea.

42. The Committee took note of the reports and the statements made.

43. The Chairman noted that some of the suggestions and comments made in the informal sessions of the Working Group on Implementation and in informal meetings of the Committee, seemed to involve possible additional information to be provided in the semi-annual reports. In that context, he suggested that that Members might consider whether it was necessary or appropriate to undertake a discussion of the format for semi-annual reports, noting that possible changes to the semi-annual report format might be a useful topic of discussion in the Working Group on Implementation.

#### C. NOTIFICATIONS OF PRELIMINARY AND FINAL ANTI-DUMPING ACTIONS

44. The Chairman noted that lists of the notifications of preliminary and final anti-dumping actions received were circulated to the Committee in documents G/ADP/N/90 and 91, and 93 through

96. Since the last meeting of the Committee, preliminary and final anti-dumping actions had been notified by Argentina, Australia, Canada, China, Egypt, the European Communities, India, Korea, Japan, Mexico, Pakistan, Peru, South Africa, Turkey, and the United States.

45. The Chairman noted that there continued to be a lack of full compliance in this area, as some Members had submitted semi-annual reports indicating anti-dumping actions in progress, but did not submit reports of preliminary or final actions taken. The Chairman reminded Members that the reports of preliminary and final actions were critical to give all Members prompt knowledge of preliminary and final actions taken and certain information regarding those actions.

46. He observed that, at the Committee's regular meetings, there was almost no discussion of the information submitted by Members in their semi-annual reports and in their reports of preliminary and final actions. This might be interpreted as indicating that Members were satisfied with the way in which other Members were conducting anti-dumping investigations, imposing measures, and notifying the Committee. If that was not the case, the meetings of the Committee should serve as the forum for discussion of Members' concerns.

47. The delegate of Chile noted that a possible reason for the limited discussions could be the fact that problems regarding implementation were being discussed in another forum as well.

48. The Committee took note of the statements made.

D. TRANSITIONAL REVIEW UNDER PARAGRAPH 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA TO THE WORLD TRADE ORGANIZATION<sup>1</sup>

49. The Chairman recalled that paragraph 18 of the Protocol of Accession of the People's Republic of China to the WTO provides that all subsidiary bodies, including the Committee, "which have a mandate covering China's commitments under the WTO Agreement or [the] Protocol shall, within one year after accession, review, as appropriate to their mandate, the implementation by China of the WTO Agreement and of the related provisions of [the] Protocol". He noted that China was to provide relevant information in advance of the review, including information specified in Annex 1A of the Protocol, and that China can also raise issues relating to any reservations under Section 17 or to any other specific commitments made by other Members on the Protocol in subsidiary bodies which have a relevant mandate. The Committee must report the results of the review promptly to the Council for Trade in Goods. Review is to take place after accession in each year for eight years with a final review in year 10 or at an earlier date decided by the General Council. There are no procedures set out for the conduct of the transition review in the Protocol, except that China is to provide relevant information in advance of the review.

50. The Chairman noted in this regard that there is no information specified for submission to the Committee under Annex 1A. He observed that China had made several of the notifications required of all Members under the Agreement, which could be found in documents G/ADP/N/1/CHN/1 and G/ADP/N/1/CHN/2, both of which concern legislation, and G/ADP/N/92/CHN, which is China's semi-annual report for the period 1 January-30 June 2002. China had also notified preliminary or final actions, as reflected in G/ADP/N/95. Members had submitted questions in the context of the transition review, all of which related to China's notification of legislation in document G/ADP/N/1/CHN/2. The Chairman reminded Members that that notification would be included on the agenda of the Committee's meeting in spring 2003 in the regular course of business. Before

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<sup>1</sup> The portion of the minutes of the meeting regarding this agenda item was previously circulated in document G/ADP/8, dated 18 November 2002.

turning to the questions posed by Members, the Chair asked whether any Member had any general comments.

51. The delegate of the United States made a statement regarding the US views on the transitional review mechanism.<sup>2</sup> He stated that the remedies authorized by the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the “Anti-Dumping Agreement”) form an essential part of the current rules-based international trading system. Transparency, predictability, and adherence to the rule-of-law are all critical to the WTO-consistent application of these remedies, as well as to ensuring that they don’t act as an unjustifiable barrier to trade. Hence, it is in all Members’ interests to ensure that each Member promptly and effectively implements their WTO obligations in this area.

52. He continued by stating that Members’ joint goal in this transitional review mechanism should be to conduct a thorough and meaningful review, both to highlight to China its successes, and to identify areas where more work needs to be done. As China is becoming increasingly active in using its anti-dumping law, it is important that it lay out its plan for bringing its practices into better conformity with its WTO commitments where there are gaps. The United States wanted to do its utmost to facilitate such a review and urged China to join in the review in the spirit in which it is intended. A key part of the review is for Members to ask questions about areas of China’s practices that they do not understand. The United States and five other Members posed such questions.<sup>3</sup>

53. The United States recognized and applauded China’s efforts to implement trade remedy laws and regulations consistent with WTO requirements. China had been prompt in promulgating new regulations and implementing rules, with new regulations having gone into effect on 1 January 2002, followed by eleven sets of provisional implementing rules between February and April. The United States were disappointed, though, by the delay in China’s notifying these regulations and rules – the regulations were not notified until May (by name only) and the text of the regulations not until September (G/ADP/N/1/CHN/1 and 2, respectively). To the knowledge of the United States, China has not yet notified its statute governing anti-dumping measures nor the text of its provisional implementing rules.<sup>4</sup>

54. With regard to transparency, the United States encouraged the Ministry of Foreign Trade and Economic Cooperation’s (MOFTEC) efforts to make non-confidential information submitted during anti-dumping proceedings available to interested parties and to the public. To the United States’ knowledge, the State Economic and Trade Commission (SETC) has not established a means to make available to the public, or even to interested parties, non-confidential summaries of materials submitted to the agency. At both agencies, there appears to be little or no disclosure of their respective analysis and decision-making process. However, none of the anti-dumping investigations that China had initiated since its accession to the WTO had reached the point of a preliminary decision. The United States hoped China took advantage of this early stage to further develop transparency in its proceedings.

55. The United States were also encouraged that the notified regulations embrace the principles of rule of law and due process. However, the regulations provide no elaboration on these topics. In particular, China should identify the specific statute or statutes that govern its anti-dumping actions and notify those laws to the Committee. China also should clarify the roles of Chinese government entities involved in China’s anti-dumping regime: MOFTEC, SETC and the State Council Tariff

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<sup>2</sup> Subsequently circulated as document G/ADP/W/428, 28 October 2002.

<sup>3</sup> G/ADP/Q1/CHN/1, 3, 4, 5, 6 and 7.

<sup>4</sup> The United States reserved comment and the right to pose questions on the provisional rules and the topics that they covered until China formally submitted the text of the rules to the Committee. A list of the provisional rules that China had issued was included in China’s May notification.

Commission. Also unclear are the entities to whom appeals of anti-dumping determinations may be made and the rules under which such appeals will be conducted.

56. China had made a significant effort to mold its revised regulations to the provisions and requirements of the AD Agreement, which was particularly evident when the notified regulations are compared with China's pre-accession anti-dumping regulations. The language in China's notified regulations appeared generally to follow that in the AD Agreement, although there were certain areas where key provisions were omitted or were worded in an ambiguous manner. In addition, China included certain provisions that do not appear in the AD agreement. The most prominent example was Article 56 of the notified regulations, which indicates that China may take "corresponding" measures when another country "discriminatorily" imposes anti-dumping measures on exports from China. This provision appeared to have provoked universal comment – each of the Members that submitted TRM questions expressed concern about Article 56. The United States and other Members also had questions about such topics as:

- The factors that China will examine in conducting an injury analysis under Article 3 of the AD Agreement;
- China's definition of "interested" and "related" parties under Articles 6.11 and 4.1 of the AD Agreement, respectively;
- China's calculation of export price and normal value under Article 2 of the Agreement;
- China's use of facts available in anti-dumping determinations under Annex II of the AD Agreement; and
- How China intended to identify and address evasion of anti-dumping measures.

57. The questions the United States and other Members posed attempted to seek understanding of the issues noted above. The United States were disappointed that China had not provided written answers to those questions. Such responses would have greatly facilitated the review during these meetings. In order to make the review useful to all, China included, the United States urged China to agree to submit in a timely manner, written responses to the questions posed by the Members.

58. The delegate of the United States stressed that the United States does not take issue with China's use of anti-dumping remedies, so long as such actions comport with WTO rules. The United States also looked forward to continued cooperation with China, such as through technical assistance exchanges, as it develops its trade remedy regime. The United States hoped these exchanges would foster a mutual understanding of each other's unfair trade laws and promote fair application of the rules in accordance with WTO guidelines. In that regard, the United States had just completed a programme of comprehensive anti-dumping training assistance to a delegation of trainees from the Shanghai WTO Affairs Consultation Centre over the course of their four-month stay in Washington this autumn. The United States were eager to provide similar assistance to the Government of China, as well as other groups within China that need such training.

59. The Chairman thanked the delegate of the United States and invited the delegate of China to take the floor to make a statement or to respond to the questions found in documents G/ADP/Q1/CHN/1, and G/ADP/Q1/CHN/3-7.

60. The delegate of China stated that China welcomed this opportunity to address the Committee on the implementation of China's commitments with regard to Anti-Dumping within the framework of paragraph 18 of China's Protocol of Accession. China's accession to the WTO reflected the strong

quest of China for a fair and open trading system, and the resolution to resist protectionist pressures of all kinds. Therefore, in spite of the challenges and difficulties arising from WTO Membership, the Chinese Government had taken a firm and positive stand on the implementation issues, for example, institutional restructuring, undertaken by China to better adapt to the demands posed in particular by the WTO accession, fulfilling WTO obligations and China's accession commitments.

61. As part of the implementation efforts, an enormous amount of preparations had been made by various related government agencies for the smooth proceeding of this review. To facilitate this exercise, he would present to the Committee a brief introduction in this regard. His statement would be composed of three parts. The first part described the implementation of the AD Agreement and China's preparation for this review; the second part would be China's responses to the questions and comments from Members raised before this meeting, and in the last part of the presentation, he would raise some issues of concern to China for the attention of Members.

