WORLD TRADE ORGANIZATION

RESTRICTED

G/ADP/M/25
9 March 2004

(04-1037)

Committee on Anti-Dumping Practices

MINUTES OF THE REGULAR MEETING HELD ON 23-24 OCTOBER 2003

Chairman: Mr. David Evans (New Zealand)

1. The Committee on Anti-Dumping Practices (the "Committee") held a regular meeting on 23-24 October 2003.

2. The Committee adopted the following agenda:

A. ARMENIA – REVIEW OF NEW LEGISLATIVE NOTIFICATION

3. The Chairman noted that the first eight items on the agenda were the review of notifications of 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).

4. The Chairman recalled that 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 2 October 2003. As provided for in the agreed procedures, Members which had received written questions in time were asked to respond orally to those questions in the meeting, and subsequently 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 were to be submitted in writing no later than 7 November 2003 if the Member posing the question wished to receive a written answer. He reminded Members to submit the written answers to all written questions by the deadline of 7 November 2003 to the Secretariat no later than 8 January 2004.

5. The Committee then turned to the notification of Armenia.

6. The questions regarding the notification of **Armenia** can be found in the following documents:

G/ADP/Q1/ARM/1	Submitted by the European Communities
G/ADP/Q1/ARM/2	Submitted by the United States

TO DATE NO WRITTEN ANSWERS HAVE BEEN RECEIVED.

7. The Committee **took note** of the notification.

B. CHINA – REVIEW OF NEW LEGISLATIVE NOTIFICATION

8. The questions regarding the notification of **China** can be found in the following documents:

G/ADP/Q1/CHN/26	Submitted by the United States
G/ADP/Q1/CHN/28	Submitted by Mexico
G/ADP/Q1/CHN/35	Follow-up question submitted by the United States

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

G/ADP/Q1/CHN/32	Replies to United States (G/ADP/Q1/CHN/26)

TO DATE NO WRITTEN ANSWERS TO THE QUESTIONS FROM MEXICO G/ADP/Q1/CHN/28, OR TO THE US FOLLOW-UP QUESTIONS (G/ADP/Q1/CHN/35) HAVE BEEN RECEIVED.

C. ESTONIA – REVIEW OF NEW LEGISLATIVE NOTIFICATION

9. The questions regarding the notification of **Estonia** can be found in the following document:

G/ADP/Q1/EST/1	Submitted by the United States

TO DATE NO WRITTEN ANSWERS HAVE BEEN RECEIVED.

10. The delegate of Estonia stated that the Anti-dumping Act had been in force since 1 September 2002. Estonia had had no anti-dumping cases since then. There had been no anti-dumping complaints. The Anti-Dumping Act contained a special provision concerning the duration of the Act, in Paragraph 72, entitled "Repeal of the Act", which provided "This Act is repealed upon Estonia's accession to the European Union."

11. It was most unlikely that Estonia could make use of the Act as the time was running short for any use of anti-dumping measures solely managed by Estonia. In the case of problems, namely if there were any complaints to come during the period until accession, the law would have to be interpreted under Article 123 of Estonia's Constitution, ensuring this Act's conformity with the relevant WTO rules as well as with the perspective of becoming an EU member.

D. EUROPEAN COMMUNITIES – REVIEW OF NEW LEGISLATIVE NOTIFICATION

12. The questions regarding the notification of the **European Communities** can be found in the following document:

G/ADP/Q1/EEC/21	Submitted by the United States

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

G/ADP/Q1/EEC/22 & corr.1	Replies to the United States

E. MEXICO – REVIEW OF NEW LEGISLATIVE NOTIFICATION

13. The questions regarding the notification of **Mexico** can be found in the following documents:

G/ADP/Q1/MEX/1	Submitted by the European Communities
G/ADP/Q1/MEX/3	Submitted by Chile
G/ADP/Q1/MEX/4	Submitted by the United States

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

G/ADP/Q1/MEX/5	Replies to the European Communities

TO DATE NO WRITTEN ANSWERS TO THE QUESTIONS SUBMITTED BY CHILE AND THE UNITED STATES HAVE BEEN RECEIVED.

F. PAKISTAN – REVIEW OF NEW LEGISLATIVE NOTIFICATION

14. No questions were posed regarding the notification of **Pakistan**. The Committee **took note** of the notification.

G. PERU – REVIEW OF NEW LEGISLATIVE NOTIFICATION

15. The questions regarding the notification of **Peru** can be found in the following documents:

G/ADP/Q1/PER/19 & Suppl.1	Submitted by the European Communities
G/ADP/Q1/PER/20	Submitted by the United States
G/ADP/Q1/PER/23	Follow-up questions submitted by the EC

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

G/ADP/Q1/PER/ 21 & Suppl.1	Replies to the European Communities
G/ADP/Q1/PER/ 22	Replies to the European Communities
G/ADP/Q1/PER/ 24	Replies to follow-up questions submitted by the EC
G/ADP/Q1/PER/ 25	Replies to the United States

H. CHINA – REVIEW OF PREVIOUSLY REVIEWED LEGISLATIVE NOTIFICATION

16. Turning to the previously reviewed legislative notification of China, the Chairman noted that questions concerning the legislation of China had been received in a timely fashion from the United States, in document G/ADP/Q1/CHN/24. Answers to those questions were to have been submitted in writing no later than two weeks before the meeting, that is, by 9 October 2003. Written answers were in fact received at the end of the day preceding the meeting, and advance copies of the document, G/ADP/Q1/CHN/33, had been made available in the room. The United States submitted follow-up questions in document G/ADP/Q1/CHN/36, to which written answers have not yet been received.

17. 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 to submit follow-up questions in writing to the Member whose legislation was concerned, and to the Secretariat, no later than 7 November 2003 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. Members were requested to submit such answers to the Secretariat no later than 8 January 2004.

18. The Chairman informed Members that the new legislative notification of Jordan, document G/ADP/N/1/JOR/2, was expected to be on the agenda for the next regular meeting of the Committee in Spring 2004.

19. 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 2004 meeting of the Committee, it had to be circulated in three languages no later than 11 March 2004. As a practical matter, in light of the translation requirements, the Chairman informed the Committee that notifications of legislative text received after 31 January 2004 were unlikely to be translated in time to meet the above agreed deadline.

20. 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 autumn's meeting would be 1 April 2004. The Chairman encouraged Members to submit questions as early as possible, and Members receiving questions were encouraged to submit written answers in advance of the spring meeting to the extent possible.

21. 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 2004, questions regarding such notification must be submitted to the Secretariat, and to the Member whose notification was in question, no later than 11 March 2004.

22. Finally, the Chairman expressed continuing concern over the failure of some Members to submit any notification at all concerning legislation or regulations relevant to anti-dumping. He noted that for many, if not most, of these Members, it was likely that a single nil notification, indicating that there was no such legislation or regulation currently in effect, would have been all that was required.

He further remarked that for those Members who conducted anti-dumping investigations but had not yet notified their legislation, it was obviously important, from the point of view of all Members, that such legislation be notified, in the interest of transparency and better understanding. He thus encouraged Members who had not yet done so to make their notification of legislation promptly.

I. SEMI-ANNUAL REPORTS OF ANTI-DUMPING ACTIONS

23. The Chairman recalled that a request for the semi-annual report for the first half of 2003, to be submitted by 29 August 2003, had been circulated to Members in document G/ADP/N/105, dated 10 June 2003. He reported that it appeared that most Members taking actions had submitted semi-annual reports, although not all reports were submitted in a timely fashion. He expressed the hope that there would be continued improvement in this respect. He noted that particularly for Members making a nil notification, reporting consisted simply of submitting a letter reporting that no actions had been taken, once before the end of February and again before the end of August.

24. He reported that although there continued to be some problems in the form of reports, Members had clearly made an effort to submit reports in the format established by the Committee. He reminded Members that guidelines for the format of semi-annual reports were set out in document G/ADP/1, and noted that the Secretariat was always available to assist Members with questions about the format of reports.

25. The Chairman stated that Members who had submitted semi-annual reports were identified in paragraph 1 of document G/ADP/N/105 Addendum 1, dated 13 October 2003. 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, Poland had submitted a semi-annual report too late to be included in that document.

26. In addition to the Members who submitted semi-annual reports, a number of Members, listed in paragraph 2 of document G/ADP/N/105 Addendum 1, had notified the Committee that they had not taken any anti-dumping actions during the period in question. In addition, Colombia, Croatia, El Salvador, Oman, Paraguay and Romania had submitted such a notification too late to be included in that document.

27. 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 and thus failed to comply with this aspect of the requirements set out in Article 16.4 of the Agreement. These Members were identified in document G/ADP/N/105 Addendum 1 at paragraph 3.

28. The Chairman strongly urged all Members to comply with the requirement to submit semi-annual reports in a timely fashion in the future.

29. The Committee then turned to the review of the semi-annual reports submitted.

30. With respect to the semi-annual report of **Argentina**, the delegate of New Zealand observed that, at the last Committee meeting, New Zealand had asked Argentina a series of questions which were subsequently submitted, in writing, regarding Argentina's notification on the case initiated on 2 October 2001 into glass wool from New Zealand. New Zealand had yet to receive a written response to these questions. First, it appeared that the duration of the investigation was greater than 12 months. Given that Article 5.10 of the ADA states that investigations shall, except in special circumstances, be concluded within one year, could Argentina please explain what special circumstances necessitated this extended time period? Second, it appeared that the provisional measures implemented on 2 August 2002 were in force longer than the period permitted under

Article 7.4 before being replaced by an undertaking. Could Argentina please explain why this time limit was exceeded? New Zealand would greatly appreciate it if Argentina could provide a response to these questions in due course.

31. The delegate of Argentina responded by clarifying that the provisional measures were not enforced for more than 4 months. Secondly, the additional period of time was notified to the New Zealand embassy in Argentina in Note DCD 010016662/2002, dated 30 July 2002, and to the representative of the Tasman insulation exporter on the same date, in Note 10000666/2002. The exceptional circumstances which led Argentina to use this additional time was to analyse the price commitment which had been put up at the end of the investigation by the exporter from New Zealand. Argentina believed that it was important to consider this price commitment and therefore used the additional time available to it.

32. The delegate of New Zealand thanked Argentina for the response. New Zealand would take some time to consider it further and might come back with further questions.

33. With respect to the semi-annual report of **Brazil**, the delegate of the United States posed a number of questions. First the US delegate asked what notice was provided to interested parties of the extension in the benzothiazole case and were reasons for the extension included? Second, had the benzothiazole case now reached a final determination? Were any measures taken? Third, had the acrylonitrile case either reached a final determination or been extended? Fourth, the US delegate asked Brazil to please confirm that no provisional measures had been taken in either of the cases involving the United States. Fifth, the US delegate noted that Brazil had reported no negative injury determinations during the reporting period. Reviewing recent semi-annual reports for Brazil he observed a similar pattern. Would Brazil please confirm that it had found material injury or threat thereof in every investigation it has conducted since 2001?

