24 February 1994

UNITED STATES - ANTI-DUMPING DUTIES ON IMPORTS OF STAINLESS STEEL PLATE FROM SWEDEN

Report of the Panel
(ADP/117, and Corr.1)*

Table of Contents

				Paragraph
I.	INTRODUCTION			1-4
II.	FACTUAL ASPECTS			5-21
III.	FINDINGS REQUESTED			22-27
IV.	ARGUMENTS OF THE PARTIES			28-195
	A.	Article 9:1 - Continued Imposition of the Anti-Dumping Duty Order		28-53
	B.	Article 9:2 - Failure of the United States to Self-Initiate a Review		54-78
	C.	Article 9:2 - United States' Dismissal of Requests for the Initiation of a Review		79-195
		1.	Legal Arguments	82-108
		2.	Factual Arguments	109-195
			2.1 Evolution of the Volume of Imports	115-134
			2.2 1976 Acquisition of a Mill in the United States	135-151
			2.3 Swedish Stainless Steel Plate Exports to the EC	152-168
			2.4 Reduced Production Capacity Resulting from the Restructuring of the Swedish Stainless Steel Plate Industry	169-181
			2.5 Avesta's Request for the Exclusion of Three Products	182-189
			2.6 Steel Voluntary Restraint Agreements	190-195

* English only

Table of Contents (Cont'd)

		Paragraph
V.	REQUEST FOR SUSPENSION OF THE PANEL'S PROCEEDINGS	196
VI.	FINDINGS	197-438
A.	Introduction	197-213
B.	Alleged infringement by the United States of its obligations under Article 9:1 of the Agreement	214-242
C.	Alleged infringement by the United States of its obligations under Article 9:2 of the Agreement	243-438
1.	Whether the United States acted inconsistently with Article 9:2 by not self-initiating a review of the injury finding made in respect of imports of Swedish stainless steel plate	243-263
2.	Whether the United States acted inconsistently with its obligations under Article 9:2 by dismissing the requests for initiation of a review of the injury determination on imports of stainless steel plate from Sweden	264-438
2.1	The USITC's dismissal of the 1987 request for initiation of a review to revoke or modify the 1973 dumping finding	265-428
2.1.1	Evolution of the volume of imports of Swedish stainless steel plate and acquisition in 1976 of a US steel mill	287-324
2.1.2	Changed structure of the Swedish stainless steel plate industry	325-344
2.1.3	Increased demand in Western Europe for Swedish stainless steel plate and free-trade agreements between the European Communities and Sweden	345-389
2.1.4	Steel voluntary	

Table of Contents (Cont'd)

		Paragraph
2.2	The USITC's dismissal of the 1985 request for initiation of a review to revoke the 1973 dumping finding	429-438
VII. CONCLUSIONS		439-442

		Page
ANNEX I	Section 751 of the United States Tariff Act of 1930, as Amended	103
ANNEX II	USITC Dismissal of 1985 Request for a Section 751(b) Review Investigation	105
ANNEX III	USITC Dismissal of 1987 Request for a Section 751(b) Review Investigation	108
ANNEX IV	Apparent US Consumption of Stainless Steel Plate, 1970-1991	113
ANNEX V	Swedish Export of Stainless Cold Rolled and Hot Rolled Products > 4.75 mm	115
ANNEX VI	Imports of Competitive Grades and Types of Stainless Steel Plate from Sweden: Share of Apparent United States Consumption	117
ANNEX VII	Imports of All Grades and Types of Stainless Steel Plate from Sweden: Share of Apparent United States Consumption	119
ANNEX VIII	Shipments of Stainless Steel Plate to US Markets from Swedish-Owned Mills in the US and Sweden, 1974-1986	121
ANNEX IX	Shipments by Avesta Inc.'s Plant at New Castle, Indiana and Shares of Apparent US Consumption, 1976-1986	122
ANNEX X	Imports of Stainless Steel Plate for Sweden	123
ANNEX XI	European Community Imports of Stainless Steel Plate from Sweden, 1971-1986	124
ANNEX XII	Swedish Exports of Hot-Rolled Stainless Steel Sheet and Plate to Western Europe and the European Community, 1970-1985	125
ANNEX XIII	Capacity Utilization of KBR Mill at Avesta, Sweden	126
ANNEX XIV	Comparison of Actual Production in Sweden of Hot-Rolled Stainless Steel Plate to Practical Capacity	127

I. INTRODUCTION

1. On 6 May 1991 Sweden requested consultations with the United States under Article 15:2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (hereinafter referred to as "the Agreement"), regarding anti-dumping duties imposed by the United States in 1973 on imports of stainless steel plate from Sweden. On 9 July 1991 such consultations were held between the two parties. In a letter to the Committee on Anti-Dumping Practices (hereinafter referred to as "the Committee") dated 10 October 1991, Sweden stated that the consultations had failed to achieve a mutually satisfactory solution, and referred the matter to the Committee for conciliation under Article 15:3 of the Agreement (ADP/67). Conciliation on this matter was held at a regular meeting of the Committee on 21 October 1991 (ADP/M/35). As the conciliation process did not lead to a resolution of this dispute, Sweden, on 15 April 1992, requested the establishment of a panel under Article 15:5 of the Agreement to examine the matter (ADP/77).