62. **Part one - implementation of the Agreement and preparation for the review.** First, on the issue of China's legislation on anti-dumping practices. The *Foreign Trade Law of The People's Republic of China* came into force on 1 July of 1994, which marked the establishment of the anti-dumping system in China. Article 30 of the Law stipulates that, "Where a product is imported at less than normal value of the product and causes or threatens material injury to an established domestic industry concerned, or materially retards the establishment of a particular domestic industry, the State may take necessary measures in order to remove or ease such injury or threat of injury or retardation". Article 32 of the Law stipulates that, in the event of such situation, "the authority or agency designated by the State Council shall conduct investigations and make determinations..."

63. Under the above-mentioned Articles of the Foreign Trade Law, China promulgated *The Regulations on Anti-Dumping and Countervailing Measures* on 25 March of 1997. These regulations, the first regulations on anti-dumping in China, were drafted with help from the United States and the European Union. After China's accession to the WTO, China promulgated *The Regulations of The People's Republic of China on Anti-Dumping* on 1 January 2002 on the basis of WTO rules, taking into account the experience China had gained in applying the *Regulations* of 1997, and also the practices of some other WTO Members. China cherished the cooperation and technical assistance received from WTO Members in the formulation of the new regulations.

64. Compared with the *Regulations* of 1997, the new *Regulations* are more detailed, with 59 Articles, and provide more predictability as well as transparency to the parties concerned. And, in the same spirit, the Ministry of Foreign Trade and Economic Cooperation of China (MOFTEC) promulgated as many as eleven administrative rules regarding anti-dumping, namely:

- Provisional Rules of MOFTEC on Public Hearing in Anti-Dumping Investigations;
- Provisional Rules of MOFTEC on Questionnaire in Anti-Dumping Investigations;
- Provisional Rules of MOFTEC on On-The-Spot Investigations in Anti-Dumping Investigations;
- Provisional Rules of MOFTEC on Information Disclosure in Anti-Dumping Investigations;
- Provisional Rules of MOFTEC on Price Understandings in Anti-Dumping Investigations;
- Provisional Rules of MOFTEC on Access to Non-Confidential Information in Anti-Dumping Investigations;
- Provisional Rules of MOFTEC on Sampling in Anti-Dumping Investigations;
- Provisional Rules of MOFTEC on Initiation of Anti-Dumping Investigations;
- Provisional Rules of MOFTEC on Interim Review in Anti-Dumping Investigations;
- Provisional Rules of MOFTEC on New Shipper Review in Anti-Dumping Investigations;
- Rules of MOFTEC on Refund of Anti-Dumping Duty in Anti-Dumping Investigations.

65. Being an integral part of China's anti-dumping regulations, the above-mentioned rules provide guarantees to protect the interests and rights of all the parties concerned. The translation of these rules was underway and the English versions would be notified to this Committee soon.

66. Second, on the application of the legislation. Based on the provisions of *The Regulations on Anti-Dumping and Countervailing Measures* of 1997, China initiated its first anti-dumping investigation on newsprint on 10 December 1997. In total 12 investigations were initiated with 8 concluded under the *Regulations* of 1997.

67. By the end of September 2002, China had initiated 21 anti-dumping investigations on products from 20 countries and regions, covering petrochemical, steel, chemical and paper products, etc. To date, of the total of 21 investigations, 8 had been concluded, and the other 13 were still in process. Of the 8 investigations concluded, 2 investigations were terminated due to no injury to domestic industry. The other 6 investigations resulted in definitive measures. With regard to these measures, some exporters were granted a zero duty rate; some exporters were given price undertakings; and certain Members were excluded from the investigation on the basis of negligible import volumes.

68. In the process of formulating the above-mentioned *Regulations* and rules, China spared no efforts in maintaining consistency with the relevant WTO rules in all aspects, including the initiation procedures and the subsequent investigation, the determination of dumping and injury, reviews, etc.

69. Third, notification by China under the Anti-Dumping Agreement. After accession, China had fully implemented its notification obligations pursuant to the Anti-Dumping Agreement. On 28 May 2002, China notified to the Committee on Anti-Dumping Practices the regulations and administrative rules on Anti-Dumping in accordance with Article 18.5 of the Anti-Dumping Agreement, which is contained in the WTO document G/ADP/N/1/CHN/1. On 27 August 2002, China further submitted to the Committee the English version of the *Regulations on Anti-Dumping*, which is contained in the WTO document G/ADP/N/1/CHN/2. On 3 September 2002, China provided to the Committee a notification concerning the anti-dumping actions taken during the first half of 2002, pursuant to Article 16.4 of the Anti-Dumping Agreement. Last but not least, China had also notified promptly preliminary and final measures taken.

70. **Part two - responses to the comments and questions of common concern to some Members.** Some Members had submitted questions with regard to the anti-dumping legislation and the practices of China in advance of the meeting. Some Members who raised questions expressed their concern that Chinese regulations on anti-dumping were too simple to completely reflect the Anti-Dumping Agreement and that China's anti-dumping practices may not be fully compatible with WTO Anti-Dumping Agreement.

71. First, as just mentioned, China strictly observed the Anti-Dumping Agreement in the process of formulating *the Regulations of the People's Republic of China on Anti-Dumping* so as to ensure the latter's full consistency in all areas. Second, under the *Regulations*, MOFTEC has formulated 11 rules for Chinese anti-dumping practices. Relevant rules on injury enquiries are in the process of formulation by the State Economic and Trade Commission (SETC). These rules, together with the *Regulations* itself, form a comprehensive package of China's anti-dumping legislation to fully implement the Anti-Dumping Agreement. As just mentioned, the translation of these rules is underway. After China had notified the English versions to the Committee, Members would find answers very easily for their questions.

72. The delegate of China then addressed some specific questions posed by Members.

**1. Function of various government Authorities in anti-dumping investigations.** At present, there are three government administrations who deal with anti-dumping matters in China -- the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), the State Economic and Trade Commission (SETC) and the State Council Tariff Commission. MOFTEC and the SETC are the investigating authorities. MOFTEC is in charge of the investigation and determination of dumping. SETC is responsible for the investigation and determination of injury. The Tariff Commission decides whether to levy provisional or definitive anti-dumping duty. Under Articles 29, 38 and 50 of the *Anti-Dumping Regulations of China*, the Tariff Commission decides whether to levy an anti-dumping duty, including the level of the duty, upon a proposal made by MOFTEC on the basis of the investigation findings. However, the level of the duty decided by the Tariff Commission cannot exceed the dumping margin determined by MOFTEC. Other than the above-mentioned functions carried out by SETC and the Tariff Commission, MOFTEC deals with the other issues related to anti-dumping including notification, consultation, etc.

**2. Implementation of Article 56 of the AD Regulation.** Some Members also expressed their concern on the "corresponding measures" under Article 56 of *China's Anti-Dumping Regulations*. The delegate of China made clear that that (1) so far China had not applied Article 56 and therefore had not yet taken any "corresponding measures" in any case, (2) being a WTO Member, before taking "corresponding measures", China would resort to the dispute settlement provisions under Article 17 of the AD Agreement and dispute settlement provisions under Annex II of the WTO Agreement, if the other party was a WTO Member.

**3. Administrative and Judicial review.** If the concerned parties disagree with the relevant anti-dumping decisions, Article 53 prescribes the mechanism of administrative and judicial review. Where interested parties disagree with the final determination, the decisions on the imposition of anti-dumping duties, the retroactivity of anti-dumping duties, refund of anti-dumping duties and imposition of anti-dumping duty on new shippers, they can apply for administrative reconsideration. In accordance with Article 14 of *The Administrative Review Law of the People's Republic of China*, the review authority shall be the department under the State Council that carried out the administrative action.

For judicial review, China had *The Administrative Litigation Procedure Law of the People's Republic of China*. According to this law, the People's Court, at intermediary level, within the jurisdiction of which the government authority making the administrative decision in question is located will deal with litigation against this government authority. Furthermore, the People's Supreme Court of China is in the process of formulating rules on hearings in the administrative litigation on anti-dumping. After its promulgation, China would notify WTO as soon as possible.

As to the standard of the review, the reconsideration authority or the court shall focus on whether there are procedural irregularities, abuse of power, improper interpretation and application of law, etc. However, they are not entitled to reinvestigate the case.

**4. Best Information Available (BIA).** Article 21 of *China's Anti-Dumping Regulations* stipulates that the investigating authority may make determinations on the basis of the facts available and the best information available, if the interested party fails to provide the information required, or refuses to provide relevant materials, or otherwise fails to provide necessary information within a reasonable time-limit or significantly impedes the investigation. This Article is consistent with Article 6.8 and the provisions of Annex II of the Anti-Dumping Agreement.

In the questionnaires, China underscores, in bold letters, **“If, within the prescribed time-frame, your company fails to submit the completed questionnaire as required, or fails to submit a comprehensive and accurate answer sheet, or does not allow MOFTEC to verify the information and materials provided, MOFTEC may, pursuant to the *Anti-Dumping Regulations of the PRC*, make determinations on the basis of the facts available and best information available.”** This principle applies to the injury enquiries as well.

In practice, Chinese investigating authorities always try to verify all the information and materials submitted by the responding companies. Best information available (BIA) is applied only when the information required is not submitted or the submitted information can not be verified with due difficulties.

**5. Anti-circumvention.** Some Members also asked questions with regard to Article 55 of *China's Anti-Dumping Regulations*, which stipulates that MOFTEC and SETC may take appropriate measures to prevent the circumvention of anti-dumping measures. Although this Article provides the possibility of remedial measures when circumvention takes place, the delegate of China made it clear that, to date, China had not invoked this Article and had not taken any anti-circumvention measures. However, China noted that quite a number of Members do have relevant rules and practices on anti-circumvention. This issue has been under discussion for a long time in the WTO, and was also a subject of the Negotiating Group on Rules, as well as the Committee. Once any new disciplines were agreed, China shall fully implement them.