34. The delegate of Brazil indicated that he would check with his authorities in capital and would provide responses. Later in the meeting, the Committee reverted to this matter at Brazil's request, and the Brazilian delegate responded to questions on two investigations: compounds containing benzothiazole ring-system; and acrylonitrile treatments. The investigation on compounds containing benzothiazole ring-system was terminated on 18 July 2003 and no anti-dumping measures were imposed. Since it was terminated there was no injury caused by the dumped imports. The other investigation on acrylonitrile treatments was extended in July and all the interested parties were notified on 18 July, including the US Government. The reasons for the extension were that after the presentation of the essential facts under consideration by the authorities a lot of arguments in documents were presented by the interested parties, and the Brazilian investigating authorities needed more time to analyse all of them.

35. The delegate of the United States expressed appreciation to Brazil for their prompt responses and looked forward to responses from other Members to questions.

36. With respect to the semi-annual report of **Costa Rica**, the delegate of the United States raised one question. He noted that Costa Rica had reported that it initiated an investigation in 1998 which still appears to be ongoing. He would ask Costa Rica to please explain this situation.

37. The delegate of Costa Rica stated that the matter would be referred to capital to obtain more detailed information on the particular case. In principle, according to the provisions of the Agreement this case should in fact have been concluded since the time has elapsed, but this would have to be confirmed.

38. With respect to the semi-annual report of **India**, the delegate of Singapore thanked India for its report and noted that quite a few of the actions reported concerned Singapore. Singapore wished to

raise in particular the case of methylene chloride. In August 2002, the Indian authorities initiated an anti-dumping investigation on the exports of methylene chloride (also known as dimethylene chloride, HS 29031200) from the EC, South Africa and Singapore. The Indian authorities named two Singapore companies in the investigation – Ethylene Glycols (S) Private Ltd., and Singa-Chem Treatment Techno Private Ltd. Singapore's statistics showed that there were no exports from Singapore to India during the period of investigation, that is, 1 April 2001 to 31 March 2002. Accordingly, Singapore's High Commissioner in New Delhi wrote to the Indian authorities on 16 September 2002 informing the authorities that Singapore did not export, and also informed the authorities that Singapore had verified that the two named companies were not involved in either the manufacture or export of the product.

39. In the preliminary determination dated 6 January 2003, the Indian authorities responded that "from the import data available from the (Designated) authority, it is seen that a quantity of 520 metric tons of the subject goods were exported from Singapore during the period of investigation". Preliminary duties were imposed on Singapore's imports. Singapore had recently been informed of final findings in this case from the Indian authorities, issued on 27 August 2003. The final findings impose an anti-dumping duty of US$ 36.30 on all imports of methylene chloride from Singapore.

40. Upon receipt of the final findings, once again Singapore's High Commissioner in New Delhi wrote to the Indian authorities on 18 September 2003, registering Singapore's disappointment at the outcome and strongly urging the Indian authorities to reverse the finding.

41. This particular case raised several concerns for Singapore over the notification and findings of the Indian authorities. First, the seemingly arbitrary manner in which the Singapore exporters were named in this investigation. Both the named exporters were mystified as to why they had been accused of dumping when they did not even export the product at all. One of the exporters had even written to the Indian authorities to confirm that they do not manufacture, sell or export this product at all. If the named exporters in an anti-dumping investigation are not correctly identified they clearly would not be in a position to furnish the appropriate data to the investigating authorities. Under such circumstances there would be an increased opportunity for the investigating authority to use constructed values.

42. Second, Singapore also found it difficult to understand how Singapore exports could have caused injury to the Indian domestic industry when, based on the response from the Singapore companies and Singapore's trade statistics, there were no exports of the product in question during the period of investigation.

43. Lastly, the mere initiation of an anti-dumping action has a trade-chilling effect. Even assuming that there are exports, or the potential for exports of this product from Singapore to India, the initiation would still have had an adverse impact on trade. Singapore would thus urge India to re-examine carefully the effects of the methylene chloride case and reconsider its findings against Singapore.

44. Singapore also wished to make a note on a broader point, relating to India's semi-annual report as a whole. Singapore noted that the methylene chloride action is one of 17 anti-dumping actions initiated by India against Singapore since 1999. No single country had initiated so many anti-dumping actions against Singapore, and there were at least 5 other cases where duties had been imposed. In one case, the case on phenol, India had already imposed a safeguard duty on imports of the product.

45. Singapore also wished to raise a practice which had caused some concern, which occurred in the methylene chloride case. That was the apparent disregard for exporters' information in preliminary determinations by the Indian authorities and the resort to using constructed values. The

imposition of preliminary and final duties on all these cases had adversely affected Singapore's exports to India. Even without the imposition of duties, Singapore's producers and exporters will already have experienced the trade-chilling effects that a mere initiation of an investigation can have.

46. The delegate of the United States posed two questions to India about its semi-annual report. Under its listing of measures in force, India listed a measure against graphite electrodes against the US as having been in place since 5 May 1998. However, in its semi-annual report, for that same case India indicated that in April 2003 continuation of the duty beyond five years was not recommended. The United States would ask India to confirm that the measure against graphite electrodes have been terminated and adjust its measures in force listing appropriately. Secondly, under its notification of measures in force with regards to the United States, India listed products SBR and, separately styrene butadiene rubber, as having measures in force from 24 August 1999. The United States would ask India to clarify whether these measures are against the same product.

47. The delegate of Korea raised a matter of a purely procedural nature. He noted that his country was described in India's report as "South Korea", but that its proper title was "Republic of Korea".

48. The delegate of India thanked the delegate of Singapore for raising this point. As regards the point of zero exports from Singapore of methylene chloride during the period of investigation concerning this case, India wished to state that this issue had been dealt with by the Designated authority of India in the preliminary findings as well as the final findings. If Singapore so desired, then this issue could be looked into bilaterally.

49. As regards another general issue raised by Singapore, on the number of anti-dumping actions taken by India in respect of Singapore, he wished to emphasize that India had always carried out anti-dumping investigations strictly in accordance with the WTO Agreement on Anti-Dumping. Investigations were launched on the basis of fully documented petitions from the domestic industry against the dumped imports originating from various trading partners.

50. Regarding the issue of a safeguard duty on phenol, he unfortunately did not have the full details available. However, as Members were aware, safeguard investigations and anti-dumping investigations were applied to remedy different sorts of situations. If Singapore had any concerns on the findings in the anti-dumping investigation on phenol, India would request Singapore to provide the details. India was also willing to discuss it bilaterally.

51. Regarding the issue raised by the delegate from the US, he confirmed that the final duty on graphite electrodes had been withdrawn on the basis of the recommendation. He did not exact dates but confirmed the duty was no longer in effect on this product. On the issue of SBR and styrene butadiene rubber he wished to clarify that a corrigendum had already been issued by the Secretariat and this was, of course, the same product.

52. Regarding the request of the Republic of Korea, India took note of the request and would accordingly take care of it.

53. With respect to the semi-annual report of **Japan**, the delegate of the United States raised two questions. He observed that every case conducted by Japan seems to have resulted in the use of facts available. He would ask Japan whether any of this use of facts available involved adverse assumptions. Secondly, he would ask Japan what rate of duty would apply to a new exporter of certain polyester staple fibre from Korea or Chinese Taipei who chooses not to request a new shipper review under ADA Article 9.5.

54. Later in the meeting, the Committee reverted to this matter at the request of Japan. The delegate of Japan thanked the United States for its interest in Japan's semi-annual report and apologised for not being able to give an answer earlier. Having consulted with his colleagues, the answers to the two points that the US raised were the following. In terms of the facts available, in these investigations Japan was using facts available but not in the context of adverse facts available. The answer to the second question from the US, was that Japan had not yet received a request for a new shipper review but if there were a request for a new shipper review, Japan would request a guarantee in the amount of the "all others rate" from the new shippers during the time of the new shipper reviews.

55. The delegate of the United States inquired how Japan calculated the all others rate in these two cases, given that both cases involved the use of facts available?

56. The delegate of Japan stated that, as this was a rather technical question, Japan would like to answer the question at the next meeting or as soon as possible.

57. With respect to the semi-annual report of **Korea**, the delegate of the United States observed that Korea had become a fairly frequent user of the anti-dumping remedy. In light of this, the United States had several questions about Korea's anti-dumping practice. First he would ask Korea to please inform the United States of the initiation date of the ethylhexyl alcohol cases. Second, in the case of disposable lighters from China, did the use of facts available involve an adverse assumption? And third, in the case of EBA from Chinese Taipei, he would ask Korea how a price undertaking can be based on facts available as appeared to be indicated in the semi-annual report?

58. The delegate of Korea thanked the US for raising three issues. Regarding the date of initiation of the ethylhexyl alcohol case, he understood it to have been August 2002. For the two remaining questions, unfortunately the answers were not readily available so Korea would provide detailed information to the United States later.

59. With respect to the semi-annual report of **Mexico**, the delegate of the United States noted that Mexico had reported no negative injury determinations during the reporting period. Reviewing past reports it appeared that of the 65 investigations Mexico had initiated since the formation of the WTO, only one had resulted in a negative finding with respect to material injury or threat thereof. Would Mexico please confirm whether this was an accurate reading of Mexico's semi-annual reports?

60. The delegate of Mexico thanked the United States for raising this question. He undertook to consult with his authorities in capital so as to provide the US delegation with a precise answer.

61. With respect to the semi-annual report of **Poland**, the delegate of Poland noted that there appeared to be some data missing from the report. He believed this was because of some computer error, and of course Poland would provide a formal corrigendum. But for the information of the Committee, in column 5 where the form asked for dates and dumping margins, in the case of the definitive duty imposed against the Czech Republic and the Russian Federation, there was only the information about the dates, but no information about the dumping margin. He informed the Committee that the dumping margin found for the Czech Republic was 21%, while for Russia it was 30.1%.

62. With respect to the semi-annual report of **South Africa**, the delegate of the United States noted South Africa had identified a sunset review on the order on acetaminophenol against the US. However, the United States was not aware that any regulations or rules had been issued by South Africa with respect to the conduct of such proceedings and would ask South Africa to comment on when such rules will be notified to the Committee.

63. The delegate of South Africa stated that his authorities would be notifying their regulations for the next meeting, next spring.

64. With respect to the semi-annual report of **Thailand**, the delegate of the United States noted that Thailand had reported no negative injury determinations during the reporting period. Reviewing past reports, it appeared that Thailand had never made a negative injury determination. Would Thailand please confirm whether this was an accurate reading of Thailand's semi-annual reports?

65. The delegate of Thailand stated that he would bring this matter to the attention of his capital and would get back to the US.

66. With respect to the semi-annual report of **Turkey**, the delegate of the United States noted that the investigation of polyvinyl chloride from the US appeared to have taken 25 months to complete. He wished to ask Turkey how this duration was consistent with the timelines set forth in the ADA Article 5.10?