2. At its regular meeting on 27 April 1992, the Committee decided to establish a panel in the matter referred to the Committee by Sweden in document ADP/77. The Committee authorized its Chairman to decide, in consultation with the parties to the dispute, on the terms of reference of the Panel, and to decide, after securing the agreement of the two parties, on the composition of the Panel (ADP/M/37).

3. On 17 September 1992 the Committee was informed by its Chairman in document ADP/84 that the terms of reference and composition of the Panel were as follows:

Terms of Reference:

> "To examine, in the light of the relevant provisions of the Agreement on Implementation of Article VI of the General Agreement, the matter referred to the Committee by Sweden in document ADP/67, and to make such findings as will assist the Committee in making recommendations or in giving rulings."

Composition:

Chairman: Mr. Friedrich Klein

Members: Mr. David Walker
Mr. Peter Palecka

4. The Panel met with the parties to the dispute on 8 December 1992 and 24-25 February 1993. The Panel submitted its findings and conclusions to the parties on 4 February 1994.

II. FACTUAL ASPECTS

5. The dispute before the Panel concerned anti-dumping duties imposed by the United States in 1973 on imports of stainless steel plate from Sweden.

6. On 25 April 1972 the United States Treasury Department received a complaint that stainless steel plate imported from Sweden was being dumped in the United States and was injuring a US industry. On 31 January 1973 the Department of Treasury issued a "Determination of Sales at Less Than Fair

Value".[1] The United States Tariff Commission investigated the matter and determined on 1 May 1973 that an industry in the United States was injured within the meaning of the Antidumping Act of 1921 by reason of imports of stainless steel plate from Sweden which the Secretary of Treasury had determined to be sold or likely to be sold at less than fair value.[2] On 5 June 1973 the Department of Treasury issued a finding of dumping[3] with respect to stainless steel plate from Sweden.[4] The finding covered all exporters of stainless steel plate from Sweden except Stora Kopparbergs Bergslags AB. As Swedish companies merged, the merged companies remained subject to the finding.

7. In June 1976, two letters were sent by counsel representing Uddeholm AB, a Swedish stainless steel plate producer, to the US Customs Service of the Department of Treasury raising the question

---

[1]38 Fed. Reg. 3204 (2 February 1973).

[2]Determination of Injury in Investigation No. AA1921-114, 1 May 1973, Tariff Commission Publication 573. 38 Fed. Reg. 11381 (7 May 1973).

[3]Up until the entry into force of the Trade Agreements Act of 1979, the United States used the term "finding of dumping" or "dumping finding" to mean the decision to impose anti-dumping duties. Subsequently, the term "anti-dumping duty order" was used to indicate the same thing. The terms are used interchangeably in this text.

[4]38 Fed. Reg. 15079 (8 June 1973). The product coverage of this finding was "stainless steel plate from Sweden" except for shipments by Stora Kopparbergs Bergslags AB. The 1990 Federal Register notice of the Department of Commerce's determination not to revoke the 1973 anti-dumping finding (55 Fed. Reg. 36680, 6 September 1990) states that imports covered by this finding are shipments of stainless steel plate from Sweden classifiable under item number 607.9005 of the Tariff Schedules of the United States Annotated through 1988, and that this merchandise is currently classifiable under items numbers 7219.12.00, 7219.21.00, 7219.22.00, 7219.31.00, and 7219.11.00 of the Harmonized Tariff Schedule (HTS) to which the United States converted on 1 January 1989. The notice indicates that the HTS item numbers are provided only for convenience and Customs purposes, and that the written description of the scope remains dispositive. The following products correspond to the above-cited HTS item numbers:

- Flat-rolled products of stainless steel, of a width 600 mm or more, not further worked than hot-rolled, in coils, of a thickness of 4.75 mm or more but not exceeding 10 mm. (7219.12.00)

- Flat-rolled products of stainless steel, of a width 600 mm or more, not further worked than hot-rolled, not in coils, of a thickness exceeding 10 mm. (7219.21.00)

- Flat-rolled products of stainless steel, of a width 600 mm or more, not further worked than hot-rolled, not in coils, of a thickness of 4.75 mm or more but not exceeding 10 mm. (7219.22.00)

- Flat-rolled products of stainless steel, of a width 600 mm or more, not further worked than cold-rolled (cold-reduced),
  - of a thickness of 4.75 mm or more. (7219.31.00)

- Flat-rolled products of stainless steel, of a width 600 mm or more, not further worked than hot-rolled, in coils, of a thickness exceeding 10 mm. (7219.11.00)

as to whether three specific products - Stavex, Ramex and Type 904L steel - were covered by the 1973 finding of dumping issued with respect to stainless steel plate from Sweden. On 11 November 1976 the US Customs Service responded by letter that the Office of Regulations and Rulings, Value Branch, had advised it that these three types of steel were not included within the purview of the 1973 dumping finding and that accordingly, Customs Service field officers would be instructed to appraise and liquidate all entries of this merchandise without regard to the Antidumping Act.

8. In May 1980, Avesta Jernverks requested a ruling as to whether or not several special grades of stainless steel, including 253 MA

stainless steel seamless tubing and wire, and the "Avesta Group"[7] producing stainless steel flat-rolled products and welded pipes and tubes, as well as certain stainless steel forgings, welding wire and electrodes, knocked-down pressure vessels and fittings. Avesta AB is the new name for the corporate entity created in May 1984 of certain stainless steel units of three companies: Avesta Jernverks AB, Nyby Uddeholm

to as the "USITC") for review of the 1973 affirmative determination of injury based on changed circumstances.

vacating the determination by the USITC not to institute a review investigation. On 7 June 1988, in a review of each of Avesta's claims of error, the motion was denied by the CIT.