**73. Part three, the Market Economy status of China and the implementation of Annex 7 to China's accession protocol by certain Members.** Section 18 of China's Protocol of Accession also stipulates that China can also raise issues relating to any reservations under Section 17 or to any other specific commitments made by other Members in the Protocol. The Chinese delegation had been requested, by Chinese enterprises who have been for a long time the victims of other Members' unfair anti-dumping practices, to raise at this meeting their serious concerns over other Members' anti-dumping regulations and practices against Chinese products.

**74.** The first would be the issue of "market economy status" ("MES"). Despite the fact that China had made remarkable achievements over the past two decades in the establishment of its market economy and that Chinese companies were now totally driven by market forces in their business operations, China had noticed that few Chinese companies had been granted market economy treatment. To a large extent, this was due to the fact that the criteria and procedures provided for in China's Protocol of Accession, which justify fair treatment towards Chinese companies meeting market conditions, were not properly reflected in the anti-dumping rules and practices maintained by some Members. These inconsistencies seriously impaired the interests of Chinese companies and impeded normal trade between China and these Members. China required those Members to objectively evaluate the achievements that China had made in establishing a market economy system and to strictly observe the relevant WTO rules to ensure fair treatment of Chinese companies.

**75.** The delegate of China also reminded some Members of the commitments they had made with regard to the reservation of some existing anti-dumping measures against Chinese products that are not consistent with WTO rules. Annex 7 of the Protocol provides clear-cut phase-out arrangements for these. China required that these provisions be carried out by these Members in due course.

**76.** China had been fulfilling its WTO accession commitments in a positive and serious spirit. The efforts made, as well as the difficulties that have been overcome, should be recognized by all Members. Great improvement had been made in terms of legislative construction, market access opportunities, and policy transparency since China's accession to the WTO. The delegate of China hoped that the information notified to the Committee prior to the meeting and the presentation made

just now would help facilitate this review. As a new Member of WTO, the Chinese Government was willing to enter into closer cooperation with the WTO as well as other Members.

77. With the guidance of the Chair and cooperation from Members, the delegate of China was convinced the review could greatly improve understanding between China and other Members, and would achieve positive results.

78. The Chairman thanked the delegate of China and inquired whether Members had follow-up questions or comments with respect to China's intervention.

79. The delegate of the United States thanked the Chinese delegation for its statement and its cooperation in the review. He asked the Chinese delegation whether it intended to provide detailed answers to each of the questions raised by the Members in advance of this meeting?

80. The delegate of the European Communities thanked China for the explanations given and for the efforts undertaken in order to implement the obligations taken in acceding to this organization. The EC had listened very carefully to what had been said and had tried to compare what had been said to the questions which had been posed by the EC prior to the meeting, but had not found replies to all its questions. The EC realized that a significant number of the questions posed could probably be answered, as the delegate of China pointed out, by looking at the provisional rules for which English translations were being prepared, and to which the EC looked forward. Some of the questions also covered issues which, at least at first sight, did not appear to be covered by these provisional rules. These were the EC's questions concerning normal value, injury, legal representatives, and so on. The EC wondered whether China envisaged to give a reply on these questions which do not relate to the provisional rules, and if so, at what time could the EC expect such a reply.

81. The delegate of Chinese Taipei echoed the positive remarks made by the previous speakers, that credit should be given to China for their obvious efforts in preparing those responses to the questions and comments tabled by his delegation and several others. However, he was not sure, having heard the Chinese oral presentation, whether all of his delegation's concerns had been thoroughly responded to. His authorities would study China's responses later in detail, and might ask follow-up questions. As one of China's major trading partners and a major investor, Chinese Taipei felt very much obliged to identify and address several important concerns in areas where China might have lapsed in its implementation of the Protocol of Accession. Of course, Chinese Taipei strongly believed that China's smooth implementation was in the best interest of all Members, including China itself. Therefore, his delegation welcomed and appreciated the opportunity to exchange views with Chinese colleagues, taking advantage of this review mechanism, and wished China well in this review exercise.

82. The delegate of Japan thanked the delegate of China for the explanations given. China's explanations covered some questions Japan had posed beforehand, but many of the questions still remained unanswered. Therefore, Japan was looking forward to answers from China, and also to the notification of the other regulations referred to by the Chinese delegate.

83. The delegate of Korea stated that, as one of the questioning Members, he appreciated very much the Chinese response, which was to the point and presented in a very cooperative manner. His delegation was especially very much encouraged by the response of China that Regulation 56 would be implemented in strict compliance with the Dispute Settlement Understanding and the Anti-Dumping Agreement. Furthermore, Korea was also very much encouraged that anti-circumvention will be implemented only after there are unified rules arrived at through negotiation.

84. The delegate of Cuba thanked China for such a broad and complete presentation, and congratulated China for the considerable efforts that they had made in barely a year following

accession. Cuba saw that work had been done on legislation and on very complex and technical subjects, such as that addressed in the Committee. Cuba was still involved in the same process. Cuba recognized China's efforts in the context of a burdensome exercise which is being conducted in parallel in several bodies of the organization.

85. The delegate of Canada thanked the delegation of China for its presentation, which had been helpful. Canada also wondered whether China would be providing answers in writing to the questions that had been submitted as part of this exercise.

86. The delegate of China thanked the Members who had spoken for their positive comments. With respect to the questions raised by the United States, the European Communities, Chinese Taipei, Japan, Korea, Cuba and Canada, he invited his colleague to give responses to some specific questions.

87. The delegate of China, before turning to specific questions posed by WTO Members, made a general remark. He noted that every country has a different legal culture. It is Chinese tradition for the legislative body just to set forth the general principles and the guidelines for carrying out of administrative action, and to leave room for the implementing authority to formulate detailed rules to accommodate changing circumstances. It was not intended that the legislative authority compel the implementing authority to violate China's international obligations. On the contrary, as Members know, the WTO Anti-Dumping rules are evolving, the simplification of the legislation especially for anti-dumping legislations is to allow the Chinese Government actively to participate in the negotiations and take into account the changing circumstances when the legislations are implemented.

88. Turning to the specific questions, the delegate of China observed that as there were so many questions put to China, it was not appropriate to read the question first and provide replies. Instead, he would structure his replies by the sequence of the Articles as they appear in the notified regulations.

89. First with regard to Article 1, concerning the legal basis for the formulation of the anti-dumping regulation, this question had already been answered by the head of the Chinese delegation -- the legal basis for the anti-dumping regulations is the Foreign Trade Law of the People's Republic of China.

90. Coming to Article 4, with regard to paragraph 2 of Article 4 of the Regulations, several questions were posed by WTO Members.

- (a) The first question would be what is the difference between the terms "country" and "region". The delegate of China noted that, as a matter of fact, there are some separate customs territories. In Chinese, the term "country" has sovereign meaning and some anti-dumping measures have had to be imposed against products from a separate customs territory as well as from customs unions, which are for certain not countries.
- (b) The second question would be under what conditions the price and the quantity of sales do not permit a fair comparison. The delegate of China stated that when the price is below cost according to Article 2.2.1 sales of the like product in the domestic market of the foreign country or sales to third countries at prices below per unit cost of production plus administrative selling and general cost might be seen as not being in the ordinary course of trade. As to the quantity, the delegate of China noted footnote 2 of the AD Agreement, providing that the domestic sales have to be more than five per cent of those exports to China.

- (c) The third question is that what is an appropriate third country. Normally, to determine an appropriate country would mean that the price has to be representative as required by Article 2.2 of the AD Agreement.
- (d) The fourth question is how to determine the reasonable amount for expenses and profits. The delegate of China confirmed that China would comply with the rules contained in Articles 2.2.1 and 2.2.2 for the determination of cost and profits.

91. As regards Article 5, one question was raised on paragraph 2 of Article 5, that is, under what conditions the price will be deemed unreliable. The delegate of China noted that China construed this term as what is provided for in Article 2.3, that is, the price will be deemed unreliable when there is any association or compensatory arrangement between the exporter and the importer or a third party.

92. With respect to Article 6, many Members raised the concern that the Chinese legislation did not list all factors that may affect price comparability. However, the delegate of China noted that there are some provisions in Article 6 that will require the investigating authority to make adjustments to those factors which might affect price comparability. In the provisional rules on initiation of anti-dumping investigations, China listed all those factors that might affect fair comparison that are listed in the Agreement, the difference in physical characteristics, level of trade and the quantity of sales, etc.

93. With respect to Article 8, several questions were raised.

- (a) The first concern was that from the wording of Article 8 of China's regulation, no differentiation was made between injury. In other words, injury in this Article was used as a general term, that includes material injury, threat of material injury and material retardation. This is why some Members were concerned that some factors only relate to a specific type of injury determination. They worried that the Chinese investigating authority would apply all those factors to a single injury determination. As he had stated, injury was used as a general term, so the Chinese authorities had formulated all the factors that might be related to an injury determination for all types of injury. However, in practice, the investigating authority, that is the SETC, would look into those factors relating to the specific type of injury. For example, paragraph 4 of Article 8 only relates to the threat determination, not the current material injury situation. In China's provisional rules on initiation of anti-dumping investigations, the petitioner is required to provide a different set of data. If Members had had an opportunity to look at the provisional rules, they would find that paragraph 6, that is the production capacity or export capacity of the exporting country, only is required when the injury allegation was made on the basis of threat of material injury.
- (b) The third concern raised by WTO Members was that paragraph 3 of Article 8 did not list all the factors that are listed in the relevant WTO rules. Members worried that the Chinese investigating authority may consider fewer economic factors than those required by the WTO Agreement. The delegate of China first stated that the economic factors that are listed in the AD Agreement are non-exhaustive. That was also the case for Article 8, paragraph 3. In practice the investigating authority always considers all possible economic factors and indices having a bearing on the position of the domestic industry.