67. The delegate of Turkey requested the United States to put its question in writing, and stated that once the written question had been received Turkey would submit a written and comprehensive answer.

68. With respect to the semi-annual report of the **United States**, the delegate of Korea raised a systemic issue concerning the format for notifications. For most Members, column 13 of the semi-annual reports concerned reporting the percentage of the trade volume of the exporting countries investigated. However, that column in the US semi-annual report was headed "Number of Firms" and did not report the trade volume investigated of exporting countries.

69. The delegate of the United States noted that his authorities reported the trade volume in column 11.

70. The delegate of Korea noted that other Members also reported trade volume in column 11. His question concerned column 13, the percentage of the trade volume investigated of the exporting countries. That was of a different nature than the information reported by the United States concerning the number of firms. He wondered which information was actually correctly to be reported according to the notification format?

71. The delegate of the United States thanked the delegate for the clarification, and indicated his authorities would look into the issue and reply to Korea.

72. The Chairman observed that answers provided to the questions posed, if they were provided in writing, should be made available to the Committee as a whole, as well as to the Member who posed the question.

73. The Committee **took note** of the statements made.

J. PRELIMINARY AND FINAL ANTI-DUMPING ACTIONS

74. The Chairman noted that lists of the notifications of preliminary and final anti-dumping actions received by the Committee were circulated to the Committee in documents G/ADP/N/104 and G/ADP/N/106-109. 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, Malaysia, Mexico, New Zealand, Pakistan, Peru, Singapore, South Africa, Turkey, the United States, and Uruguay.

75. The Chairman stated that there continued to be a lack of full compliance in this area. As reflected in Annex D of the annual report, a draft of which had been made available to Members earlier in the week, some Members who had submitted semi-annual reports indicating actions in progress had not submitted reports of preliminary or final actions taken. He noted that if the Committee was to carry out its role in monitoring and discussion actions taken by Members, it was extremely important that Members notify their measures as required by the Agreement.

76. The Committee **took note** of the Chairman's statement.

K. EFFECT OF MEMBERSHIP ENLARGEMENT ON TRADE REMEDIES CURRENTLY IN FORCE IN THE EUROPEAN COMMUNITIES: TEN QUESTIONS – ITEM REQUESTED BY THE UNITED STATES

77. The Chairman noted that this item had been requested by the United States to be on the agenda for this meeting and the meeting of the Committee on Subsidies and Countervailing Measures the following week. The United States had submitted written questions to the European Communities, circulated in document G/ADP/W/435-G/SCM/W/526. Both he and the Chair of the SCM Committee had received letters from the European Communities dated 13 October indicating that the European Communities would provide answers to the US questions and proposing that the questions be dealt with only in this Committee.

78. The delegate of the United States observed that most delegates present in the room would recall that the United States had raised this issue at the Committee's meeting last spring. To refresh memories, a useful summary of the discussion was contained in the minutes of the Committee's Spring meeting, document G/ADP/M/24, beginning on page 9.

79. Because these sources were available to Members, he would be brief in his description of the issue, and the potential problems which caused the United States to raise these questions for the EC. As discussed in the Spring, last March the EC announced a rather surprising policy with respect to the effect of expansion of EU membership from 15 member States to 25 member States, which is scheduled to occur on 1 May 2004. With the expansion of the EU, the Commission had announced that any trade remedies in place by the 10 acceding countries would be automatically terminated. This was, of course, a welcome announcement. However, the Commission had also announced that they would be replaced by the far more numerous trade remedies currently in effect in the EC-15. To put it simply, the geographic coverage of the EC's current trade remedies would be stretched to encompass the new territory. As the United States understood this policy, for many products covered by current measures in the EU-15, if an exporter ships its merchandise to the 10 acceding countries on 30 April 2004 it will not have to pay dumping duties; but if it enters that same merchandise into the same port on 1 May 2004, it will have to pay dumping duties. By the same token, domestic producers of that merchandise located in those 10 countries will not be protected by trade remedies on 30 April; they will have such protection on 1 May.

80. The obvious problems this proposed policy raised were that dumping duties were being imposed in those countries, and protection was offered to domestic industries in those countries, with no determination ever having been made that those domestic industries were suffering material injury. This policy not only raised questions about the EC's definitive measures, but also about the numerous special deals it had cut with exporters threatened with such measures.

81. The EC had said it may conduct reviews of the injury determinations underlying its trade remedies, but only if the exporters would produce facts about the financial condition of their competitors in the EU-25. In addition to this high threshold, the EC had warned that any time an exporter requested a review of the injury to the domestic industry in the EU-25, the Commission would also self-initiate a review of that exporter's level of duties, which might increase as a result.

Clearly, even if an exporter believed that the facts likely showed that the EU-25 industry was not suffering material injury, in the face of this policy it would have to think very carefully about the possible repercussions of asking the EC to review such facts.

82. This proposed policy raised a number of issues which were the focus of the United States' questions to the EC. The United States began, of course, by asking about the status of this policy. If it had been abandoned, or if reviews of all of the EC's trade remedy measures had been completed, then this issue could be dropped, and the Committee could move on to other matters before it. The United States also asked about the status of current investigations. The United States was aware that some investigations were being conducted on the basis of injury to the domestic industry in the EC-15, even though the EC had already announced the policy of applying the results to the EC-25. This practice was even more troubling given the EC's practice of limiting its examination of the domestic industry solely to those companies which supported the petition. This practice not only raised the question of whether the EC was conducting valid injury investigations, but also the issue of whether their industry support finding had been distorted. The United States also asked about the proposed review procedures, to find out if the EC had modified its policies which seemed designed to discourage requests for review of the injury determinations. Finally, the United States asked several questions about the EC's views of the possible implications of their policy. For example, if a Member currently had a measure against the EC, did the EC agree that the measure may be expanded to cover the acceding countries? If a Member had measures against some subset of the EC-25, may it apply those measures against all upon expansion? The answers to these questions might shed some light on the reasons underpinning the EC's announced policy.

83. The delegate of the European Communities started by thanking the United States for sending a list of specific questions on the impact of enlargement on the EC trade defence policy. Since the end of last year, the Commission had conducted a series of information activities aimed at explaining to interested parties the approach that the EC will take on this issue. The EC was confident that this exercise in the Committee would further contribute to the dissemination of the relevant information.

84. The EC also wished to announce that a couple of days ago the Trade Defence Services of the Commission had launched a website explaining various aspects of the EC trade defence policy after enlargement. The EC trusted that the website would serve as a valuable and easily accessible reference tool for everyone seeking answers to most common questions on this topic.

85. The EC also wished to underline that it had compiled considerable experience in handling this issue in successive rounds of enlargements. This experience clearly showed that economic operators requested reviews only to a very limited extent, although the EC showed great willingness to open such reviews. All this demonstrated that the issue was not as critical as the US questions might at first sight suggest.

86. Having said that, he proceeded with the answers to the US questions. He noted that the answers only referred to anti-dumping and anti-subsidy measures.

> **1. Please update the Committee on the EC's plans regarding the effect of enlargement on outstanding trade remedy measures by the EC. Do the documents entitled "Trade And Enlargement - Why is enlargement good news for third countries?" (MEMO/03/72, dated 27 March 2003) and "Trade and Enlargement - A Sectoral Overview" (MEMO/03/73, dated 27 March 2003), continue to represent a complete and accurate picture of the EC's policy with respect to the effect of enlargement on outstanding trade remedy measures by the EC?**

87. The EC could confirm that it had not changed its approach since the publication of the above-mentioned documents earlier this year. For those who did not have the documents referred to by the US at hand, it was recalled that this general approach consisted of the following key elements :

- as of the day of enlargement, there would be an automatic and immediate application of all the existing EU-15 anti-dumping and anti-subsidy measures in the new Member States;

- as of the day of enlargement, all the existing anti-dumping and anti-subsidy measures of the individual new Member States would lapse;

- there would be additional possibilities for interested parties to request reviews of AD/AS measures in force in the EU-25, provided that they have evidence that enlargement generates changed circumstances to an extent that these measures are no longer appropriate for the market situation in the EU-25.

Have any other documents been issued which pertain to this issue?

88. No. The delegate of the European Communities recalled what had just been said about the launch of a website dedicated to this topic. In addition, the Commission had undertaken other information activities, such as seminars, *ad hoc* bilateral meetings and exchanges of letters with the aim of explaining its policy *i.a.* to its trading partners.

Does the EC intend to hold a hearing to discuss with interested parties the appropriateness of the extension of measures to additional customs territories?

89. There are no such plans. However, in line with its practice in the previous rounds of the EU enlargement, at the latest immediately after the enlargement, the Commission would publish a Notice in the Official Journal reminding all interested parties of their rights to request reviews of the AD/AS measures in force in the EU-25. Such request would have to be accompanied by sufficient evidence that enlargement had substantially changed the circumstances underlying the imposition of the measures.

How and when does the EC intend to advise interested parties that these measures will be extended to the ten countries acceding to the European Union?

90. As previously explained, interested parties have had numerous opportunities to be informed of the consequences of enlargement in terms of trade defence measures. This information dissemination exercise will of course be continued in the further run-up to enlargement.

2. Does the EC intend to conduct reviews of the injury determinations of all outstanding trade remedy measures to confirm that those determinations remain a valid basis on which to impose trade remedy measures? If so, have such reviews begun?

91. There are no and will be no automatic *ex officio* reviews of the AD/AS measures in force in the EU-15 at the time of the accession of the new Member States. However, provided that the enlargement substantially changes the circumstances with regard to a measure (e.g., the injury parameters that the US address in their question or other parameters that determine the scope and legality of measures), a review of such a measure will be possible.

92. It should be underlined that not only exporting countries and their exporters had expressed, albeit in a very general way, an interest in such reviews, but also producers in the current and enlarged Community.

93. The EU approach also took into consideration that reviews are resource and time-consuming for all parties involved, and that without due justification for the need for such an investigation, parties share a practical interest not to be subject to such reviews. Reviews should only be carried out where necessary, as highlighted by adequate and accurate facts.

> **3. In its currently ongoing investigations, is the EC basing its injury determinations on information relating to the domestic industry in the EU-15 or the domestic industry in the EU-25? Does the answer vary depending on whether the proceeding is scheduled for completion months before enlargement, weeks before enlargement, days before enlargement, or after enlargement?**

94. In all investigations initiated before the enlargement, all investigation parameters (not only the injury parameters) are based on the data relating to the EU-15.

> **In which cases, if ever, does the EC intend to begin examining issues of injury to the domestic industry based upon the industry in the EU-25?**

95. The reply to this question followed from the EC's reply to the previous question. As a general rule, all investigations initiated after the date of enlargement will be carried out on the EU-25 basis.