(1) the USITC conclusion that Avesta was exporting very significant quantities of standard types of hot-rolled plate to the United States, although the opposite was shown in the data;

(2) the USITC's assumption that the import data for standard types of stainless steel plate excluded Avesta's patented grades, when the latter were included in the data; non-standard types of stainless steel plate (KBR, Stavex and Ramex) did not compete with standard types of hot-rolled plate;

(3) the USITC conclusion that import levels had not decreased since Avesta's purchase of a US mill in 1976, although Avesta had submitted information showing the opposite;

(4) the USITC conclusion that exports to the EC had not increased significantly, although Avesta had submitted data showing this.

In a letter of 23 July 1987 to the USITC, counsel for the US domestic industry rebutted each point raised by Avesta AB in its request for reconsideration and urged the USITC to reject the request. On 18 August 1987 the USITC notified Avesta AB of its decision that reconsideration of the determination was not warranted.

21. The 1987 decision by the USITC not to initiate a review investigation was appealed by Avesta AB and Avesta Stainless Inc. to the CIT on 31 July 1987. On 27 October 1989 the CIT denied the motion to invalidate the USITC's determination not to institute a review investigation.[18] On 14 September 1990 the United States Court of Appeals for the Federal Circuit affirmed the decision of the CIT.[19] On 13 December 1990 Avesta AB and Avesta Stainless Inc. petitioned the Supreme Court of the United States for review of the Court of Appeals' decision. On 18 March 1991 the Supreme Court denied the petition for a writ of *certiorari*.[20]

III. **FINDINGS REQUESTED**

22. Sweden requested the Panel to find that the ongoing imposition by the United States of anti-dumping duties on stainless steel plate from Sweden constituted a *prima facie* nullification or impairment of Sweden's benefits under the Agreement. Sweden set forth three arguments in support of this claim:

(i) The anti-dumping duties were based on a determination of injury from 1973; the latter could not be considered a valid basis for the continued imposition of such duties in 1992. Thus, the United States had acted and was still acting contrary to Article 9:1 of the Agreement.

(ii) The United States authorities had not, on their own initiative, reviewed the determination of injury, although such a review had been and was

[18] Avesta AB and Avesta Stainless Inc. v. United States, 724 F. Supp. 974 (CIT 1989).

[19] Avesta AB and Avesta Stainless Inc. v. United States, 914 F.2nd 233 (Fed. Cir. 1990).

[20] Avesta AB, et al., Petitioners, v. United States, et al., 111 S. Ct. (1991).

injury would not recur upon revocation. This was inconsistent with Sweden's argument elsewhere that the decision to conduct a review was a threshold determination that did not prejudge the outcome of the review. Thus, by requesting revocation and refunding of the duties, Sweden had apparently prejudged the outcome of the review which it alleged should have been undertaken by the investigating authorities.

26. The United States noted that Sweden had included in its submissions to the Panel certain factual information pertaining to the period after 1987. In the view of the United States, this information was not admissible in the Panel's proceedings, because it had not been presented to the USITC for its consideration as

a duty. This, in turn, implied that an anti-dumping duty was temporary in nature. This conclusion was reinforced by the Preamble of the Agreement:

> "… anti-dumping practices should not constitute an unjustifiable impediment to international trade and … may be applied against dumping only if such dumping causes or threatens material injury to an established industry or materially retards the establishment of an industry."

It was also supported by the provision in Article 7:6 concerning price undertakings, which stated that "[u]ndertakings shall not remain in force any longer than anti-dumping duties could remain in force under this Code." The words "only as long as" in Article 9:1 put a limit on the duration of an anti-dumping duty, not in absolute and explicit terms - such as a fixed cut-off date - but implicitly, since these words indicated that a duty had to be revoked if dumping, injury or a causal link between the two no longer existed. The assurance provided for in Article 9:1 was essential in relation to the recognition in the Preamble of the Agreement that anti-dumping measures should not constitute unjustifiable impediments to international trade. Anti-dumping measures are intended to be temporary and remedial measures imposed solely for the purpose of counteracting injurious dumping. The Party imposing a duty did not recognize this constraint. The duration of the measure a situation could easily occur in which the duty became more [illegible] Sweden maintained that this [illegible] happened in the present case.

30. Sweden maintained that the use of the word "shall" in Article 9:1 made the provision legally binding on Parties. The obligation in Article 9:1 could only be fulfilled if the authorities kept the anti-dumping duties under appropriate surveillance. The investigating authorities were obliged to monitor, once anti-dumping duties were imposed, that the conditions of dumping and injury were present, and that a causal link existed between the two. This [illegible] fulfilled during the life of an anti-dumping duty, provided that a reasonable period of time had elapsed since the determination of injury. If the investigating authorities could not find that the relevant conditions were met, the anti-dumping duties in question should be revoked. This monitoring need not be carried out at certain predetermined intervals, but had to be sufficiently effective to fulfil its purpose, which was to determine whether the injury caused by the dumped imports had been remedied. When the monitoring resulted in a finding that the injury

"… the fact that Article VI:6(a) required an injury determination to levy duties, combined with the fact that it had been implemented by the pre-selection system, made

The stated rationale for the suggested provisions on duration of anti-dumping duties was that:

> "If full relief has been granted over a period of time on all consignments of goods supplied by any one country this would demonstrate that the continued imposition of

in certain circumstances, the need for the anti-dumping duties. These circumstances were specific - i.e., "where warranted" - and only in these circumstances were the investigating authorities required to conduct a review, either on their own initiative or at the request of an interested party.