94. With regard to Article 11, the delegate of China clarified that there might be a problem of translation. In Chinese this Article states that if domestic producers are related to exporters or importers they may be excluded from the domestic industry. If one looks at the English translation,

one may have the impression that the exclusion is mandatory. Another point is how to determine that the domestic producers are related to exporters or importers. The criteria China takes into account in practice are exactly as stipulated in the AD Agreement, footnote 16. That is, whether the domestic producer controlled the exporter or importer or the domestic producer and the exporter or importer jointly controlled the third person, or are controlled by the third party. This is the same as provided for in the AD Agreement.

95. With regard to Article 12, the question is how to determine the scope of the like product. In practice, China considers several factors, physical characteristics, use, marketing channels, etc. None of those factors are decisive, and it has to be decided on a case-by-case basis. The delegate of China noted that this is the view taken by the WTO panels and Appellate Body.

96. Coming to Article 13, some Members asked what is the meaning of "relevant organization". The delegate of China explained that in the Chinese legal system, they have different kinds of organizations. Some have personality and some have no legal personality. Looking at the wording of Article 13, only natural persons, legal persons are mentioned. If there were no reference to other relevant organizations, the provision might exclude trade associations, or trade unions from being considered as interested parties.

97. Addressing questions concerning Article 19.

- (a) The first question is the scope of the interested parties. The scope of the interested parties as set out in the AD Agreement is non-exhaustive in nature. If one looks at the wording of Article 19, it lists some of them, and then refers to other interested organizations and parties. China wants to encompass as many as possible of those interested parties and take a participating role in the investigations, to express their views to enable the investigating authority to make their determinations on an objective basis.
- (b) The second question is the notification to the known exporters. Some Members questioned that the Chinese Government never notified the known exporters. The delegate asserted that this was not the case. Indeed, in some cases, China did not notify the known exporters. However, when China fulfilled the obligation under the AD Agreement, to give notification to the government of the exporting country before the initiation of the case, China always asked the diplomatic representative to kindly notify their exporters that the Chinese Government had initiated an anti-dumping case against them. Those requests were always accepted, so in that case China did not notify the exporters. After the initiation, normally the foreign exporter would retain a Chinese lawyer to represent them in the case. The Chinese authorities notified all decisions to their legal representatives.
- (c) The third question is that China has no provisions on the content of the public notice. Yes indeed, in the regulation there were not such rules. However, in China, it is not appropriate for the State Council to deal with such specific issues. Those issues are left to the Ministry. When China formulated the provisional rules on initiation of the case, China had a specific and very detailed provision on what has to be contained in the public notice.

98. Coming to Article 20.

- (a) Some Members asked whether the Chinese investigating authority would require consent from the companies concerned before on-the-spot verification is carried out. The answer was yes. In every case, before Chinese officials conducted an on-the-spot verification, they always obtained consent from the company concerned and informed them of the time schedule of the verification.
- (b) The second question was when the request for on-the-spot verification is objected to, whether best information available would be used. The delegate of China directed Members' attention to Article 21. In that Article, China did not use the words "the investigating authorities *shall* make a determination on the basis of best information available", it used the word "*may*". That means that it is not mandatory for the investigating authority to use the best information available when the request for on-the-spot verification is objected to. In practice, China always tried to verify by other means the information submitted. If it could be verified without undue delay, China did not resort to best information available.
- (c) The third question was regarding disclosure of the result of the verification. China had a provisional rule on disclosure of information concerning the anti-dumping investigation. There, China had a specific procedure for disclosure of the result of verification to the parties that verified.
- (d) The fourth question was whether China had specific rules on sampling. The answer was yes, China did have very specific rules on sampling.

99. With regard to Article 22.

- (a) The first question was what constitutes confidential information? In accordance with the WTO rules, that is the AD Agreement, there are two kinds of confidential information. That is, information that is confidential by nature, and the second kind of confidential information is information that a party provides on a confidential basis. China does the same in practice.
- (b) The second question was whether China had rules on summaries of confidential information, to which the answer was yes.
- (c) Another question was raised about the wording in paragraph 2 of Article 22. The regulation says that the request for confidentiality has to be "justifiable". Some Members raised a concern that this is different from "warranted". The delegate of China indicated that this was simply a matter of translation, and one can read *justifiable* as *warranted*.
- (d) The fourth question about confidential information was that whether China had rules similar to administrative protective orders, such as are used in the United States. The answer was no. Confidential information is only for the use of the investigating authority, it is not allowed for the legal representative of parties other than the party submitting it, to access such confidential information.

100. With regard to Article 23, the delegate of China stated that MOFTEC had established a special office for access to public files in the investigation. Those files were readily available to the public, not only the interested parties.

101. With regard to Article 27, one question was raised. China's law mentioned five circumstances in paragraph 1, while in paragraph 2 just three were listed. Some Members asked what the difference

is between the two paragraphs. The delegate of China stated that paragraph 2 sets out the circumstances in which a case had to be terminated against a specific country or region, on the products from that country or region, meeting the conditions stipulated in paragraph 2, 3 and 4. The first paragraph is talking about the termination of the whole case, to use the term of the EC, that is the proceeding will be terminated under the circumstances of the first paragraph. Under the second paragraph only an investigation against a specific country will be terminated.

102. With regard to Article 28, several questions were raised.

- (a) The first was the time-period of the provisional anti-dumping measure in Article 30, and why it can be extended to 9 months. The delegate of China directed Members' attention to Article 38, which indicated that the final anti-dumping measure will be decided upon by the Tariff Commission under the State Council. What governs the exercise of the discretion of the Tariff Commission is Article 42, that is, the amount of the anti-dumping duty shall not exceed the margin of dumping established in the final determination. That is to say, although China had no explicit lesser duty rule, it did keep such a possibility, to apply a lesser duty rule, if the Tariff Commission sees fit. That means that the provision of Article 30, that a provisional measure can be extended up to 9 months, is consistent with the AD Agreement. This brought him back to Article 28, regarding which some Members raised a question concerning the refund of the provisional anti-dumping duty. The delegate of China stated that first, when the provisional duties collected have to be refunded, there are no further actions for importer or exporter to take for the refund. MOFTEC will notify the Customs to make those refunds. Second, China made such refund within 90 days, according to Article 9.3.2 of the AD Agreement. Third, no interest will be paid on those refunds.
- (b) The second question with regard to Article 28 was that China did not follow the AD Agreement in formulating the conditions to impose provisional measures. That is according to Articles 7.1.1 and 7.1.3, if the injury determination is made on the basis of threat, the threat has to be imminent and only under the circumstances that if provisional measures are not imposed the threat of material injury will become a current injury. China did not set forth such conditions in Article 28. However, he asked Members to note that in Article 28 China used the word *may* not *shall*.

103. With regard to Article 31, some Members raised the question that the Chinese regulations did not stipulate that the small margin of increase of price was to be required, when the lesser increase in price would enough to remove the injury. However, the delegate of China noted that this was not mandatory by nature, so China did not incorporate such provisions in its regulation.

104. With regard to Article 48, some Members asked that China did not make clear whether the extension of anti-dumping measures will be five years. The delegate of China stated that China wanted to keep the possibility that it would extend an anti-dumping measure shorter than five years. With that, he stated that he had finished with the answers to specific questions.

105. The delegate of China noted that, with respect to the question raised by several Members regarding written answers, the Chinese delegation had no written answers. He noted that paragraph 18 of the Protocol of China's Accession serves as the only legal basis governing the TRM exercise, and asserted that no one in the room could justify a request for written responses from that paragraph. Of course, China had noticed that there were some differences in the understanding of the paragraph, but China believed it was not the mandate of this Committee to interpret the paragraph, and he hoped the Committee would not waste time. The second point he made was that China believed the information provided prior to the meeting, at the meeting, and the explanations made by his colleague, were sufficient for a meaningful review. China understood that it was technical, and his

delegation could agree that the statement made by the head of the Chinese delegation be submitted to the Secretariat and Members could get copies for transparency purposes. The third point he wanted to make in addressing the concerns of Members was that, since the experts from China were here for the review, Members who had any follow-up questions might approach those experts, and China would hold informal bilateral discussions with them. He stated that informal bilateral contacts had nothing to do with the TRM, and China was not intending to substitute this for multilateral exercise, but to supplement the multilateral exercise.

106. The Chairman thanked the Chinese delegation for the detailed answers and comments provided to the Committee, noting that Members would benefit from it.

107. The delegate of Chinese Taipei thanked the Chinese delegation for its replies, and raised two points as follow-up.

- (a) First, about Article 30 of the notified regulation. China had replied that because the Tariff Commission has the possibility to look into the lesser duty, the provisional measure may be extended to nine months. He sought clarification that it was not merely because the Commission has the mandate to look into the matter. That is, the provisional measure would last for nine months only in the case where the Commission did conduct the examination on lesser duty.
- (b) The second follow-up question was about the provisional rules on initiation which his delegation had raised in its question. His understanding was that this provisional rule was only available in Chinese. His authorities had taken the effort to look into the Chinese version, and could comprehend the provisions there. They had found that in Article 39 of the provisional rules on initiation, if the investigating authority intended to conduct an on-site investigation, this intention must be announced in the Public Notice. His question concerned whether or not an on-site investigation would only be conducted when it is mentioned in the Public Notice. He recognized that the text of the provision was not available to all Members for the time being, so would be more than happy to wait until everybody had the notification available and have the question outstanding at that point.

108. The delegate of the European Communities thanked China for the very extensive and very valuable replies. He had been quite impressed with the degree of detail which the delegate has entered into on the various issues raised. He did not want to enter into the issue whether there was any legal obligation to provide written responses or not. He considered that the reply had been fantastic, to use the word of the head of the Chinese Delegation, and constituted a very valuable contribution in understanding the Chinese Anti-Dumping Law. Simply on that basis alone, it would be extremely helpful to have some written record of this because it would help for future reference. Without entering into any discussion of obligation, he thought it would simply be helpful for everybody here to understand the replies if they were available in written form.

109. With respect to one question put by his delegation, concerning the issue of legal representation in case of anti-dumping proceedings, he thought China had not replied. The question was whether non-Chinese lawyers can make representations for exporters in the context of anti-dumping proceedings in front of MOFTEC and SETC, and should this not be the case then the EC would appreciate it if China could explain why not.