96. In addition it should be pointed out that, in conformity with past practice adopted after the former rounds of enlargement, in the conduct of investigations initiated after enlargement, the new Member States will be considered as part of the Union. Thus the facts will be collected and the calculations performed in the framework of the EU-25 even if the investigation period covers a period in which the EU had only 15 Members States.

> **4. Article 5.4 of the Antidumping Agreement provides that an investigation shall not be initiated unless the authorities have determined that the application has been made by or on behalf of the domestic industry. In order to be considered "by or on behalf of the domestic industry," it must be supported by domestic producers whose collective output constitutes more than 50 percent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting application account for less than 25 percent of total production of the like product produced by the domestic industry. Please identify all cases in which the EC has considered producers in the ten acceding countries for purposes of determining whether the application has been supported "by or on behalf of the domestic industry." If the EC has not yet begun considering such producers for this determination, when does it intend to begin doing so?**

97. The answer to this question flows again from the basic concept that all investigations initiated after the date of enlargement would be carried out on the EU-25 basis. Obviously, all complaints submitted to the Commission after the enlargement will have to be based on data representative for the EU-25 and this requirement refers not just to standing issues, but also to all the other criteria that a complaint must meet in order to lead to the initiation of an investigation.

> **Does the EC intend to review all ongoing investigations to ensure that they were supported by domestic producers in the expanded EU-25?**

98. Again, this question had been addressed already in the replies to the previous questions, notably, that there will not be any automatic *ex officio* reviews of the current EU AD/AS measures.

5. If, based on an examination of the facts with respect to a domestic industry in the EU-15, an affirmative preliminary anti-dumping or countervailing duty determination is issued prior to enlargement resulting in provisional measures, will those provisional measures be lifted upon enlargement pending a final determination based on an examination of the facts with respect to that domestic industry in the EU-25?

99. In all investigations initiated before the enlargement, all investigation parameters (not only the injury parameters for the domestic industry) are and will be based on data representative for the EU-15. Accordingly, there will be no change of the sets of data used for the adoption of provisional and definitive measures. As for all the measures adopted on the basis of the data representative for the EU-15, also in this particular situation after the enlargement interested parties will have a possibility to request reviews of these measures under the circumstances described before.

6. One particular concern is the statement in the above-cited memoranda that the burden of establishing the need for a review will be on the exporter to establish that circumstances with regard to a case have changed substantially due to enlargement. An exporter is unlikely to have access to detailed information about the precise condition of a domestic industry in another country, given how sensitive such information about its competitors is likely to be. Has the EC reconsidered its proposal to impose such an insurmountable burden upon exporters in requesting a review?

100. With regard to this question, the EC expressed at the outset a certain degree of astonishment. The US question seemed to suggest that Article 11.2 ADA requirements as to the initiation of an injury interim review are *inherently* impossible to fulfil. The EC is not of the opinion that this can be seriously argued. In the EC's view, and the EC hoped that the US shared this view, the ADA gives already today exporters the possibility to request an Article 11.2 review if circumstances with regard to injury have changed. The same is true with regard to producers in the importing country who are of the opinion that the dumping has increased. On that basis, the EC failed to see why enlargement would constitute a particular problem in the context of processing of review requests and the opening of 11.2 ADA reviews.

101. These reasonable standards would, as always, be applied by the EU, also in the context of enlargement. And if there are any exceptional circumstances arising from this event or any particular difficulties, they would certainly be taken into account in this context.

102. This is nothing more than the application of a well-known principle of Roman law which is still highly relevant in any modern law. And that principle is *ultra posse nemo obligatur*. In other words nothing impossible is requested. If the data submitted suggest that there is a change in circumstances which in turn has an effect on the level of the measures, such review will be opened. Relevant indications in this respect can be the number of producers in the accession countries and their production volume when compared to the production volume of the EU 15 or the level of import volume and prices of the product concerned in the accession countries when compared to the exports in the EU 15. Under no circumstances would the EC require that exporters submit injury information which is, because of its confidential nature, only available to domestic producers in the EC.

103. Finally, this issue does not arise to the extent that a review is limited to issues of dumping or subsidy.

7. Will the EC consider a request to review the injury determination upon enlargement without a parallel request to review the appropriate level of duties? If the EC receives a request for a review solely of the injury determination, will it self-initiate an accompanying review of the appropriate level of duties? If so, what evidence, if any, will

the authority be required to have before undertaking such a self-initiated review? Please explain the basis for the EC's policy in this regard.

104. At the outset, the EC wished to underline that under its practice, the duty level can be based on dumping/subsidy or, if this is below the dumping margin or subsidy level, on injury. The EC also noted that in about 50% of all EC cases the duty level was governed by such lower injury margin. A request for changing the level of the duty can consequently be based on either of these two although there are unfortunately no WTO rules which govern the determination of the injury margin. Consequently, any discussion in this forum as to what is the appropriate standard of review of an injury margin is entirely academic.

105. Whether the EC will accept a request for an injury interim review would very much depend on the circumstances of the case at hand. As a starting point, the EC considered that an injury review does not necessarily have to be accompanied by, for example, a dumping review. However, if the information at hand suggested that the enlargement had not only affected the injury findings to a significant degree, but also the dumping findings, there would be no reason nor indeed any possibility to close one's eyes to this information. It goes without saying that the same approach will apply in the inverse situation, i.e. when the Community industry requests a review limited to issues of dumping or subsidy.

8. If another Member has an outstanding measure against the EU, would that Member be justified in applying that measure against imports from all of the acceding countries upon EU enlargement? Why or why not?

106. As a parallelism to the EC's approach the EC considered that the measure can be extended to the EU 25. However, again in parallelism to the EC' approach, the EC would insist that the possibility for a review is offered if an interested party can provide sufficient *prima facie* evidence demonstrating that circumstances have changed. Such review should allow for a quick update of the findings wherever necessary.

107. It also follows from this that in these circumstances a measure against an individual accession country cannot give rise to applying this measure to the EU 25.

9. If another Member has an outstanding measure against an individual Member of the EU-15, would that Member be justified in applying that measure against imports from all EU-25 Members upon EU enlargement? Why or why not?

10. If another Member has a trade remedy measure against one of the acceding countries, would that Member be justified in applying the measure against imports from anywhere in the EC upon enlargement? Why or why not?

108. Questions 9 and 10 were best answered together. There is certainly no basis for an extension if the Member follows the policy to impose TDI measures on individual EC Member States or on individual accession countries. The EC did not see any reason whatsoever as to how the simple fact of enlargement could entitle a WTO Member to extend the measure against an individual member to the EU 25.

109. The delegate of Korea thanked the EC for providing the answers to the questions raised by the US. At the last regular meeting, Korea had expressed its concerns with regard to the effect of membership enlargement of the EU on the outstanding trade remedy measures by the EC. Accordingly, Korea wished to limit itself to the legality under the AD Agreement of the EC's policy of uniform EC-wide application of trade policy instruments in the context of impending enlargement of the EU.

110. As the EC had just confirmed, the anti-dumping measures currently applicable in the 15 member States of the EU will be automatically applicable in the newly acceding member States. Korea continued to seriously doubt how the EC can extend the measures to the new member States without running afoul of its obligations under the AD Agreement, including those under Article 1, which stipulates that anti-dumping measures should be applied only under circumstances provided for in Article 6 of GATT 1994, pursuant to investigations initiated and conducted in accordance with the provisions of the AD Agreement.

111. First of all, the previous injury determinations which served as the basis for the outstanding anti-dumping measures cannot constitute a valid basis on which to extend those measures to the new member States. Secondly, the geographically extended outstanding anti-dumping measures to be applied after the enlargement cannot possibly be considered to have met the standing requirement or the initiation requirement provided for in Article 5 of the AD Agreement. The ongoing investigations conducted by the EC on the basis of current member States cannot support application of anti-dumping measures covering enlarged EU membership.

112. Korea was of the view that the only way to overcome this problem of lack of parallelism between the scope of investigation and the geographical application of the measures is first to conduct individual reviews on the basis of a broadened geographical scope of all the outstanding AD measures, including provisional ones as well as ongoing investigations and, second, to postpone extended EU-wide application of the outstanding anti-dumping measures pending completion of such reviews. The authority suggested by the EC, that is changed circumstances reviews under Article 11.2 of the AD Agreement at the request of affected exporters, cannot be the solution.

113. In its intervention, the EC made mention of increased activities in terms of information dissemination and also pointed out that review is time consuming and should be triggered only when there is due justification. But Korea did not believe that these two arguments could overcome the legality problem of the EC's current policy.

114. The delegate of Japan also thanked the EC for its responses to the questions by the US. Japan shared the view of the United States in that Japan was also concerned about the effect of the membership expansion on the anti-dumping measures currently in force in the European Communities. As the Korean delegation had explained, in accordance with Article 1 of the AD Agreement, anti-dumping measures shall be applied only pursuant to investigations initiated and conducted in accordance with the provisions of the AD Agreement. Article 1 therefore prohibits imposing anti-dumping duties on imports without investigation of the imports. The EC has not conducted any investigation on the imports to acceding countries and therefore has not found any injury due to these imports to the acceding countries. The EC however intends to expand the current anti-dumping measures to the acceding countries. Japan believed that the EC should take into account its concerns and should not simply expand the current anti-dumping measures to the acceding countries without investigation and in the absence of injury determinations.

115. The delegate of India also thanked the EC for their comprehensive responses to the questions raised by the US. India requested the EC to provide a copy of the statement in writing so that it could be examined in detail. India wished to emphasize that it believed that the scope of existing anti-dumping measures cannot be automatically expanded to include application of these measures in the newly acceding countries. This was based on the consideration that in the original investigation, the dumping injury analysis based on the domestic industry did not include the newly acceding countries. It cannot be the case that while the standing requirement on injury is established on the basis of the domestic industry existing in respect of the [previous] EC members, this could be an adequate basis for application of the anti-dumping measures by the newly acceding member countries.

116. The delegate of Australia supported clarification of the effect of EU enlargement on third-country exports currently subject to trade remedy actions. Australia had systemic and commercial interests in the EC's responses to the US questions posed and this issue in general. Australia recalled discussion n the Committee on Regional Trade Agreements on these issues following the previous EU enlargement, during which a number of concerns were raised, which remained unresolved. Australia saw merit in having further discussions in the trade remedy committees on the current provisions in the relevant WTO Agreements and the preservation of Members' WTO rights in relation to transparent and fair processes and treatment. Australia considered that there is a need for the principles underlying GATT Article 6 and the WTO AD Agreement to be respected. In addition to the US questions, Australia was interested in whether the EC could provide the modalities that were implemented during the last enlargement and which were referred to in the two EC documents referenced in the US document G/ADP/W/435. The EC documents note that exporters may request suspension of measures on the basis that injury would not be likely to recur. Could the EC elaborate on what procedures are envisaged? What are the evidentiary requirements relating to this request? What would the burden of proof be on the exporter? And Australia's final question was could the EC explain how the extension of the trade defence measures will not automatically vary the dumping and subsidization and injury determinations?