38. The United States explained that the drafters of Article 9 had a number of options available to them, ranging from leaving the duration of anti-dumping duties completely in the hands of investigating authorities, to requiring constant investigation and ongoing determinations that the requirements of Articles 2 and 3 of the Agreement were satisfied at all times. Rather than adopt either of these extreme positions, or a sunset clause, the drafters instead struck a balance that provided that the need for continuation of duties had to be reviewed when there was credible new information indicating that the duties might not be needed. This common-sense rule was reflected in the "positive information" and "where warranted" standards of Article 9.

39. The United States further argued that since any elimination of anti-dumping measures was preceded by a review, it followed that if it was appropriate not to conduct a review, it was also appropriate to maintain the anti-dumping measures. Thus, should the Panel determine that the United States had acted in conformity with Article 9:2 in not conducting a full review, the Panel should also determine that no violation of Article 9:1 existed in this case.

40. The United States observed that there was no specific time period for review set by Article 9, and its plain language did not suggest even a general temporal requirement. A correct interpretation of the Agreement was that it was the change in circumstances rather than the mere passage of time that was relevant, as time passage alone did not automatically indicate that anti-dumping duties might not be necessary. While it might be expected that as time passed, developments could occur suggesting the need for review, it was not the time elapsed which necessitated the review, but the specific developments that had transpired in that period. It was therefore appropriate to require, as the Agreement did, that the party requesting review specifically identify such developments and show why they substantiated the need for review. Had the drafters intended Article 9 to have a review requirement based on passage of time, they could easily have included it.

41. The United States argued that by the very terms used in Article 9:2, it was clear that there was no legal obligation to review simply on the basis of the passage of time. The purpose of a review under Article 9 was to determine whether, despite a previous finding of injury, the current situation was such that injury would not recur upon revocation of the anti-dumping duty. There was nothing in the Agreement suggesting that the standard for "positive information" substantiating the need for review became lower over time. The presumption that with the passage of time, circumstances were increasingly apt to change in such a way as to warrant a review and revocation of the duty, was no more sound than the opposite presumption, namely, that as long as dumping continued, import-related injury would occur absent anti-dumping duties. Although investigating authorities might take time alone into account, there was nothing in the Agreement mandating that the authorities had to do so.

42. Regarding Sweden's reference to "sunset" provisions[31], the United States maintained that the Agreement did not require periodic review or "sunset" provisions. The fact that a proposal requiring periodic review of anti-dumping measures was included in the Draft Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations showed that there was no such requirement in the existing Agreement. Article 11.3 of the draft Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade added a "sunset" provision for anti-dumping duties as follows:

[31]See para. 34, *supra*.

45. The United States noted that Sweden had also referred to the United Kingdom's 1965 "Draft International Code on Anti-Dumping Procedure and Practices"[37], citing a passage under the heading "Rationale" that stated that

> "If full relief has been granted over a period of time on all consignments of goods supplied by any one country this would demonstrate that the continued imposition of the duties was unnecessary and, in the unlikely event that no request for revocation had been received, the authorities concerned should, nevertheless, revoke the duties."[38]

Contrary to what Sweden had alleged, the above-quoted statement was the rationale behind a proposed provision that addressed dumping, not injury. The relevant part of the provision read as follows:

> "Anti-dumping duties … shall be revoked as soon as (i) full relief from duty has been granted in accordance with Provision 16 over a sufficiently

changed circumstances. Read as a whole, therefore, this statement meant that reviews were to be conducted from time to time, if and when circumstances had changed. This was the standard applied by the United States. Nothing in the above-quoted paragraph indicated that reviews had to be provided simply after passage of a particular amount of time.

48. The United States further asserted that what had been at issue in the Brazilian Footwear case were the circumstances under which a signatory was required to conduct an injury investigation on goods from a country that had newly become a signatory of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement (hereinafter referred to as the "Subsidies Agreement"). A conclusion that Article 9 of the Agreement required reviews after periodic intervals would not have been germane to that issue.

49. The United States argued further that, contrary to Sweden's claims, Article 9 contained no "monitoring" requirement. The text of Article 9 contained nothing suggesting such a requirement. Since there was nothing explicit in Article 9:1 about monitoring, Sweden's claim had to be that such an obligation was implicit in Article 9:1. Sweden had pointed to nothing, however, to indicate that the drafters of the Agreement had intended this unstated obligation. Given how specific the drafters had been about reviews in Article 9:2, it was not reasonable to conclude that they had also intended certain similar procedural obligations - that they chose not to enumerate - in Article 9:1. Moreover, while Sweden had argued that monitoring was required under Article 9, Sweden had failed to explain what monitoring would consist of and how it would differ from a review itself, and had acknowledged that the Agreement did not specify any methodology for monitoring.

50. The United States asserted that no other Party to the Agreement engaged in the kind of ongoing "surveillance" suggested by Sweden, for the reason that to do so would place the investigating authorities in a near-constant state of investigating the conditions surrounding all outstanding anti-dumping duty orders. To be meaningful,

monitoring.