110. The delegate of the United States thanked the Chinese delegation for the lengthy and comprehensive answers to the questions. The United States did have a few follow-up questions.

- (a) The first was, recognizing that the lesser duty rule is not mandatory, in what cases had the Tariff Commission lowered the margin recommended by MOFTEC? And what criteria did it apply to identify the appropriate margin.
- (b) The United States asked to be given an example of an other relevant organization that would be considered legal under the Chinese system.
- (c) The United States also asked whether the Tariff Commission is subject to judicial review in the People's Court, and whether it would be subject to the Court's determinations?
- (d) In the discussion of the questions on sampling, the delegate indicated that China does in fact have rules on sampling. The United States would appreciate it if China could specify where those rules may be found.
- (e) In a similar vein, in the discussion of confidential information and the need to provide public summaries of such information, again the delegate indicated that China does have rules with respect to such public summaries. Again, the United States would appreciate it if China could specify where these rules may be found.
- (f) One additional question at this time related to the delegate's discussion of notification to known exporters. In that discussion, if he had understood correctly, the delegate of China seemed to indicate that China regarded notice to the government of the exporting country as constituting notice to the exporters, and requesting that the exporting countries government provide notice to the exporters. The United States asked if China could provide some additional indication of how it believed that to be consistent with the requirements of Article 6.1.3 of the Anti-Dumping Agreement.

111. The delegate of China briefly responded to the follow-up questions.

- (a) First, with respect to legal representation in the anti-dumping investigations, according to China's rules it is not allowed for foreign attorneys-at-law to represent foreign exporters or other parties, to make submissions or to attend the public hearings. This was because China's law on attorneys-at-law does not allow a foreign lawyer not qualified to practice law in China to act. Since anti-dumping investigations are quasi-judicial exercise, it is not allowed. He noted that this was not the appropriate forum to discuss whether foreign lawyers can represent interested parties in an anti-dumping case – that was a matter of Trade in Services.
- (b) As to the function of the Tariff Commission and the State Council, he clarified that the Tariff Commission cannot amend the dumping margin determined by the MOFTEC. However, it can take a different decision on MOFTEC's proposal for the final anti-dumping measures. That is to say, the Tariff Commission can lower the duty rate. However, it cannot raise the anti-dumping rate above the dumping margin determined by MOFTEC.
- (c) Another point was that the Tariff Commission is also subject to judicial review.
- (d) Regarding the rules for summaries of confidential information, he noted that it was not easy to formulate very detailed rules for a summary of confidential information. He was not aware of any country which had specific rules. What he had said was that China had some rules on the summary of confidential information, that is, the

summary has to be meaningful to enable the other party to understand the substance of the information submitted on the confidential basis.

- (e) As to the question of notification to known exporters, in practice, it was difficult for the Chinese authorities to find the addresses of exporters in the petitioner's application, so it was very difficult to carry out such a notification. However, if it was possible to notify known exporters, the authorities would do that.
- (f) With regard to Article 30 of the Chinese Anti-Dumping Regulation, he noted that the similar article in the Anti-Dumping Agreement stated that whenever the competent authorities are entitled to consider whether to impose a lesser duty, the provisional measure can be extended to 9 months. China did have that possibility. Having said that, he clarified that in practice, China had never extended provisional measures beyond 6 months.

112. The delegate of China noted that China understood that the questions could not be exhausted by one TRM. A TRM is an 8-10 year programme, and China did not expect to graduate from an 8-10 year programme in one year, so there would be many more opportunities, multilateral and bilateral. China hoped to cooperate with other Members on this issue.

113. The Chairman considered that Members recognized this to be a useful exercise. Important information had been presented, and everybody had learned a great deal about the Chinese Anti-Dumping laws and the implementation of the Anti-Dumping Agreement in China. He noted that, as he had mentioned earlier in the meeting, the legislation that was the subject of questions today would be on the Committee's agenda in the spring, in the regular course of business, so as the delegate of China had said, there would be more opportunities to continue discussing these issues.

114. Turning to the Committee's report on the review, the Chairman noted that there are no guidelines for the report contained in the Protocol. In several other bodies that had undertaken the transition review, the Chairman had, acting on his own responsibility, prepared a brief, factual report, with references to the documents concerned, and attaching the portion of the minutes of the meeting which relate to the transition review. He asked Members whether this procedure should be followed in the Committee.

115. The Committee so decided.<sup>5</sup>

#### E. CHAIRMAN'S REPORT ON MEETING OF THE WORKING GROUP ON IMPLEMENTATION

116. The Chairman recalled that, as most Members were aware, the Working Group on Implementation met in regular session on Monday, 21 October 2002. Despite the lack of new papers on the topics referred to the Group for discussion, the Group had had a useful and productive meeting. A thorough discussion took place of the most recent revision of the draft recommendation on conditions of competition that may be relevant to a decision whether a cumulative assessment of the effects of imports is appropriate. The Chairman noted that additional revisions suggested during the discussion would be incorporated into a new revised version of the draft recommendation, which would be circulated to Members.

117. Members had also discussed briefly the outstanding issue of the status of adopted recommendations. Although the draft text as such was not discussed during the meeting, copies had been made available to Members at the request of one Member. The Chairman had urged Members to think

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<sup>5</sup> The Committee's Report was circulated as document G/ADP/8, dated 18 November 2002.

about this issue in the context of the work on implementation issues in both the Working Group and the Committee, and the mandate of Ministers in the Decision on Implementation-Related Issues and Concerns to draw up recommendations on the matters referred to the Committee. In this regard several Members had commented that the concern with the status of adopted recommendations predated the Ministers' decision to refer implementation issues to the Committee and the Working Group. Some had noted that the lack of agreement on the draft decision concerning the status of adopted recommendations need not affect the work of the Group either in the implementation process, or more generally with regard to its future work. Several Members had stated the view that the content of the discussions was as important as any recommendation that might emerge from the discussions.

118. Members had discussed the course of future work of the Group and the Chairman had suggested that Members think about the number and length of meetings of the Group, and consider the possibility of choosing new topics of discussion. One Member had suggested, in the latter context, that it might be useful to divide proposed topics into those that Members envisioned as leading to a recommendation, and those opened for discussion without the intention of going forward to a draft recommendation. Other Members had commented that the possibility of recommendations had, in the past, emerged from the discussions themselves, and that therefore it might not be useful to limit the possibility at the outset. Members generally considered that it remained appropriate to schedule two days for the meetings of the Group.

119. Members had agreed that it would be appropriate to begin the process of choosing new topics for discussion. While Members need not limit themselves, they might, if they considered it appropriate, note that one or another topic was being proposed for discussion. Proposals for new topics of discussion were to be submitted to the Secretariat no later than 31 March 2003. The Secretariat would compile suggestions received by that date and circulate them to Members, for consideration at the next meeting of the Working Group.

120. Finally, the Chairman reiterated that the next Meeting of the Group was scheduled to begin Tuesday, 29 April 2003 and noted that the deadline for submissions on any of the topics currently before the Working Group was Tuesday, 18 March 2003, and the deadline for submission of proposals of new topics was Monday, 31 March. As usual, the Secretariat would circulate a reminder of the deadlines for all the Anti-Dumping meetings in the spring. Members were urged to respect these deadlines, in order to allow the Secretariat to translate and circulate the submissions before the meeting as this will allow delegations and capital-based experts to study the submissions in their preferred WTO language and prepare considered responses, which will enhance the discussions.

121. The delegate of the United States requested, if possible, that the minutes for this meeting be made available prior to the December 2002 General Council meeting.

122. The Chairman responded that the Secretariat would make every effort to prepare the minutes as soon as possible. However, if the minutes were circulated before the next General Council meeting in December, they would necessarily be incomplete, because the answers to questions on legislation were only due to be submitted in January 2003. There was therefore a technical problem in responding favourably to the request by the United States.

123. The delegate of the United States took note of the technical problems, but would welcome having incomplete minutes with a supplement to be issued once written responses had been received.

124. The Committee took note of the report by the Chairman and statements made.

F. CHAIRMAN'S REPORT ON MEETING OF THE INFORMAL GROUP ON ANTI-CIRCUMVENTION

125. The Chairman stated that, as most Members were aware, the Informal Group on Anti-Circumvention met during the morning of Wednesday, 23 October 2002. Members had had a lively and informative discussion sparked by a paper submitted by one Member under topic 2. Despite the focus of the paper, the discussion had ranged over all three of the topics set out in the framework for discussion. In addition, one Member had provided answers to written questions posed by two other Members regarding its previously submitted paper. One additional paper, addressing topic 3, which was first introduced at the Informal Group's meeting last spring, was also on the agenda. This paper was briefly introduced again, but no substantive discussion of it took place.

126. Members had also considered the future work programme of the Group. The Chairman noted that continued useful discussion would be difficult in the absence of new papers. However, in light of the debate sparked by one Member's paper submitted for the meeting, it seemed clear that there was room for further submissions and discussion in the future. Members had agreed that the Group should continue the discussions, mandated by Ministers at Marrakesh, in meetings held in conjunction with the regular meetings of the Committee. It was suggested that the Group might realistically schedule the meetings of the Group for half-day sessions.

127. The Chairman strongly urged Members to submit papers under the first three topics in the Group's framework of discussion, set forth in document G/ADP/W/404, and to follow on from the discussion at this meeting with comments and questions. He expressed the hope that in future meetings, more Members would participate actively in the work of the Informal Group, not only by submitting papers, but by taking part in the discussions themselves.

128. Finally, the Chairman reiterated that the next meeting of the Group was scheduled for the morning of Thursday, 1 May 2003. The deadline for submissions for that meeting was 25 March 2003. He urged Members to make maximum efforts to respect this deadline, to allow the Secretariat to translate and circulate Members' submissions in a timely fashion before the meeting. This would allow delegations, and particularly capital-based experts, to study the submissions in their preferred WTO language and prepare for the meeting.