117. The delegate of the United States expressed deep appreciation to the EC for its complete and comprehensive responses to the US questions. That being said, the United States did have a few additional questions which have been raised by these responses. First, he noted that the EC had stated that reviews should not be automatically initiated because reviews are burdensome. He noted that the reviews being talked about were reviews of the injury determination. Given that trade remedy measures will be expanded to provide protection to the domestic industry, was not some burden upon that domestic industry appropriate? Secondly, he noted the EC's statement that only cases initiated after enlargement would receive treatment of their injury determination in the context of the EU-25. He asked the EC to confirm that cases initiated the day before enlargement would not receive examination of the EU-25 in the injury determination. Third, the EC referred to a reasonable requirement that facts for review be appropriate before reviews will be initiated. The EC referenced in this regard facts about the size of the industries in the newly acceding countries. He would ask the EC to provide the threshold for how large such industries must be in the newly acceding countries. In this regard, he noted that one highly profitable company could substantially sway an injury determination.

118. Next, he noted the EC's statement that an injury review does not necessarily mean that a dumping review will be conducted. In other words, the fact that a Member requests an injury review does not automatically mean that the EC will also review the level of duties. He would ask the EC to confirm whether, if only facts relating to injury are presented by an exporter, would the EC solicit or otherwise seek facts which may require a review of the level of duties?

119. Finally, in response to the United States' last three questions, he appreciated the EC's expression of its view that a member may cover the entire EU with a single trade remedy measure. This was previously somewhat unclear. In light of this statement, he would ask why a measure covering a single Member could not be expanded to cover the entire EU-25 upon expansion? If part of the EU-25 is covered prior to expansion, and that order may be expanded to cover the entire EU-25, why should it matter which part? In other words, if a Member who has a current order against the EU-15 may reasonably expand that to cover the EU-25, as the EC has stated today, why should not a Member which has an order against *one* member of the EU-25 be authorized to expand that measure to cover the entire EU-25 upon expansion?

120. The delegate of the European Communities thanked the delegations who had spoken for their comments and their questions, and would try to respond to these questions as comprehensively as possible. At the outset, he underlined that what the EC was going to do would be carried out in a very

transparent and fair manner. In fact, the EC strongly rejected the notion that this was a surprising policy. The policy which the EC intended to apply to the enlargement which would take place in May 2004, was the same policy as had been applied in previous rounds of enlargement. There was no surprise here. For a considerable number of months, the EC had also tried to draw the attention of economic operators to how it intended to handle this issue this time. So he failed to see how this could come as a surprise to anybody who more or less follows trade events.

121. He noted that he had heard today the view that the EC policy was designed to discourage requests for reviews. Again, he would strongly dispute such a notion. On the contrary, if Members had carefully listened to the EC response to question 6 from the United States, they will have heard that the EC would certainly not request from anybody the impossible. The EC had never done this and would not do this in future. There was no reason for applying such standards. On the contrary, the EC requested and invited anybody who thought that circumstances have changed due to enlargement to prepare already now for a request for review and to come along and request such a review so that on the day of enlargement or soon thereafter these problems and these issues could be dealt with expeditiously.

122. Looking at the statements that had been made, he saw a common theme, which seemed to be the suggestion that there should be sort of an absolute parallelism between the geographical scope of the investigation and the geographical scope of the measure. In other words, if the investigation had covered the EU-15 the measure cold not cover the EU-25. The EC thought that this was not correct. In the lifetime of an anti-dumping measure, and the same is true also for a anti-subsidy measure, there could be many circumstances which could change. This had already been discussed in the spring meeting of the Committee. New operators can come into existence, new operators in the Community and also new operators in the exporting country. Existing operators can go out of business, or can move on to other horizons, and again this can happen in the country which has adopted the measure and also in the country whose exports are subject to the measure. So this is one example where very important circumstances can change, and this does not automatically trigger a review. There can be other circumstances which can change. For instance if prices of raw materials increase, that can certainly have an effect on an injury determination, but he considered that nobody would suggest that there was a sort of automaticity to opening a review in these circumstances.

123. Having outlined a number of circumstances which change, another circumstance which could change, and did change here in the case of the EC, was the geographical scope of the Community. The EC had pointed out in the past that the economic weight, if he could use that phrase, of the ten new member States was not big as compared to the economic weight of the existing 15 members. This figure had been quoted as 10% -- the economic activity of the 10 new member States represents roughly 10% of the economic activity of the EU-15. So in the light of these facts, the EC failed to see how this particular change of circumstance, enlargement, should automatically trigger a review.

124. Turning to the more specific points. The US wanted confirmation that the investigation would only cover the EU-25 if the investigation has been initiated after enlargement and that investigations initiated the day before enlargement would only cover the EU-15. It was clear that there had to be a cut-off date, because the cut-off date gives legal certainty, it gives indication to all economic operators what had to be done and what was not necessary to do. The fact that the EC had such a cut-off date, and that the cut-off was the date of enlargement, does of course not mean that the change in circumstance resulting from the enlargement will subsequently not be taken into account. On the contrary, there is the possibility of a review. But a cut-off date is necessary in order to have legal certainty.

125. The US also raised the question whether or not there will be a threshold which could facilitate or even trigger the initiation of such a review, a threshold in terms of economic operators in the new member States, in the acceding countries. The US had also noted the example of a highly profitable

company that can completely change the injury picture. It is indeed true that a very highly profitable company can change the injury picture. But again this particular example shows in fact that it would be extremely difficult to have a hard and fast threshold which should trigger reviews. Due to enlargement there might an additional number of new companies being part of the Community, but if the data suggests that the change is not very big then there is no point in opening a review. At the same time if there is one new company which is highly profitable, that could suggest such a change. So the EC had great difficulties in seeing how a hard and fast threshold could be applied in this context.

126. Another issue raised by the US was would the Community solicit or seek information on dumping if only an injury review were requested? The point here was that injury covers a number of factors which have to be examined according to Article 3. One of the factors which plays a role is of course the volume of imports. Another factor which play a role is the prices of imports in relation to the market in the importing country. So, to the extent that injury data addresses these two points, requests for review also address these two points. If the information relating to these two points would suggest strongly that a dumping review would have to be opened, as previously noted in the EC's responses, it would be extremely difficult to ignore such facts.

127. The US had taken issue with the reply to the last questions, questions 9 and 10, raising the question why a country which has imposed measures against one single member of the Community should not be allowed to impose its measure, following enlargement, against the Community as a whole, the Community of 25? This the EC thought a very remarkable statement which defied logic. The EC saw no reason whatsoever why a duty which was imposed against one member and which followed an investigation against this particular member should be extended to all 25. This was something that the EC had a problem in understanding and he considered that it could not be meant seriously.

128. Before concluding, he wanted to point out another aspect of this enlargement exercise. He noted that the EC had a number of anti-dumping measures in force, as reported in its semi-annual report. As had been said, and was also said last time, following enlargement the measures which are in place in the newly acceding member States will be repealed. They will no longer apply from the day of enlargement onwards. He wished to point out that this was not a negligible figure – the EC had counted 64 measures in force in the 10 new member States. Out of these 64 measures, 24 measures applied *erga omnes*, that is, against everybody in the room and also against a number of States not in this room. And 27 of these 64 measures apply against individual third countries, and these individual third countries are not other acceding member States or are not member States of the Community, these 27 countries are countries other than the acceding countries and other than members of the Community. So, 24 + 27 = 51, that is a considerable number of trade defence measures which will disappear. He noted that reviews could always be requested, and the EC would certainly not impose any requirements in order to open such reviews which were impossible to fulfil.

129. The delegate of the United States asked whether the EC would allow newly acceding member States to opt out of coverage of these expanded anti-dumping and countervailing measures? Why or why not?

130. The delegate of the European Communities responded that there is no opt out. The possibility of opt outs in other areas had been discussed, but not in the area of trade. This possibility did not arise given the fact that the EC was a customs union, having only one border, and so there was no possibility to opt out.

131. The Committee **took note** of all the statements made

L. TRANSITION REVIEW UNDER PARAGRAPH 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA TO THE WORLD TRADE ORGANIZATION

132. 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.

133. The Chairman noted in this regard that there is no information specified for submission to the Committee under Annex 1A. Members had submitted questions in the context of the transitional review relating to China's implementation of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-Dumping Agreement). These can be found in documents G/ADP/W434 (submitted by Japan) and G/ADP/W/436 (submitted by the United States).

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

135. The delegate of the United States stated that the United States would like to recognize China's efforts over the past year as it worked to fashion an anti-dumping regime that is transparent, subject to the rule of law and in compliance with WTO rules. This process was not complete, however, and in the spirit of the TRM the United States was taking this opportunity to highlight areas where further improvements could be made. To assist in making this review as productive as possible, the United States had submitted written questions, in document G/ADP/W/436. He noted that written questions and answers were the most practical and appropriate form to accurately transmit technical information. It was in the interests of all Members – including China – to promote a free exchange of information through the mechanisms provided by the WTO, including the transitional review mechanism.

136. The United States applauded China's on-going efforts to round out the legal framework of its anti-dumping regime. The delegate noted that China had issued ministerial rules on industry injury investigations as well as judicial interpretations on hearing anti-dumping appeals. Nonetheless, gaps remained in this legal structure. One notable gap was in the area of expiration reviews, which left China in the position of currently conducting an expiration review without having ministerial rules on the books.

137. The delegate also noted that China had notified many of these anti-dumping laws and regulations to the WTO. Other such laws and regulations – including those concerning judicial review of anti-dumping measures – had not been notified. Notification of such laws and regulations is required by the WTO, specifically Article 18.5 of the Anti-Dumping Agreement, to increase the transparency of Members' anti-dumping regimes. Furthermore, as China's initial anti-dumping actions since joining the WTO were now coming to final decisions, it was essential that clear rules be in place and known to all parties regarding procedures for seeking judicial review. It was also important for such parties to be provided with a clear understanding of the legal authority the courts have over the decisions made by the administering authorities. The United States, therefore, expected

China to notify all laws and regulations that have a bearing on anti-dumping investigations and reviews to this Committee. The United States also invited China, as it had all other active users of the anti-dumping remedy, to submit papers describing its practice regarding the various topics now under discussion in the Working Group on Implementation.

138. The United States appreciated China's providing answers to the questions posed to it by the United States in the spring of 2003 on laws and regulations notified as of that date under Article 18.5.[1] Unfortunately, the late date of China's response precluded the United States from commenting on the content of those answers. Members of the AD Committee had agreed to these procedures in order to establish a technical forum for gaining a deeper understanding of each other's anti-dumping regimes. This procedure was not unique to China, and many Members, developed and developing, large and small, had participated in this process. The United States expected China to meet its responsibility to answer such questions promptly and in full, as all Members had agreed.