56. Sweden noted that the first part of Article 9:2 stated that, "The investigating authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative …." The words "on their own initiative" placed an obligation on the investigating authorities to take the initiative to review the need for the anti-dumping duty. Since it was the investigating authorities that had taken the decision to levy the duty, it

per cent, with an average during those years of less than 0.9 per cent per year. Sweden noted that these figures included three products - Stavex, Ramex and Type 904L - that had been excluded from the scope of the anti-dumping order in 1976 and had not been subject to anti-dumping duties since then. The figures also included other products - KBR, 253 MA, 254 SMO - that should be excluded from the scope of the order since these products did not

The acquisition by Avesta[46] in 1976 of a hot-rolling plate-producing mill in the United States had resulted in a change in its export behaviour which had rendered the above-cited conclusion invalid. This mill was presently one of the United States' largest producers of hot-rolled stainless steel plate. The acquisition had resulted in a decline of almost 40 per cent of Avesta AB's exports of hot-rolled stainless steel plate to the United States. The restructuring of the stainless steel industry in Sweden had resulted in decreased capacity to produce hot-rolled stainless steel plate both in absolute and relative terms compared to all other stainless steel products. In addition, the individual Swedish mills had also restructured. From 1984 to 1986, the mill in Avesta had decreased its capacity to produce hot-rolled plate by over 10 per cent. Accordingly, the conclusion in the determination of injury from 1973 concerning Sweden's "room for expansion" was no longer valid.

61. Sweden argued that the USITC had failed to consider the relevance of the relief programmes in the steel sector to the issue of whether the USF8 11 Tf(Sweden) TjETceel

steel whether

67. The United States said that the Brazilian Footwear Panel report to which Sweden had referred[50] also supported the United States' position that it was sufficient under Article 9:2 to provide reviews upon request of an interested party. This Panel report stated that

> "… the requirements of Article 4:9 applied, *mutatis mutandis*, to a case under the Code where a countervailing duty imposed without an injury determination, subsequently became subject to the Code's provisions and therefore eligible for an injury determination."[51]

Article 4:9 of the Subsidies Agreement was identical to Articles 9:1 and 9:2 of the Anti-Dumping Agreement. The United States' procedure for providing an injury determination in transition cases such as those described in the above quotation provided only for reviews upon request, and did not contain any provision for self-initiated reviews. The Panel had examined this procedure and concluded that

> "In the Panel's view, the US legislation implementing the Code (in particular section

anti-dumping measures, and could be expected to bring relevant information to the attention of the investigating authorities.

71. The United States said that in the present case, the issue of whether the USITC should have self-initiated a review without having received a request had not arisen, because requests had been filed. Avesta had petitioned the USITC for review not once, but twice. At both times it had raised numerous allegations that it claimed justified a review, and at both times the USITC had conducted a preliminary review of those allegations. The

of home market sales, and (2) the currency fluctuations between the Swedish krona and the US dollar. Sweden also understood that even if

The factors being considered had to be examined in connection with the provision in Article 3 of the Agreement. In the present case, the determination had been made in 1973, based on facts from earlier years. Those facts had to be examined in relation to the current situation. The purpose of the second stage, the actual review, would then be to determine whether continued imposition of the duties was still necessary. The proper standard for such a determination would be to examine whether injury would recur if the duties were removed. In other words, the investigating authorities had to determine whether circumstances had changed sufficiently to warrant a finding that a prolongation was necessary in order to counteract recurrence of injury.

83. In Sweden's view, the threshold set by the reference in Article 9:2 to "positive information" and "where warranted" should not be interpreted as a more burdensome requirement than the standard for initiation of an anti-dumping investigation. Article 5:1 required that in order to initiate an investigation, the authority had to receive a request including "sufficient evidence" of injurious dumping. It could be argued that the concept of "evidence" in Article 5:1 in itself implied a higher degree of proof than the more neutral notions of "positive information", and "where warranted", and that consequently, the standard for initiating a review should be lower than that for initiating an investigation. It was clear that the determination whether to initiate an investigation required a lower level of evidence than the findings in the final determination. This followed from the fact that the term "sufficient evidence" in Article 5:1 implied that less evidence had to be at hand than what the notion of "positive evidence" in Article 3:1 required. Also, the investigating authorities were less informed about the facts of a case in the first stage of the procedure than in the final stage. Logically, the threshold for initiating a review had to be set at a lower level than the standard for the ultimate determination in a review procedure. In this context, Sweden noted that the decision whether or not to initiate a review merely determined whether such a review was warranted; it did not prejudge the outcome of the review. Nevertheless, in Sweden's view the facts that Avesta had presented to the USITC would, in a review, have shown that the continued imposition of anti-dumping duties was not necessary to counteract injurious dumping.

84. Sweden argued, referring to several dictionaries, that a pure linguistic comparison of the terms used in Articles 3:1, 5:1 and 9 - "positive evidence", "sufficient evidence", "information", and "positive" - showed a fundamental difference between them.

85. Sweden noted that in the "Draft International Code on Anti-Dumping Procedure and Practices" circulated by the United Kingdom, it was suggested that:

> "Anti-dumping duties … shall be revoked as soon

party had been able to provide such information, it was the investigating authorities which had the

different from the minimal threshold of "sufficient evidence" in Article 5 for the institution of an entirely new investigation.