129. The Committee took note of the Chairman's report.

G. OTHER BUSINESS

(i) *Korea – India's anti-dumping measures on NBR (acrylonitrile butadiene rubber)*

130. The delegate of Korea expressed a number of concerns regarding the decision of the Indian authorities in their sunset review. First, he noted some inconsistency in the calculation of the dumping margin. In the Disclosure Statement of Essential Facts dated 13 December, the dumping margin was given as US\$109 per metric ton. However, in the final finding, published in the Government Gazette 8 days after the disclosure, the margin went up to more than US\$400 per metric ton. No formal explanation had yet been provided and the delegate of Korea expressed concern that the Indian authorities might have relied upon inaccurate and biased information obtained from a secondary source and not on the information duly submitted to and verified by the authorities. If this were the case, it might be in contravention of Article 6.8 and Annex II, paragraph 3 of the Anti-Dumping Agreement.

131. Second, the delegate of Korea stated that the Indian Government had disclosed certain information submitted by a Korean company on a confidential basis and which it explicitly requested to be treated as such, in breach of Article 6.5 of the Agreement.

132. Third, he stated that the Indian Government had made a determination to extend the anti-dumping measure without conducting a detailed analysis of the likelihood of recurrence of dumping and injury, in violation of Article 11.3.

133. Lastly, the Indian Government seemed to have considered only part of the injury factors stipulated in Article 3.4 – although the authorities alleged that they had considered appropriate injury parameters, there was no evidence that they had evaluated all of the requisite factors specified in the Agreement.

134. Korea was of the view that the final decision of India should be invalidated and the measure be terminated immediately. The delegate of Korea informed the Committee that a more detailed paper on this case had been delivered to the Indian delegation in advance of the meeting.

135. The delegate of India stated that the detailed paper would be forwarded to his capital for consideration.

(ii) *Korea – Japan's anti-dumping measures on PSF (polyester staple fibre)*

136. The delegate of Korea expressed serious concerns regarding the decision by the Japanese authorities. First, Korea was of the view that the Japanese decision on the product under investigation and its like product was not only inconsistent with Article 2.6 of the Anti-Dumping Agreement, but also with the jurisprudence of the WTO derived from the Indonesian automobile case and some others. According to Korea, the Government of Japan considered Korean regenerated PSF as a like product of Japanese virgin PSF, even though they are different from each other in both physical and non-physical characteristics, including manufacturing process, interchangeability, channels of distribution, common manufacturing facilities and employees, producer and customer perception, price and use. In addition to the above, none of the Japanese regenerated PSF producers participated in the petition as it was filed by only the virgin PSF industry while the industry is composed of large-scale major corporations which are strictly different from small regenerated PSF producers.

137. Second, the delegate of Korea stated that the decision by the Japanese authorities to initiate the investigation was not supported by sufficient evidence to justify the initiation, as most of the evidence provided by the petitioners on dumping, injury and the causal link between the alleged dumping and injury was based on mere presumptions. The authorities had failed to separate the regenerated PSF from virgin PSF in analysing evidence of injury and causal link in violation of Articles 5.2 and 5.3 of the Anti-Dumping Agreement.

138. Third, in Korea's view, the calculation of the dumping margin contained many flaws - in the calculation method, the adjustment in the difference in product quality and grade, the exchange rate and currency conversion, the level of trade adjustment and the circumstances of sale.

139. Fourth, the evidence of injury and threat of injury were insufficient, as all the major indicators of injury to the Japanese virgin PSF producers did not support a finding of material injury. The volume of alleged dumped imports from Korea showed mere fluctuation during the investigation period, the prices of Korean PSF exports did not decline, and a price depression of domestic products was not caused by the alleged dumped imports from Korea. Furthermore, there was no actual or potential decline in sales and the share of alleged dumped imports from Korea in the total imports had been decreasing. Korea therefore questioned the existence of a causal link between Korean imports and material injury to the domestic industry.

140. Lastly, the delegate of Korea asserted that there were procedural defects in the investigation, as the Japanese Government extended the investigation period by three months claiming that further investigation was necessary, although the Korean authorities could not find any special circumstances

to justify the extension. The scope of the investigation was also unduly extended from five Korean companies to include many other small companies during the investigation. These actions were not only in contravention of Article 5.10 of the Agreement, but also were violations of the letter and spirit of the Agreement.

141. For these reasons, Korea believed that the final decision of Japan was not consistent with the Anti-Dumping Agreement and requested Japan to immediately terminate the measure. The delegate of Korea informed the Committee that a detailed paper on the issue had been delivered to the Japanese delegation in advance of the meeting.

142. The delegate of Chinese Taipei stated that this case concerned a measure which also affected its exports. There were basically three concerns which he would like to address. The first concern related to the price undertaking. Chinese Taipei exporters had opted for the application of price undertakings during the investigation. It was with that understanding that the exporters had replied to the questionnaires, but rejected the request for an on-site investigation. However, the Japanese authorities responded in a very rapid and inattentive way. According to Article 8.2 of the Agreement, price undertakings shall not be sought or accepted from exporters until the authorities have made a preliminary affirmative determination of dumping and injury. The Japanese proceedings did not include any preliminary determination. Therefore, the opportunity for Chinese Taipei exporters to actively seek a price undertaking had been severely restrained. As a result, an ultimatum on the terms of a price undertaking was delivered to the exporters on 10 July with a grace period of only five days to decide whether to accept it or not.

143. Second, as a consequence of the decision of the Chinese Taipei exporters to seek price undertakings, and the fact that they replied to the questionnaire but rejected the request for an on-site inspection, the authority totally disregarded information provided by the exporters and decided to use the best information available. To make matters worse, the information provided by the applicants which requested 8.8 per cent anti-dumping duty was not even good enough for the investigating authority and they went elsewhere and came up with information even better than the best information available provided by the applicant, and made the final determination of a higher dumping margin at 10.3 per cent.

144. Last, but not least, the investigation in question was initiated on polyester staple fibres whose imports only constitute 4.5 per cent of the total domestic production. After the finding that the dumping margin for the largest company in Korea was at 0 per cent, the alleged dumping volume would be less than 3 per cent of the total domestic production. With such a small amount of imports *vis-à-vis* the domestic production, Chinese Taipei had serious reservations about the material injury found by the investigating authority.

145. Chinese Taipei reserved its right to further pursue this matter in the Committee or in other appropriate fora.

146. The delegate of Japan noted that it had resorted to only a few anti-dumping measures so far. Japan had strictly observed anti-dumping rules by sticking to the principles of GATT that anti-dumping measures should be taken only in situations where dumping and injury truly exist and where the measure truly is necessary. With respect to this particular case, he emphasized that the investigation had been conducted consistently with the AD Agreement and the relevant domestic laws. With respect to the issue of like product regarding regenerated PSF and virgin PSF, the Japanese authority had made an overall examination in terms of such factors as physical characteristics, uses, channels of distribution, production process, prices, interchangeability, tariff classification and industrial users' perceptions. In consequence, the Japanese authority reached the conclusion that regenerated PSF and virgin PSF constituted a single like product. The delegate of

Japan expressed his authorities' willingness to have talks with Korea and Chinese Taipei on a bilateral basis for further clarification and discussion on this particular case.

147. With respect to the procedural matter concerning a price undertaking raised by Chinese Taipei, the delegate of Japan stated that the Japanese authority was quite open to the discussion of price undertakings, but for the entire duration of the investigation Chinese Taipei had made no concrete proposals for price undertakings. On the issue of best information available, he stated that the Japanese authority used the best information available because Chinese Taipei's companies rejected on-the-spot investigation and the authority had therefore decided that materials submitted by Taiwanese companies were unreliable. The Japanese authority had used the submitted materials as the best information available, and totally based the dumping margin on the submitted materials by Taiwanese companies. The delegate of Japan reiterated that his authorities were open to further discussion on a bilateral basis.

148. The delegate of China stated that the correct nomenclature and name of Chinese Taipei is not Taiwan, but the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

(iii) *European Communities – Anti-dumping investigation by India of cold-rolled flat products of stainless steel originating in the European Union, Japan, Canada and the United States*

149. The delegate of the European Communities expressed its concern regarding the anti-dumping investigation carried out by India on cold-rolled flat products of stainless steel originating in the European Union, Japan, Canada and the United States. He stated that the Indian investigating authority had disclosed the findings in this case and it had found dumping margins ranging from 20-265 per cent. A disclosure document had been issued, but this document did not contain any information whatsoever on the proposed anti-dumping measures on imports of the product concerned. The European Communities believed the findings of this investigation violate the AD Agreement in several aspects. First, there was a wrong determination of dumping. Second, it would appear that the rights to have disclosure and the rights of defence of parties concerned had not been respected. Third, the determination of injury and also the determination of causal link did not seem to be in line with the AD Agreement.

150. As far as dumping was concerned, it was clear from the disclosure document that one dumping margin for one major EU exporter had been calculated by comparing a normal value based on first-quality Community steel and export price for second-quality steel exported to India. The Indian authorities had refused to take account of this fact and therefore the dumping margin was, in the view of the European Communities, wrongly determined. Second, as far as procedural rights were concerned, in terms of injury the disclosure by the Indian authorities was very incomplete and fell well below the standard, and thus due process had been denied. There also appeared to be an assumption in the disclosure that it was up to the interested parties to raise and to rebut the arguments for and against the existence of injury. This is clearly not the case. Article 3 of the AD Agreement makes it very clear that the onus is on the investigating authority to establish whether injury exists. Indeed, any injury finding requires a demonstration based on positive evidence, irrespective of any information supplied by the parties. More specifically, no disclosure had been made on price undercutting and price depression, either in actual or in indexed form. The European Communities had simply been informed that such price injury had been established.