139. The transparency concerns of the United States did not end with China's participation in transparency exercises in this Committee. Of potentially greater concern was the extent to which the conduct of investigations and reviews was transparent to the interested parties involved in them. In particular, many respondent companies had complained that there was insufficient information released to parties to reasonably mount an effective defence. The delegate noted that the Ministry of Commerce had created a reading room for interested parties to access public versions of certain documents relating to anti-dumping investigations. However, a particular shortfall was that the Ministry, and its predecessor, the SETC, had never adequately made available documents relating to their injury investigations. Increasing the timeliness and breadth of the documents made available on the public record in anti-dumping investigations and reviews would improve the utility of this reading room.

140. China could also enhance the transparency of its anti-dumping investigations and reviews by providing details of the administering authorities' decision-making processes and reasoning. Again, limited disclosure of the basis for decisions taken in a proceeding greatly hindered interested parties' ability to defend themselves. Preliminary and final determinations were particularly suitable for these kinds of disclosures and should include substantive information considered by the administering authorities, and a description of the analysis conducted in the course of dumping and injury decisions.

141. China had informed this Committee that the roles played by MOFTEC and SETC were now subsumed under the Ministry of Commerce. The role of the State Council Tariff Commission was still not completely clear, however. Nor did it appear that China had issued regulations governing the activities of the Tariff Commission in anti-dumping investigations or reviews. The United States urged China to clarify the oversight role of the State Council Tariff Commission, including when it may exercise discretion in the course of an investigation and any decisions it had made in investigations and reviews to date. The United States further urged China to establish procedures for publicizing the Tariff Commission's decisions in anti-dumping actions.

142. The United States applauded the continued efforts of China to increase the transparency of its anti-dumping regime and bring it into conformity with WTO rules. The United States wished to foster mutual cooperation and understanding on this front through multilateral mechanisms such as the TRM process and through bilateral technical exchanges.

143. The Chairman then invited the delegate of China to take the floor to respond to the questions and comments put to it.

[1] G/ADP/Q1/CHN/14 & G/ADP/Q1/CHN/19

144. The delegate of China took the opportunity to brief the Members and the Committee on China's implementation of its accession commitments in relation to anti-dumping measures over the past year, and also to respond to questions and comments from certain Members under the framework of the TRM.

145. **Part 1: China's Implementation of its Anti-Dumping Legislation.** Competent authorities in China carried out anti-dumping investigations on a number of cases pursuant to Chinese anti-dumping legislations in accordance with statutory procedures in the past year. During the past year, China had initiated 3 anti-dumping investigations; made 12 preliminary determinations and 10 final determinations; currently, there were four anti-dumping cases pending preliminary determination. Furthermore, China was supervising the implementation of two price undertakings with respect to change of the name and price readjustment.

146. In addition, the Ministry of Commerce (MOFCOM) published a notice of initiation on 1 July 2003 to conduct a sunset review of anti-dumping measures applied to newsprint imported from Canada, Korea and the United States, which review was now underway. China implemented anti-dumping investigations in strict accordance with the *Foreign Trade Law*, the *Regulations of the PRC on Anti-Dumping*, and the WTO Anti-Dumping Agreement. Most Members recognized the consistency of Chinese anti-dumping legislations and practices with the WTO Anti-Dumping Agreement in the first TRM conducted in 2002.

147. **Part 2: Responses to Questions**. Prior to the meeting, some Members raised some questions with regard to the following anti-dumping investigations: Coated Paper, PA, SBR, PVC, TDI and Phenol. The delegate of China undertook to respond to those questions.

1. **On the application of "facts available" to determine AD measures against "all other" companies of that country**. In the above investigations, Chinese authorities published all anti-dumping investigations to be initiated and notified them to relevant agencies of the countries (regions) concerned before making the public notices. The notice of initiation of investigations leaves all parties sufficient time to register and respond. In addition, Chinese competent authorities issued questionnaires to all registered respondent companies, thereby allowing them to furnish information and evidence. At the request of interested parties, hearings were organized in some cases to allow interested parties to further express their opinions. The Chinese investigation authority has in all the investigations provided companies with adequate opportunity to access the relevant information via either public channels or their diplomatic missions in China. Therefore, the above anti-dumping determinations made by China are consistent with the requirements of Article 6.8 of the ADA and its Annex II. It is proper that the Chinese Authority applied facts available to determine AD measures against "all other" companies of a country that failed to respond and were unknown to the Chinese authority or if the information is not provided within a reasonable period. All of these measures adopted by the Chinese Authorities are fully consistent with the AD Agreement.

2. **On establishing injury and the causal link in Notices of Determinations in the above anti-dumping investigations**. While establishing industry injuries and the causal links between other factors, Chinese authorities strictly abide by the WTO ADA and the Chinese legislations in the following aspects: conducting a full and comprehensive analysis and assessment of all indicators determining injury as recognized by WTO; demonstrating by positive evidence that the volume of imports from each country is not negligible and conducting an analysis of competition conditions between imported products and between imported products and domestic like products while cumulatively assessing the effects of imports from more that one country, conducting an analysis of other causes of industry injuries and clarify in the Notice of Determination; and so on.

3. **On the disclosure of relevant data and the disclosure of calculation methodologies for determining dumping margins and the relevant data used in preliminary injury determinations in the above-mentioned six investigations**. In all the anti-dumping investigations in which preliminary determinations have been made, the Chinese authorities expounded in Notices of Determination on the data and facts based on which the injury determinations were made, to facilitate the comments by interested parties on the determinations to protect their own interests.

4. **On the examination of physical characteristics and uses of the products for determinations of "like products" in the anti-dumping investigations of Coated Paper, SBR and TDI**. The Chinese Authority took full account of the physical characteristics, chemical characteristics, uses and means of distribution of the products and other factors according to Article 2.6 of the ADA in the determination of "like product" in its investigations of coated paper, SBR and TDI. All the determinations are available in the public notice of preliminary or final determinations. This practice is in full conformity with the ADA.

148. The delegate of China noted that China had received another document with questions just before the meeting. Due to the short notice, she could only make some preliminary replies:

1. **On the question of access to public information**. China had enacted the Provisional Rules on Access to Public Information in AD investigations. Its Article 5 provides for the types of public information that can be accessed by the interested parties. Its legal authority can be found in Article 23 of the AD Regulations.

2. **On the question of Judicial, Arbitral and Administrative Review**. Judicial review and administrative review are stipulated in the Administrative Proceedings Law and Administrative Review Law. Article 53 of the AD Regulations provides for administrative review and judicial review for AD investigations. Judicial review of AD determination was further clarified by the Supreme People's Court in its judicial interpretation. Such reviews also apply to Customs enforcement.

3. **On the question of the function of the State Council Tariff Commission**. According to Article 38 of AD Regulations, it makes decisions on the level of tariff duties on the proposal of MOFCOM. So far, it has not modified any such proposal by MOFCOM.

4. **On the question of rules on expiration reviews**. Chapter 5 of China's AD Regulations focuses on the time-limits and review of AD duties and price undertakings. The provisions were formulated in compliance with the WTO ADA. The expiration reviews will be conducted in strict conformity with the AD Regulations and the WTO ADA.

149. The delegate of China stated that, since WTO accession, China had been attaching great importance to the anti-dumping legislation and the enforcement thereof. China initiated investigations solely for the purpose of protecting normal international trading order, a fair competition environment as well as the rights and interests of China's domestic industries. The investigations target only the injury-causing imports priced under normal value.

150. Another delegate of China then provided some additional comments concerning questions or statements as to some of the questions that had already been addressed by the head of the Chinese delegation. China had made unremitting efforts to bring its legislation and practice in line with the letter and the spirit of the WTO rules and it had worked with utmost sincerity in fulfilling its accession commitments. Immense progress in this respect had made, and recognized by many. This

was particularly true in the field of anti-dumping. Although China had been subjected to over 540 anti-dumping investigations initiations since 1979, it had only initiated the first of its own investigations in the year 1997. In every investigation that it had initiated and undertaken, the Chinese investigating authority had endeavoured to provide adequate opportunities to all the interested parties to defend their legitimate rights and interests, and had kept open all the remedial channels, including the ever-improving AD procedures, and administrative and judicial reviews. Being one of the most frequently targeted victims of AD measures, and despite the many challenges those in China had encountered, both as a new Member of WTO and due to the fast changing situation, and with practical difficulties caused by government restructuring and downsizing, China had nonetheless endeavoured to build and improve a trade remedy regime that was consistent with WTO rules, its international obligations and such principles as transparency, procedural fairness and the rule of law, and had enforced and implemented such a regime in the same manner. China was not claiming that its system and the enforcement were perfect but China believed that it had been moving in the right direction and would continue along this path. In this process, China counted on other Members' cooperation, trust and goodwill as well as objectivity.

151. The delegate of Japan thanked China for the responses to its questions, and stated Japan's appreciation for the efforts made by China in developing and improving necessary legislation and measures after its accession. Hoping that this TRM procedure would enhance Japan's understanding with respect to the compliance of Chinese anti-dumping measures to the WTO Agreement, Japan had submitted some questions.

152. One of the concerns that led Japan to submit these questions and those it still had, was the compliance of procedure of anti-dumping investigations taken by China. Anti-dumping investigations should be initiated by notifying the interested parties of the initiation of the investigation. However, some investigations were initiated without any notification to the responding parties. The Chinese authorities then applied facts available because the responding parties did not submit any information, even though the responding parties did not receive any notification about the initiation of the investigation. According to the response from China that had just been given, the Chinese Government notified the relevant agencies instead of directly notifying the interested parties. Japan's follow up question was: who is the relevant agency that China notified about the initiation of the investigation instead of directly notifying the exporters or producers in the following countries?

153. The other concern Japan had was with the transparency of investigations. Many companies complain about the insufficient disclosure of the process of determination, especially the process of injury determination and causality analysis. As noted by the delegate of the United States, insufficient disclosure hinders the opportunity for the responding parties to effectively defend themselves. As some responding companies and the Japanese Government were continuously submitting their comments, the responding party should be notified sufficiently detailed explanations about the determinations on dumping and injury. Again, Japan hoped that its questions and clarifications in this TRM process would enhance the transparency of anti-dumping measures taken by China and therefore help Members to better understand the commitment of China to the WTO.

154. The delegate of the United States thanked the Chinese delegation for their comments and for so quickly responding to the US questions. He had two follow-up questions to ask. First, he asked the Chinese delegation if they would mind repeating the answer to the US question number 4. In addition, he asked, in connection with the response to the US question number 1, part (b), whether the Chinese Government, MOFCOM, had indeed now placed injury documents in its public reading room so that the interested parties may view them.

155. The delegate of China stated, concerning the first question, that is the notification of the investigation initiation to the relevant interested parties, in practice, what the authorities did in China was to send the notification prior to the public notice of initiation to the diplomatic mission of the

country of those companies whose products were subject to the investigation. So, in the particular cases referred to in the question posed by Japan, that diplomatic mission should be the Japanese Embassy in Beijing. He stated the view that this was compliance with Article 6.1.3 of the WTO ADA.