94. The United

would increase

information submitted warranted this. In this regard, the United States cited the example of a case that had come before the USITC for review in 1987. In "Liquid Crystal Display Television Receivers from Japan"[63], there was a conflict between the data submitted by the requesting Party and that submitted in opposition to the request. Given the conflict in the data, the USITC determined that a full review was appropriate in order to gather all relevant information prior to making a determination. By contrast, in Avesta's case, the data submitted by the requesting Party itself contained internal inconsistencies.

103. Regarding Sweden's contention that the United States had wrongly, and without legal authority, equated the "positive information" in Article 9:2 with the "positive evidence" in Article 3:1, the United States said that it was only arguing that, as between "positive evidence" and "sufficient evidence", "positive information" was closer to "positive evidence", but that, in any event, it need not be decided precisely where the term "positive information" fell. It was sufficient in the case at hand for the Panel to conclude that, in deciding whether positive information had been submitted, the investigating authorities were permitted to examine the information critically, and to weigh it against other information received. This was what the USITC had done in the present case, and that was how it had arrived at its conclusion that a full review was not warranted. The United States noted that Sweden had not contested that the investigating authorities could review this matter. TJETBT9.2 1 206.16 499.44 Tm/F3f(eT11 (the) TjE

104. Contrary to what Sweden had alleged, the United States asserted that the USITC did not require the requesting party to prove in its request for review that injury would not recur upon revocation of the duties. Nor, at the request stage, did the USITC seek to resolve legitimate and substantial factual issues that required further investigation. The USITC did require that the requesting Party justify the review by presenting information that provided a reasonable basis on which to suspect that injury would not recur upon revocation of duties. This information had to be credible and had to be more than mere allegations.

105. The United States said that in Avesta's case, the USITC determined that there was not credible information of changed circumstances warranting a review. In reaching this determination it had not been necessary for the USITC to resolve legitimate factual disputes or to choose between conflicting credible evidence submitted by interested parties. In fact, in most instances the USITC had relied upon data provided by Avesta in making its determination.

106. The United States argued that the changed circumstances alleged in the request for a review would be the changed circumstances examined in the course of the review itself, although a review might not include all allegations in a request, but only those warranting review. In this sense, the standard for evaluating changed circumstances at the initiation stage and after review was the same

108. Regarding the United States' argument that in determining whether a full review was warranted, the USITC was permitted to weigh the evidence presented to it

had made the decision the Panel would have made had it been the investigating authorities. It was axiomatic that reasonable persons looking at the same set of facts could draw different conclusions. In the present case, the USITC had concluded that Avesta had not submitted

117. Sweden noted that Avesta's 1987 request for a review showed that US imports of stainless steel plate from Sweden had decreased substantially and, since 1974, had been at negligible levels. Between 1974 and 1986 these imports, in relation to apparent US consumption, had in most years been below one per cent: for example, 0.86 per cent in 1974, 0.57 per cent in 1980, and 0.63 per cent in 1985.[67] On average, imports from Sweden as a percentage of US consumption were 0.9 per cent between 1974 and 1986.

118. Sweden noted that the above-mentioned figures included three products - Stavex, Ramex and Type 904L - that had been officially excluded from the anti-dumping order in 1976 and had not been subject to anti-dumping duties since then. The figures also included other imported products - KBR, 253 MA and 254 SMO - that in Sweden's view should be excluded from the scope of the order because they did not compete with any type of stainless steel plate made in the United States.

119. Sweden further noted that its share of total US imports of stainless steel plate had decreased since the original determination of injury in 1973: imports from Sweden represented 41 per cent in 1974, 22 per cent in 1980 and only eight per cent in 1985. In its 1987 determination, the USITC stated that

> "As we noted there [in the 1985 decision], U.S. imports of Swedish stainless steel plate declined sharply in 1974, the

121. The United States reiterated that the purpose of a review investigation was to determine whether injury would recur if the duties were removed. Once such duties were removed, the unfair price advantage gained by dumped sales was no longer offset. In the absence of other changes in the market, the unrestrained imports could thus be expected to regain their previously injurious market position. Therefore, the party seeking to substE9eeking

and the USITC had not been aware of that ruling. The ruling had never been issued publicly or published in the Federal Register.

126. The United States further observed that, not only had Avesta not indicated that products might already be excluded from the scope of the anti-dumping order, but by arguing that the USITC should find a way to exclude Stavex and Ramex from the order, Avesta had necessarily represented that such products were within the scope of the order at that time. By requesting that the USITC undertake to perform a specific act, Avesta had led the USITC to believe that the act had not yet been performed. In fact, at all times that this matter had been before the USITC and the courts of appeal, Avesta had consistently argued that the USITC should exclude these items from the order. At no time had Avesta suggested that imports of Stavex or Ramex had already been excluded by the Treasury Department in 1976, nor had it brought any previous documents of the US Customs Service to the USITC's attention. The only

responsibility to be updated on US determinations. The fact that the United States had divided the responsibilities regarding dumping and injury determinations