151. The delegate of the European Communities also noted that one of the two Indian complainants in this case apparently failed to cooperate properly in this investigation. Data from this company were used to establish injury. For example, this particular company had provided no sales figures, yet the Indian authorities had used partial data supplied by this company. What was worse, apparently none of the information supplied by either complainant was verified by the authorities. In light of these shortcomings, the conclusion of the Indian authorities that the domestic industry

suffered injury, was entirely unjustified. Indeed, there was a fall in the market share of imports and a corresponding huge rise in the market share of the Indian domestic industry. The market share of allegedly dumped imports from the exporting countries under investigation had decreased from 32.3 per cent to 30.5 per cent, while the share of the domestic industry increased very substantially, from 28.19 per cent to 40.25 per cent. In fact, it was imports that appeared to be suffering, but this aspect, that the domestic industry increased market share so significantly, both in the investigation period and during the full 3-year analysis period, was not analyzed in the disclosure.

152. Furthermore, the Indian authorities had made no effort to identify the various causes of injury, but it was clear that such other causes existed. The larger of the two complainants had increased capacity three-fold over the last three years and was operating at one third of its capacity. The other complainant's capacity had fallen sharply - this was the company that did not appear to have cooperated. According to the European Communities, it had not been provided with any explanation of why there was a rise for one of the companies and a fall for the other. In fact, the Indian authorities had refused to address this capacity issue during the investigation on the grounds that insufficient information had been provided by the complainants. The concerns that the European Communities have with regard to this case were further heightened by the fact that India had recently initiated an anti-dumping investigation against the European Communities, Australia, Canada, Singapore, South Africa, Romania and Venezuela concerning hot-rolled steel products. The most worrying feature was that this initiation was based on threat of injury and the combined market share of the six exporting countries, or entities, was as little as 3 per cent. The European Communities was therefore of the opinion that the proceeding on cold-rolled flat products should be terminated forthwith without the imposition of any anti-dumping measures.

153. The delegate of India stated that he would convey the issues raised by the European Communities to his capital upon receipt of the full text of the European Communities' statement.

(iv) *European Communities – Anti-dumping investigation initiated by the Andean Community on sorbitol originating in France*

154. The delegate of the European Communities stated that by resolution 639/2002, published in the Official Journal of the Cartagena Treaty of 12 August 2002, the Secretary-General of the Andean Community had decided to initiate an anti-dumping investigation on imports of sorbitol produced by a French producer. The complaint was lodged by an Ecuadorian producer, apparently the only sorbitol producer in the Andean Community.

155. The Secretary-General, as the investigating authority on behalf of the Andean Community, which considers itself as a customs union, had based his decision on Article 2(d) of Decision 283/1991, which apparently contains rules on anti-dumping investigations.

156. This initiation raised a number of questions. First, to the European Communities' knowledge, neither the Andean constitution agreements, nor the anti-dumping rules, had been notified to the WTO. The delegate of the European Communities inquired whether there was any notification of the documents. If there was no such notification, the European Communities would like to know when such notification would take place.

157. Second, on the basis of the information available to the European Communities, it would appear that the Andean Community neither constitutes a customs union, nor is it a free-trade area. This seemed to at least be the case with regards to the product in question, sorbitol. The information available to the European Communities indicated that the relevant duty rates applied by Ecuador, Colombia, Venezuela, Bolivia and Peru to each other and to the rest of the world vary. For instance, the rate applied by Ecuador and Colombia is 15 per cent, while the rate applied by Venezuela and Bolivia is 10 per cent. Therefore, the delegate of the European Communities inquired whether one of

the Members of the Andean Community could explain the legal basis, under the WTO rules, of this anti-dumping activity of the Secretary-General of the Andean Community.

158. The delegate of Colombia responded that she had taken note of the European Communities statement and that the concerns raised would be transmitted to her authorities. She stated that Colombia was of the view that was not appropriate in this Committee to study the issue of substantial share of trade according to Article XXIV:2 of the GATT.

159. The delegate of Ecuador took note of the European Communities' statement and responded on a preliminary basis to the concerns raised. He informed the Committee that as the Andean Community was not a Member of the WTO, it did not notify its legislation to the WTO, but each country member did communicate this legislation to the WTO. As concerns anti-dumping legislation, this had been done. The information referred to by the European Communities, Decision 283/1991, was notified by some of the Members of the Andean Community. The delegate of Ecuador stated that he did not wish to enter into a discussion whether the Andean Community is a free-trade area or a customs union or not, but wished to point out that, for at least the last eight years, the Andean Community had resisted an analysis of whether or not it is a free-trade area. It does cover a substantial part of trade and this had been included since 1997, but this was not a subject to be discussed in this forum.

160. Concerning the third point raised by the European Communities, the delegate of Ecuador stated that the legal basis for the initiation of this anti-dumping investigation would be found in the legislation, the Decision previously referred to, which is a legislation of the region and which was notified by at least the member countries.

161. The delegate of Ecuador informed the Committee that it would revert to this matter in writing at the next meeting of the Committee. To conclude, he pointed out that the Secretariat of the Andean Community had started the investigation in August and one might presume the existence, at least on a preliminary basis, of dumping of crystallized and non-crystallized sorbitol imports under 2905, 4900 and 3860 originating in an enterprise in the European Communities, until the year 2002. Evidence had been found to show the threat of injury or injury to domestic production from products originating in France and possible dumping practices carried out within the 12 previous months.

162. The delegate of the European Communities thanked Colombia and Ecuador for the preliminary statements they had given and looked forward to replies in writing. He added however that the European Communities were nevertheless perplexed at finding out that some Members have simultaneously two sets of anti-dumping legislation in force.

(v) *Thailand – Australia's imposition of anti-dumping duty on imports of certain steel shelving kits from Thailand*

163. The delegate of Thailand expressed concerns on the imposition of anti-dumping duties on certain steel shelving kits from Thailand by Australia. The Australian authority, in September 2001, had decided to impose an anti-dumping duty of 47.8 per cent on Thai imports based on a 3-month period of investigation, that is from 1 January to 31 March 2001. The concern of Thailand was whether the 3-month time-frame was justified and sufficient to determine that there was dumping or injury to the Australian domestic industry. He noted that the issue of the time-frame of the period of an investigation had been raised by WTO Members for some time and Members were all aware that the Working Group on Implementation and this Committee were in the process of drafting a recommendation concerning the time-period to be considered in making a determination of negligible import volumes for the purpose of Article 5.8 of the AD Agreement. The shortest period discussed in the meetings and written in the draft was 6 months, which is still longer than the 3-month time-frame used by the Australian authority.

164. In addition, Article 15 of the AD Agreement also recognizes that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures. Thailand was of the view that the AD measure imposed by Australia was in this case not based on positive and sufficient evidence and failed to comply with the obligation under Article 15. The delegate of Thailand requested Australia to clarify the issue and expressed the hope that its concerns will be taken into consideration when reviewing the case.

165. The delegate of Australia confirmed that that the period of investigation for dumping was determined to be 1 January – 31 March 2001, as that was the only period for which there were any imports from Thailand of the particular product. However, for the purposes of injury analysis the period was 1 October 1999 – 31 March 2001. Australia did publish the statement of reasons and a report, and in either case, no concerns had been expressed either by the company or the Thai Government.

166. With respect to the second issue, the delegate of Australia repeated that the period of 1 January – 31 March 2001 was the only period for which there were any imports at all, and that this issue was therefore of no practical consequence. He pointed out that the Australian authority was still in the process of drafting a recommendation. He stated that in one sense the issues raised by Thailand go beyond Article 15, but in any event, expressed the hope that the answers given indicated that Australia had not been in breach of Article 15 or its responsibilities under the AD Agreement.

(vi) *Thailand – Australia's imposition of anti-dumping duty on imports of pineapple concentrate and canned pineapple from Thailand*

167. The delegate of Thailand raised concerns about the Australian imposition of anti-dumping duties on pineapple concentrate and canned pineapple from Thailand. In this case, the Australian Customs Service (ACS) had initiated an anti-dumping investigation on pineapple concentrate and canned pineapple from Thailand on 29 January 2001, based on the application lodged by the sole Australian producer of pineapple products, Golden Circle Limited (GCL). Subsequently, ACS had made a determination and imposed provisional measures on pineapple juice concentrate and pineapple fruit exported from Thailand in the form of securities, effective 28 August 2001 and 4 October 2001 respectively. The actual amount of the security was not published as it was confidential. On 4 October 2001, the Minister had accepted the ACS recommendation to impose AD duties on pineapple juice concentrate and pineapple fruit exported from Thailand.

168. The concerns expressed by Thailand were: First, in calculating normal value, construction of costs is allowed under the AD Agreement. However, Article 2.2.1.1 states that costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation if they are kept in accordance with the generally accepted accounting principles in the country of export and reasonably reflect the costs associated with the production and sale of the product under consideration. Even though the Thai exporters provided all necessary information to the ACS during its lengthy verification visits, the ACS had rejected the sample companies' actual cost allocation. Instead, the ACS used its own net realizable value (NRV) method of cost allocation, which was less reasonable as it ignored the differences in the individual company's product styles. The ACS also did not provide an explanation as to why it considered the cost allocation of the sample companies as being unreasonable.

169. Second, from October 2001 until the present, the ACS was still imposing provisional measures, in the form of securities, on all other Thai exporters, even though Article 7.4 of the AD Agreement states that the application of provisional measures should be limited to as short a period as possible. The provisional measures should last no longer than six months and the Australian current system of security cannot continue indefinitely. The Thai authorities and exporters had raised these

concerns to the ACS several times, but had not yet received a satisfactory response from the ACS. Thailand therefore would appreciate it if Australia could address the issue of the securities currently in place on pineapple products exported by residual or new exporters.

170. As Thailand had already provided a copy of its statement to the Australian delegation and to the Secretariat, the delegate of Thailand requested the Australian delegation to provide written replies to the concerns raised.

171. The delegate of Australia responded that it was not correct to simply say that the ACS had not provided an explanation as to why it rejected the company's allocation method and determined the cost using the net realizable value method. Detailed explanation was given in the statement of essential facts and in the report. On the last point, the complication had arisen in this particular case because the matter was referred to an internal review mechanism. The delegate of Australia expressed his authorities' willingness to meet with the Thai authorities and the relevant exporters to resolve this matter.