156. Concerning the second question, that is the transparency of China's investigations, particularly with regard to access to information on the injury and causal link, he noted that this question was addressed in the statement by the head of the Chinese delegation. Actually, access to information on injury and causal link was made possible under Article 8 of the Anti-Dumping Regulations of China, as well as in Articles 6 and 9 under the Rules on the investigation and the determination of injury to the industries. Here, there was a particular circumstance already referred to, that is the Government's restructuring process. The functions of the former SETC or State Economic and Trade Commission with regard to the investigation of injury had already been incorporated into the newly established Ministry of Commerce or MOFCOM. Therefore, the information relating to both the analysis of dumping and the determination of the injury was now provided by MOFCOM, and the interested parties may access MOFCOM for that information.

157. On the two questions from the US, the delegate noted that the first concerned the methodology or the way to address complaints concerning the decision or enforcement of anti-dumping duties by the General Customs Administration of China. The Chinese delegation had already addressed this question in the statement. With regard to such complaints, judicial review and administrative review were possible and could be resorted to by the relevant parties. China also had special laws and regulations governing the enforcement and the levying of customs duties by the General Customs Administration. Concerning the second question by the US, it was also a question related to the access to information regarding injury and the causal link. The answer to this question was, he thought, somewhat similar to the answer to the question posed by Japan.

158. The delegate of Japan observed that according to the response just given about the initiation of an investigation, the Chinese authorities notified the initiation of the investigation to the diplomatic mission, the Japanese Embassy, but the Japanese Government had never agreed to that. The Japanese Government has no obligation to notify the initiation of the investigation to the Japanese company. In accordance with the AD Agreement, it was the investigating authority that was obliged to notify the companies that are subject to the investigation. Japan hoped that China would further improve the procedure of anti-dumping measures, especially as to the notification of initiation of an investigation and the disclosure of relevant information to the interested parties.

159. The delegate of the United States observed that, with regard to the availability of injury documents for review by interested parties, the US question was specifically whether such documents were now readily available in the public reading room that MOFCOM maintains in its headquarters in Beijing. The United States knew that MOFCOM had made great efforts to put documents relating to its dumping margin calculation in this reading room, but to date the United States were not aware of injury documents ever having been placed in this room and made available to interested parties. So the question was asking specifically whether such documents were now available in the reading room. Secondly, with regard to the rules and regulations that dictate how the Customs Administration will apply anti-dumping duties, collect anti-dumping duties and provide for judicial review, the United States asked that the Government of China notify to the Committee the relevant portions of that law and those regulations so that they could be reviewed in the Committee.

160. The delegate of China observed, regarding the question by Japan, that he had checked the WTO ADA. Article 6.1.3 of the ADA, at footnote 16, read "it being understood that where the number of exporters involved is particularly high the full text of the written application is to be provided only to the authorities of the exporting member or the relevant trade association". He noted that this might not apply in all dimensions to the fact that China was only notifying the Japanese diplomatic mission in China. He had quoted it just to indicate the difficulty the investigating authority

may have in notifying all the interested parties, because the parties have to be known to the investigating authority. This was a practical difficulty and he did not think there was any specific or very clear direct requirement set forth in the ADA.

161. Regarding the follow-up questions from the US, the first question concerned whether the injury information was currently available in the public reading rooms set up by the former MOFTEC, now MOFCOM. As he had stated, the process of government restructuring was still going on. Of course, it was China's intention to make such documents or information available in this public reading room in the future. He clarified that, even before the Ministry of Commerce was established, SETC already had a statutory requirement to disclose such information to the interested parties, which can be found in Article 43 of the Rules on the investigation and determination of industry and injury. As for the second question, it was a request to notify the relevant laws and regulations concerning or governing the enforcement of China's General Customs and Administration. China would of course consider it, and try to see if this was actually required by WTO in accordance with China's obligations. One additional note -- even now, if someone was interested in gaining access to the information on injury they could directly approach the Ministry of Commerce for such information if they could not find such information in the public reading room.

162. The delegate of Japan stated that the Japanese question was not regarding the application submitted by the domestic industry, but as to the notification of initiation of the investigation. Anyway, Japan appreciated the response from China and expected further efforts from China through the commitments to the WTO.

163. Turning to the Committee's report on the transitional review, the Chairman noted that there were no guidelines for the report contained in the Protocol. Following the review at last October's meeting, the Chairman, acting on his own responsibility, had 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. The Chairman asked Members whether this procedure should be followed again.

164. The Committee **so decided**.

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

165. The Chairman noted that, as most Members were aware, the Informal Group on Anti-Circumvention met the previous day in the morning. At that meeting, the Informal Group had considered a new paper submitted by a Member. The discussion had been lively and useful, and he believed that it had given Members good food for thought for further discussions on this issue. In addition, another delegation had recalled for Members the ideas set out in a paper that had been discussed at the last meeting.

166. The Chairman noted his belief that work in the Informal Group could contribute to the work of Members in the Negotiating Group on Rules. Of course, the work of the Informal Group was independent of anything happening in the Negotiating Group, and was useful in its own right, regardless of what progress was made, or not made, in the Negotiating Group. Therefore, he urged all of Members to make the best use of the informal setting of discussions in the Informal Group by submitting papers and participating actively in the discussions.

167. The next Meeting of the Informal Group was scheduled for 22 April 2004. The deadline for submissions for that meeting is 11 March 2004. The Chairman urged Members to make maximum efforts to respect this deadline, in order to allow the Secretariat to translate and circulate submissions

in time. This would allow delegations and capital-based experts to study the submissions in their preferred WTO language and prepare considered responses, which would enhance our discussions.

168. The Committee **took note** of the Chairman's report.

N. CHAIRMAN'S REPORT ON MEETING OF WORKING GROUP ON IMPLEMENTATION

169. The Chairman noted that, as most Members were aware, the Working Group on Implementation met on Tuesday of this week. The Group had had a useful discussion on the latest revision of the draft recommendation concerning conditions of competition that may be relevant to a decision whether a cumulative assessment of the effects of imports is appropriate, no consensus was reached. The Secretariat had been asked to prepare a new revision of the draft recommendation.

170. The Group had also begun the discussions on the four new topics that were referred to it by the Committee at its last meeting. Although only four Members had submitted papers on the new topics, and some of the papers were received only shortly before the meeting, the discussion was nonetheless interesting and useful in enabling Members to better understand the issues involved and the practices of various Members.

171. The Chairman strongly encouraged those Members who had not submitted any papers on these topics, to do so. He observed that the more information on the table about the approaches of different national authorities on these issues, the better for all Members. Additional information concerning national practices and different Members' views would add to the value of the discussions.

172. The next meeting of the Group was scheduled to begin on 20 April 2004. The deadline for submissions for that meeting is 9 March 2004.

173. As usual, the Secretariat would circulate a reminder of the deadlines for all the Anti-Dumping meetings in the spring. He urged Members to respect these deadlines, in order to allow the Secretariat to translate and circulate submissions before the meeting. This would allow delegations and capital-based experts to study the submissions in their preferred WTO language and prepare considered responses, which would enhance the Group's discussions at the next meeting.

174. The Committee **took note** of the Chairman's report.

O. OTHER BUSINESS

(i) European Communities – Anti-Dumping duty imposed by the Andean Community on Sorbitol originating in France

175. The delegate of the European Communities noted that this matter concerned an anti-dumping duty imposed by the Andean Community on sorbitol originating in France. In August 2002, the Andean Community initiated an anti-dumping investigation on imports of sorbitol originating in France following a complaint lodged by *Indumaiz del Ecuador SA*, the sole sorbitol producer in the Andean Community. The case concerned French sales to customers located in Colombia and Venezuela. On 15 May 2003, the Secretary General of the Andean Community decided to impose a definitive anti-dumping duty of US$ 70 per tonne of imported sorbitol.

176. The EC had at different stages pointed out its doubt about the compatibility of this proceeding with WTO rules. The main shortcomings were the following:

- The Andean Community cannot be considered a Customs Union, since the requirements stated in GATT Article XXIV:8(a) do not appear to be fulfilled: Peru had not yet adhered to

the Common External Tariff Agreement and as regards the other Members there was no Common External Tariff for a very large number of products as far as the EC knew.

- For the product at issue, there was no Common External Tariff, since Ecuador and Colombia apply a 15 per cent external tariff, Venezuela and Bolivia a 10 per cent and Peru a 4 per cent tariff.

- Only two of the five Members (Ecuador and Venezuela) had notified the Decision No. 283/1991 to the WTO Anti-Dumping Committee as required under the Anti-Dumping Agreement.

177. The EC had already raised its arguments earlier in this Committee but had up to now not received an adequate reply from the Andean Community members. Similarly inadequate was the response to these criticisms provided by the Andean Community in its final determination.

178. This case raised an important systemic issue, *i.e.*, the use of "supposed" custom unions to justify granting AD protection to producers located in one country from imports to third markets. Apparently the measures here are imposed to protect producers in Ecuador from the competition they face in third markets (Colombia and Venezuela). In such circumstances measures can only be imposed under the conditions of Article 14 of the ADA, or if the Andean Community were a customs union. The EC was convinced that this was not the case. Therefore it was a clear breach of WTO rules to impose such measures.

179. Finally the EC wished to underline that, for the systemic reasons explained, this was an issue which should interest all Members, and the EC would be interested to hear the views of others on this.

180. The delegate of Colombia thanked the European Communities for their interest in the investigation initiated by the Andean Community. She noted that, at the previous meeting of this Committee, questions had been put by the Communities under the item "Other business". Colombia replied to them and also answered some questions put in a communication addressed to the Mission of Colombia by the Communities. After transmitting its response to the European Communities, Colombia received no request for additional information, and it was therefore Colombia's understanding that the information provided was sufficient. Nevertheless, she wished to make it clear that the resolution of the Andean Community is not of a supra-national character, and that consequently it can become an anti-dumping duty only if it is issued by each of the Andean countries individually. Colombia had not issued any such resolution. Consequently, the measure was not applicable in Colombia.

181. She observed that it appeared the European Communities wished the Committee to discuss the scope of Article XXIV:8 of GATT, and was asking Members in the Committee to determine what scope Members were to give to the obligation to apply substantially the same duties and other regulations to territories not included in a customs union. Colombia considered that this Committee was not an appropriate forum in which to discuss Members' interpretation of this matter.

182. To conclude, Colombia was surprised at the undue rigidity with which the Communities interpret Colombia's multilateral commitments. This contrasted with the creativity, imagination and flexibility that they showed with regard to their anti-dumping decisions in connection with enlargement of the Communities from 15 to 25 Member States.