2.2 1976 Acquisition of a Mill in the United States

135. Sweden contested the USITC's conclusion that the acquisition by Avesta of a mill in the United States did not constitute a changed circumstance warranting a review. Avesta had argued in its 1987 request for review that the negligible levels of the volume of imports from Sweden had resulted largely from the 1976 acquisition of a hot-rolling plate-producing mill in the United States by the predecessor of Avesta AB. At present, Avesta's US mill, Avesta Inc., was one of the United States' largest producers of hot-rolled stainless steel plate. The acquisition of this mill had resulted in a decline of Avesta's exports of hot-rolled stainless steel plate to the United States. Sweden provided the Panel with information on the evolution of the volume of exports[74] to support its argument regarding the impact of the acquisition of this mill. In 1976, Avesta's US mill shipped almost [ ] tons of hot-rolled stainless steel plate into the US market; this volume represented

determination regarding the condition of the industry or the impact of dumped imports. Since the USITC had found that the purchase of the US mill would affect neither the US industry's condition nor the likelihood of additional imports from Sweden, it had determined that the purchase was not a changed circumstance substantiating the need for a review. In making this finding, the USITC had objectively examined the evidence of record and had fairly applied the standard of Article 9, thereby fulfilling its obligations under the Agreement.

139. In response to a question from the Panel as to the basis for the USITC's conclusion that "…the Swedish producers have offered no additional argument to support their assertion that exporters have significantly altered their long-term practices with regard to exports of plate to the United States", the United States noted that it was Table 3B of Avesta's 1987 request for review - which provided data for all imports from Sweden - upon which the USITC had relied in making its determination that the long-term practices of exporters had not significantly changed. Table 3B indicated that Swedish imports in 1984 and 1986 were higher both in absolute terms and as a percentage of apparent US consumption than they had been in 1976, the year of the acquisition of the US plant. The USITC had chosen not to rely on the incomplete data in Confidential Table E[77] of Avesta's 1987 request for a review, and instead had relied on the complete data provided by Avesta in Table 3B. Confidential Table E presented a distorted and incomplete picture of Swedish imports and was one of the many examples of transparent manipulation of data that had undermined the credibility of Avesta before the USITC.

140. The United States noted that Avesta had asserted that acquisition of the mill had caused a substantial

[of the New Castle Mill]" was erroneous. The record had established that the average quantity of stainless steel plate imported from Sweden in 1974 and 1975 was 1632 short tons, and its average annual import penetration was 1.25 per cent. In the eleven years from 1976 through 1986, the average quantity of plate imported from Sweden had been only 1019 net tons. The average annual import penetration had been 0.85 per cent of apparent US consumption. Thus, since the acquisition of the US mill, the average annual quantity of imports had been more than 60 per cent below the average annual level in the period 1974 to 1975. The average annual import penetration since 1976 had been more than 47 per cent below the 1974-1975 average.

145. Sweden explained that Avesta's corporate strategy was to supply the US market with stainless steel plate from its operating mill in the United States. In 1984, Avesta's management had publicly announced that this production facility was to be used as

claim that the volume of imports subject to the anti-dumping duties had declined after the acquisition of the US mill.

148. The United States said that if one assumed that Avesta's allegations regarding the

Agreement between Sweden and the EC - and the subsequent declining import volumes of Swedish stainless steel plate in the United States - had any relevance to the 1973 injury determination or whether this information substantiated the need for review. Sweden claimed that since the United States

regard to this allegation." (page 6)

However, in Sweden's view it was clear from the statistics found on page 8, footnote 13 in Avesta's brief before the United States Court of Appeals[82] and from the data on Swedish exports to the EC of stainless steel plate provided to the Panel by Sweden[83], that the statement of the USITC majority was not correct. The quantities imported from Sweden by the EC were, in volume terms, more than 100 times greater than the quantities imported by the United States from Sweden. Thus, a small percentage increase in exports to the EC had a huge impact on the possibility of exporting to other markets. Sweden claimed that the most proper data to use were those provided to the Panel. From those data a clear trend could be identified: exports to the EC had constantly increased and, between 1972 and 1991, by almost 130 per cent.

155. Sweden noted that the Free Trade Agreement between the EC and Sweden had not entered into force until after the 1973 determination. This fact had been ignored by the USITC in 1987, although the EC's elimination of import duties on Swedish stainless steel plate and the absence of quantitative import restrictions were relevant to the impact of Swedish stainless steel exports on the US industry, in particular since Sweden's trade with the EC had played a prominent role in the 1973 determination of injury. The USITC had never investigated whether the Free Trade Agreement and the subsequent declining volumes imported into the United States had any relevance to the determination of injury from 1973, or whether the information substantiated the need for review. The USITC had concluded only that the developments did not constitute "changed circumstances". Consequently, the USITC must have considered that the conclusion in the 1973 determination regarding Sweden's export behaviour vis-à-vis Western Europe was still valid, contrary to the facts presented by Avesta.

156. The United States said that the USITC reasonably determined that the alleged increase in Avesta's exports to the EC had not substantiated the need for review.