*(vii) Colombia - Mexico's anti-dumping investigation of ceramic tableware and replacement articles of ceramic tableware*

172. The delegate of Colombia stated that Mexico had initiated an anti-dumping investigation on Colombian exports of ceramic tableware, and replacement articles of tableware, on 21 January 2002. Information had been presented to Mexican authorities by Colombian exporters as well as by the importing company in Mexico. With the information provided it was clear that there was no dumping. The Mexican authorities did not calculate adjustments to the normal value in the reconstructed export price. The adjustments, rather, were increased, reducing the export price. In light of this, Colombia requested that the Mexican authorities take into account the concerns expressed in the course of the investigation and that they strictly apply the provisions of the Agreement.

173. The delegate of Ecuador informed the Committee that it was in a situation similar to that of Colombia on this issue, involving the Mexican investigation of ceramic tableware. He echoed the concerns expressed by Colombia and requested that the Mexican delegation take these concerns into account.

174. The delegate of Mexico responded that the investigation was currently under way and that there still was a time-period in which it was possible to submit further information by exporters. In addition, as a part of the procedure a public hearing is also provided for, where comments and arguments from exporters, as well as by the governments of the exporting parties, will be able to be heard. Mexico took note of the concerns expressed.

*(viii) Report on Technical Assistance Activities by the Rules Division in the area of anti-dumping*

175. The Chairman noted that the question of Technical Assistance in the anti-dumping area was briefly discussed during the spring meeting of the Committee. Some Members at that meeting had indicated that they would appreciate receiving a report on the technical assistance activities of the Secretariat in the area of anti-dumping and the Chairman had therefore requested the Secretariat to prepare a brief report describing the number and kind of activities undertaken since January of this year by the Secretariat and the Rules Division in the area of anti-dumping.

176. The Chairman emphasized that his report only described technical assistance in the anti-dumping area – the Rules Division also provides comparable technical assistance in the areas of countervailing measures, safeguards, and subsidy disciplines.

177. The Rules Division conducts specialized technical assistance activities in the anti-dumping area on both a regional and a country-specific basis. This is in addition to routine contacts with delegations and capital-based officials in which technical issues under the AD Agreement are discussed.

178. Regional activities are usually in the form of seminars. Participants are most often officials of Members with little or no experience in anti-dumping or other rules area matters, and officials of countries in accession. The purpose of these seminars is principally to clarify the relevant WTO rights and obligations in the rules area in general, and with respect to anti-dumping in particular. However, the Rules Division also conducts specialized regional workshops for investigators from WTO Members. These are intended to provide in-depth technical assistance in such areas as the calculation of dumping margins, injury analysis and investigation procedures.

179. Country-specific activities focus on the specific needs of a particular Member, and can be either seminars or workshops for training investigative staff, or more specialized activities such as assistance in drafting legal provisions or regulations.

180. Seminars and workshops generally last from three to five days, and often involve two members of the Rules Division staff as instructors. From January 2002 to date, the Rules Division had done 7 regional and 5 country specific programmes involving anti-dumping matters. It had also conducted 2 specialized national workshops, and a third such workshop was scheduled for December 2002.

181. The Chairman also deemed it useful to Members, and especially to their capital-based experts present in the meeting, to explain the procedures involved in requesting and obtaining technical assistance from the Rules Division in the area of anti-dumping.

182. As Members would appreciate, the Secretariat has limited resources, both human and financial, to provide technical assistance. Demand for technical assistance far outstrips the capacity to supply such assistance, not only in the Rules Division but in the Secretariat as a whole. To ensure proper planning and that the available resources are maximized, the Technical Cooperation Division earlier this year had requested Members to submit, in writing, requests for technical assistance in 2003 by 31 July 2002. Requests for 1038 technical assistance activities were received. 74 of these requests were in the area of trade remedies, that is, anti-dumping, countervailing measures, and safeguards. That was the second largest group of requests, after the 84 requests for activities in the area of Services. The Technical Cooperation Division was in the process of developing a Coordinated WTO Secretariat Annual Technical Assistance Plan for 2003. A first draft of the plan, contained in document WT/COMTD/W/104, was discussed in the Committee on Trade and Development in early October.

183. The Committee took note of the report, copies of which were made available in the room.

184. The delegate of Egypt thanked the Secretariat for the national seminar held in Cairo during the period 16-18 September 2002.

(ix) *Second inquiry by the Chairman of the Committee on Trade and Development concerning the Committee's activities in respect of special and differential treatment provisions*

185. The Chairman informed the Committee that he had received a letter from H.E. Ambassador Smith, the Chairman of the Special Session of the Committee on Trade and Development – copies of the letter were made available in the room. Ambassador Smith had requested information on any discussions, or other developments, relating to special and differential treatment that had taken place in the Committee on Anti-Dumping Practices and its subsidiary bodies,

in the form of a report before 30 November 2002. In response to this request, the Chairman intended to send a letter to the Chairman, reporting that the Committee, through the Working Group on Implementation, had been conducting discussions examining Article 15 of the AD Agreement, but that, as yet, there had been no outcome of those discussions to be reported. Should those discussions come to a conclusion before 30 November 2002, he undertook to provide any relevant additional information to the Chairman of the Special Session at that time. Copies of the Chairman's response would be provided to Members.

186. The Committee took note of the statement

(x) *Inquiry by the Chairman of the Working Group on Trade and Transfer of Technology concerning any discussion, submissions or other developments relating to trade and technology transfer*

187. The Chairman informed that he had received a letter from H.E. Ambassador Stefan Johannesson, Chairman of the Working Group on Trade and Transfer of Technology, in which it was noted that the Working Group was examining the relationship between trade and transfer of technology, as well as any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries. The Working Group decided at a meeting held on 10 October to request information from other WTO bodies regarding any work that they may have done in this regard, or that they plan to carry out in relation to trade and transfer of technology. The Chairman was therefore requested to inform the Working Group of any discussion, submissions and/or other developments relating to trade and technology transfer that may have taken place in the Committee, or its subsidiary bodies, by 20 November, in order that he could report the response at the meeting of the Working Group on 28 November. In response to this request, the Chairman intended to send a letter to Ambassador Johannesson informing him that there had been no discussions, submissions, or other developments in the Committee or its subsidiary bodies relating to trade and technology transfer. Copies of this response would be provided to Members.

188. The Committee took note of the statement.

#### H. DATE OF NEXT REGULAR MEETING

189. The Committee had agreed at its meeting of 21 February 1995 that regular meetings normally would be held in the last week of April and the last week of October. Accordingly, and taking into consideration the Easter Monday holiday on 21 April 2003, it was proposed that the next regular meeting of the Committee be held in the last week of April 2003, that is, the week of 28 April – 2 May 2003.

190. The Chairman considered that it would be reasonable to shorten the Committee's overall meeting schedule by one day and therefore proposed that the Committee begin its regular spring meeting in the afternoon of Thursday, 1 May 2003. A meeting of the Working Group on Implementation had already been scheduled for Tuesday and Wednesday, 29 and 30 April, and a meeting of the Informal Group on Anti-Circumvention for the morning of Thursday, 1 May. By starting the meeting of the Committee on Thursday afternoon, the Committee would have the full day on Friday available, if necessary, to complete its business.

191. The Committee decided to meet on the dates proposed by the Chairman.

#### I. ANNUAL REPORT TO THE COUNCIL FOR TRADE IN GOODS (ARTICLE 18.6)

192. The Chairman noted that, pursuant to Article 18.6 of the Agreement, the Committee was required to review annually the implementation and operation of the Agreement, taking into account

the objectives thereof, and to inform annually the Council for Trade in Goods of developments during the period covered by the review. Copies of a draft report had previously been made available to Members for comment.

193. The delegate of the United States stated that he wished to make general comments about the annual report. In the view of the United States, the annual report was an extremely important document – it was the only officially sanctioned representation of the work of the Committee and it would be best that this stood as the only official representation from the WTO of the work of this Committee. With respect to other documents that might have been issued by the Organization in regard to work conducted in this Committee, the United States did not have the opportunity to place such documents or raise the issue of such documents under "Other Business" of the Committee as it did not receive them until late the previous day. To the extent that such a document referred to statistics reported by Members to the Committee, the United States believed that such documents should prominently note any limitations on the data on which they are based. For example, the United States had noted in recent days that certain information was not included in reports of initiations conducted during the reporting period, and additionally, the Chairman had noted that some Members had not provided semi-annual reports. Both of these omissions, the United States believed, could substantially influence the statistics to a degree that was simply unknowable. Nevertheless, the United States recognized the value of such statistics in comparison to the statistics put out by other organizations on the incidence of anti-dumping measures.

194. Second, the United States was also of the view that that such documents put out by this Organization should clearly define such terms as "developed" and "developing" when they are used. Third, the United States believed that such documents produced by this Organization should eliminate references to non-WTO Members. Investigations conducted against imports from non-WTO Members might be conducted on a very different basis from investigations conducted with respect to imports from WTO Members, as those investigations by definition were not subject to the ADP Agreement. However, the United States did recognize the importance of accurate statistics put out by this Organization and which show which Members had a concentration of exporters who had engaged in dumping. The United States believed that such information would prove very useful as work on underlying market distortions in progress in the Rules Negotiating Group.

195. The delegate of India commented that some of the issues raised by the United States needed to be looked into carefully. One issue on which India wanted to express an opinion there and then was about the definition of "developing" and "developed", as the delegate was not sure whether this was the forum for discussing that issue. This had come up in many other fora as well. However, if one were to read the WTO Agreements, then everyone was clear as to what was meant by a "developing country" and what was meant by a "developed country". Of course, if the United States delegate had another context in mind, India would like clarification.

196. The delegate of United States agreed with India that this was not the appropriate forum to discuss the issue of "developing" versus "developed" countries. That issue was being discussed in other fora and it was precisely with this in mind that the United States believed that such references should not be made when discussing the work carried out by this Committee.

197. The meeting was recessed to allow preparation of a final version of the draft annual report, reflecting the current meeting, which was made available to Members, and the meeting was resumed.

198. The Committee adopted the annual report.<sup>6</sup>

199. The meeting was adjourned.

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<sup>6</sup> Subsequently circulated as document G/L/581, dated 29 October 2002.