183. The delegate of Ecuador also thanked the delegation of the European Communities for the interest shown in the sorbitol issue. Ecuador substantially agreed with the remarks of Colombia, and also considered that this Committee was not an appropriate forum in which to discuss whether the

Andean Community is or is not a customs union. Indeed, Ecuador considered that the definition of a customs union to be found in Article XXIV:8(a) of GATT 1994 contains no requirement that Members should maintain a common external tariff for all products, merely requiring that "substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union". Furthermore, neither Article 4.3 of the WTO Anti-Dumping Agreement nor Article XXIV:8(a) of GATT 1994 require Members that intend to act as a group in imposing anti-dumping measures to apply the same customs tariff to 100 per cent of the tariff universe; nor do they require them to apply the same customs tariff to imports of the product subject to the investigation.

184. With regard to Decision 283, which was being questioned by the European Communities, it must be understood, as the delegate of Colombia had explained, that this Decision contains no mandatory rules requiring the organs of the Andean Community or its member States' national authorities to act in a manner incompatible with the relevant WTO Agreements. On the contrary, Decision 283 contains optional rules that may be interpreted in a manner consistent with the WTO Agreements. This has been the interpretation consistently applied by the General Secretariat of the Andean Community in its anti-dumping investigations into goods originating in WTO Member States.

185. Lastly, as the European Communities had directly implied that this measure was an attempt to protect Ecuadorian producers, it was necessary to explain, with regard to concerns about the General Secretariat of the Andean Community imposing anti-dumping measures on crystallized and non-crystallized sorbitol imports from an enterprise in the European Communities, that Ecuador was not currently applying any measure affecting imports of this product into the Andean Market.

186. The delegate of Peru expressed support for the comments made by the delegations of Colombia and Ecuador. Peru also maintained that this Committee was not an appropriate forum in which to discuss whether the Andean Community constitutes a customs union. Peru also supported the comments made by Ecuador with regard to Article XXIV of GATT 1994. Peru had one additional comment, with regard to the European Communities' question about information on the common external tariff. Peru already applied 64 per cent of the common external tariff. A commitment had been made to consider and assess the prospects of full compliance by the end of the year. Lastly, she confirmed, as the other two members of the Andean Community had already done, that no member country had given notification of the application of the anti-dumping duties referred to.

187. The delegate of Bolivia also thanked the European Communities for their interest. In endorsing what had been said by previous speakers, he informed Members that Bolivia had not issued any resolution on this matter, and that accordingly this measure was not applied in Bolivia.

(ii) European Communities – US consideration of whether to deduct countervailing and 201 safeguard duties from the export price in anti-dumping proceedings

188. The delegate of the European Communities noted that, in a notice published in September in the Federal Register, the US indicated it had decided to analyse the relation between the different types of remedial duties, in particular in the context of anti-dumping proceedings. The issue being considered was the possible deduction of Section 201 (safeguard) and CVD duties from the export price for the calculation of the dumping margin.

189. The EC would strongly oppose this type of deduction. It would artificially inflate the dumping margin (and the resulting anti-dumping duty) by the rate of the existing safeguard, which meant that the level of trade protection could be doubled, although the injury margin remained the same. From the point of view of the WTO Agreement on Safeguards, existing safeguard measures would become redundant in that they would exceed "the extent necessary to remedy serious injury" contrary to Article 5.1.

190. This approach would have far-reaching consequences and some very perverse effects. The illustrative example could be the US steel safeguard case. New dumping cases on any steel products covered by these measures would automatically result in a finding of a dumping margin corresponding to at least the existing level of the safeguard duties. This would be the case even if the sales prices had been identical both in the export and in the domestic market, provided of course, that normal value could be based on such sales prices.

191. The EC followed this matter with great concern and would urge the US to ensure that double-protection is avoided in a case of possible cumulation of safeguard measures with other types of remedial duties.

192. The delegate of Japan also expressed concern with respect to the possibility that the US would change its longstanding practice of not deducting 201 safeguard and countervailing duties in dumping determinations. He referred to the recommendation memorandum, in the case of Trinidad and Tobago, which was submitted from the Department of Commerce to the Court of International Trade in August 2002, which stated: "deduction of section 201 duties from the US price in calculating EP or CEP would artificially increase anti-dumping duties and thereby double the impact of section 201 tariff remedies. For these reasons, such a deduction is not consistent with department policy". The Department of Commerce also says in the recommendation memorandum that the departmental rationale for not deducting anti-dumping duties from EP or CEP, as approved by the Court of International Trade in Bethlehem Steel supported the conclusion that section 201 duties also should not be deducted. Japan wondered what was the rationale at this time for the US to change its longstanding practice? The concern was that imposing section 201 tariff on imports and then deducting them from the export price in calculating dumping margins might double the trade remedies for the domestic industry in the United States. He noted that, as provided for in Article 9.1 of the AD Agreement, it is desirable that the duty be less than the margin if such a lesser duty would be adequate to remove the injury to the domestic injury. Also, as provided in Article 5.1 in the Agreement on Safeguards, a Member shall apply safeguard measures only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. Japan hoped that the US would not apply excessive trade remedies to remove the material injury or serious injury of the domestic industry.

193. The delegate of the United States expressed appreciation for the opportunity to explain the procedures being undertaken. As a preliminary matter, he noted the question of Japan about the rationale for changing a longstanding practice. He emphasized to all Members that no decision had been taken – a procedure was underway to examine the issue, but as of this date no decisions one way or another had been made.

194. On 9 September 2003, because of the cross-cutting nature of this issue which influences a number of cases, the US published a notice in its Federal Register soliciting comments on this issue from all parties who are potentially affected. A large number of comments were received by the deadline of 9 October 2003. All of the comments submitted are available on the Department of Commerce Import Administration website << http://ia.ita.doc.gov>>. He noted in passing that reviewing the website that morning, he had seen that the delegation of the European Communities as well as at least one prominent Japanese Steel Trade Association had submitted comments, presumably reflecting the arguments made to the Committee today.

195. The US had also extended the deadline for receiving rebuttal comments from any interested party to any of the comments which have already been made. Rebuttal comments were due to the Department of Commerce by 7 November 2003. On the website, Members can find the address to which such comments should be submitted.

196. As a final note, in the most recent development, on 7 October 2003, in the case of stainless steel wire rod from the Republic of Korea, a preliminary investigation, the Department of Commerce had received arguments about this particular issue. It did not in fact deduct section 201 duties from the export price in that case. However, parties were reminded about the ongoing procedures for facilitating comments and reaching a decision on this issue. No adjustment was made in that case but the issue will be examined for purposes in the final determination in that case.

(iii) United States – Proper understanding of Annex D of the Committee's Annual Report – Avoiding a Misunderstanding of the Number of Preliminary and Final Actions Notified

197. The delegate of the United States stated that he wished to draw Members' attention to the table contained in Annex D of the Committee's Draft Report. This table compares the number of provisional and final measures reported in semi-annual reports with the number of preliminary and final actions which have been notified to the Secretariat. He stated that the number reported for the US under "action notified" should not be misinterpreted. The US makes it a practice of providing the Secretariat with all published notices which relate to anti-dumping proceedings. Thus the high number of notices reported for the US includes not only notices of what are normally considered to be preliminary and final determinations, but also notices of initiations, deadline extensions, amendments of determinations and many other actions which take place in the course of anti-dumping investigations and reviews. The United States understood that in putting this table together, the Secretariat counted all of these notices rather than attempting to make the potentially controversial decision of what notices constituted "preliminary and final actions".

198. Under no circumstances should Members misinterpret this table to mean that the US actually undertook the number of measures listed in the last column of this table. Looking over this table, it appeared several other Members were in the same position.

199. This was not to say that this table does not provide useful information. The same column just referred to showed, for example, although that it took five preliminary and final measures over the last year, Brazil provided none of its notices to the Secretariat so they could be reviewed by other Members. The situation was even more serious for Thailand, which had forty-two provisional and final measures but provided no notices. The lack of transparency was even more troubling given that neither of these Members had elected to participate in the transparency exercises being conducted by the Working Group by submitting papers describing their practices.

200. He did not wish to end on a negative note. He believed India deserved special recognition in this regard. India issued 118 provisional and final measures in the reporting year, a number two and one half times greater than the next most frequent user, China, and three and one half times greater than the United States' own use of anti-dumping measures. Yet, compared to those 118 measures, the Secretariat reported receiving 115 notices. This is a truly admirable rate of reporting, which all Members and particularly other developing county Members should strive to emulate.

201. Finally, he could not end without drawing Members' attention to the very useful information contained in the second column of data which lists "final measures". This column was a Member-by-Member summary of the definitive duties and price undertakings which were broken out in Annex C of the Annual Report. From this column it was apparent that the Members which most frequently applied final measures to combat injurious dumping in their territory in the last year, in order, were: India; Argentina; Turkey; Thailand; the EC; and the United States.

202. The delegate of India thanked the United States for its appreciation of the Indian information.

(iv) Procedures for Members' requests for national technical assistance activities – Statement by the Chairman

203. The Chairman stated that, as Members were aware, the WTO has a comprehensive technical assistance programme, which is coordinated by the Institute for Training and Technical Cooperation Division. As Members were also aware, the Rules Division has an extensive range of technical assistance programmes available to Members. These programmes vary from general overviews of the trade remedy agreements, to very detailed workshops on specific aspects of trade remedy investigations, such as dumping margin calculations, injury determination, and procedures.

204. In the past, Members were requested to submit requests for technical assistance activities well in advance, indicating priority areas. These requests formed the basis for development of a detailed programme for the next calendar year, which was discussed and agreed to by Members in the Committee on Trade and Development.

205. For various reasons, including to allow Members more flexibility, the process had been changed for 2004. As a result, all Members were now free to request a national technical assistance activity at any time - there was no deadline for such requests. However, as Members were aware, the demand for technical assistance in the Rules area normally exceeded the capacity of the Secretariat to provide the requested assistance. Therefore, he advised Members to submit their requests as soon as possible to the Secretariat. This would ensure that each request was considered early in the process of allocating resources and thus had a better chance of being included in the schedule for next year, and would assist the Rules Division in its planning.

206. Requests for national technical assistance activities can be sent to Mr Paul Rolian, Director of the Institute for Training and Technical Cooperation Division, with a copy to the Rules Division, or to the Rules Division directly, in which case a copy would be forwarded to the Institute.

207. The Committee **took note** of all the statements made.

P. DATE OF NEXT REGULAR MEETING

208. The Committee 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. The SCM Committee has the same schedule, as does the Safeguard Committee. In order to accommodate all three bodies' meeting, the next regular meeting of the Committee was proposed for the week of 19 April 2004. In light of previously scheduled meetings of the Working Group on Implementation and the Informal Group on Anti-Circumvention, the Chairman therefore proposed that this Committee meet beginning in the afternoon on Thursday, 22 April 2004.

209. The Committee **decided** to meet on the date proposed by the Chair.

Q. ANNUAL REPORT TO THE COUNCIL FOR TRADE IN GOODS

210. 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.

211. The Committee **adopted** the annual report.[2]

212. The meeting was adjourned.

[2] Subsequently circulated as document G/L/653, dated 28 October 2003.