157. The United States noted that while the matter was before the USITC, Avesta had misstated the growth of its exports to the EC market. Despite Avesta's claim that Swedish shipments to the EC had increased 30 per cent from 1972-1985, the USITC had found that in 1985, such shipments had in fact been only five per cent higher than in 1973. This five per cent change from 1973 to 1985 had been calculated using the data supplied by the domestic industry in Table 7[84] of its 1987 submission.[85] EC shipments had been 28,005 tons in 1973 and 29,407 tons in 1985. The USITC had found that such a modest increase over a period of more than ten years did not constitute a changed circumstance, let alone a circumstance justifying a full review. Furthermore, Avesta had submitted flawed shipments data to the USITC, which the USITC had noted "failed to take into account the change in EC membership since 1972". Thus, Avesta had failed to satisfy its burden to submit positive information substantiating the need for review. The United States observed that, with regard to the EC shipments data provided by Sweden to the Panel[86], those data had never been presented to the USITC. Moreover, the new

[82]Brief for Plaintiffs-Appellants, Avesta AB and Avesta Stainless Inc. v.

data extended beyond 1987, the year of the USITC's determination regarding Avesta's second request for review. Thus, these data were irrelevant to the question of whether the USITC

which was within the scope of the "like product" and which Avesta exported in substantial quantities to the EC. Nevertheless, the USITC had considered that these data - which had not been derived from official government sources - were adequate, and had neither verified these data nor afforded Avesta the opportunity to comment on them. The United States' statement that Swedish exports to the EC had increased by only five per cent was based on the assumption of 1973 as the base year; in Sweden's view, it would have been more appropriate to use 1972, since this was the year when the original investigation had been conducted. Between the years 1972 - 1985 Swedish exports to the EC had increased by 24 per cent according to the US domestic industry's data.

161. The United States said that Table 5[89] in Avesta's 1987 request for review, which purported to show EC imports of stainless steel plate from Sweden for the period 1971-1986, included both hot-rolled and cold-rolled products. A review of the footnote to this Table in Avesta's petition showed that the cold-rolled category, which had registered the most growth over the period, included both stainless steel plate and stainless steel shstainless

Community. Regarding the enlargement of the EC, it had been clearly spelled out by Avesta, in Footnote 48 to Table 5 of the 1987 request for review, which countries had been included for the various years. Avesta had relied on official EC statistics without any alterations; those data pertained to the actual number of member States for each particular year.

164. Sweden explained that Avesta's underlying contention had been that, in contrast to the early 1970s, the EC had become a much more important trading partner for Sweden. This increased importance was attributable not only to the EC's general economic growth, but also to its admission of additional members. The USITC had never sought any additional information from Avesta, and the US procedures had not provided any opportunity for Avesta to rebut the data submitted in opposition to the review request. Sweden noted that the US industry's opposition had been filed on the last day of the stipulated 30-day period for submitting information, and that Avesta had not had an opportunity to rebut the US industry's statistics or any other aspect of its submission. Sweden argued that this was not in conformity with the Agreement's requirements for "fair and

Year	Avesta Table 5

171. The United States maintained that the USITC had examined the evidence before it and had correctly found that the consolidation of the Swedish stainless steel plate industry did not constitute a changed circumstance warranting review. In its 1987 determination, the USITC had addressed Avesta's claim regarding the restructuring of the Swedish stainless steel plate industry and had found that

> "… notwithstanding the decreases in absolute capacity, there remains significant unused productive capacity to significantly increase exports to the United States without decreasing production for the Swedish market or for other export markets". (page 7)

The USITC based its decision on capacity data submitted by Avesta itself. Although Avesta had offered reasons why it could not expand its practical capacity to produce stainless steel plate in the short term, it had provided no information to show that it was unable or unlikely to expand operations using its existing capacity.

172. The United States asserted that even small increases in capacity utilization could lead to substantial increases in the volume of exports from Sweden. For example, if Avesta had increased its capacity utilization by two per cent in 1986 for export to the United States, its export volume would have multiplied several times from 1986 levels. Thus, with significant excess capacity remaining, a modest reduction in capacity did not give rise to the need for a full review. Moreover, the fact that the Swedish

be readily increased. The United States said that, as with a number of other arguments made by Avesta to the USITC, the arguments that had been made in this area had not been supported by Avesta's own data.

175. Sweden noted that the United States had claimed that Avesta had no home-market competition and could therefore use its monopoly status to restrict home-market sales to raise prices and maximize revenues, and that Avesta could thus free additional tonnage for sale abroad at lower prices.[96] This claim was completely erroneous. First, the USITC had never found that Avesta exercised monopoly power in the Swedish market and had never used the words "monopoly" or "monopolization" in its decisions. Second, steel products from the EC and the EFTA States entered Sweden without any restrictions whatsoever, which meant that Avesta was subject to a high degree of competitive imports; in effect, Europe could be regarded as Avesta's home market. The import penetration in Sweden had varied around 40 per cent between 1975 and 1987. This was underlined by the fact that for other countries, the Swedish *ad valorem* custom duties on the products in question were low by international standards and varied between 3.2 per cent and 5.0 per cent. By comparison, the US *ad valorem* duties on the same products ranged from 9.6 per cent to 10.6 per cent. Third, the significant restructuring and specialization that had taken place in the Swedish steel industry was very much due to an open and liberal trade policy. If Avesta raised prices in Sweden, it would lose market share due to lower pricing by foreign competitors exporting to Sweden. Avesta had no such dominant position, either in the Swedish or the European market, as the United States had implied it did. By size, Avesta was ranked fifth or sixth in Europe.

176. In response to the Panel's request that Sweden comment on the USITC's conclusion in its 1987 determination that

> "notwithstanding the decreases in absolute capacity, there remains significant unused productive capacity to significantly increase exports to the United States without decreasing production for the Swedish market or for other export markets",

Sweden said that the USITC's conclusion that Avesta would increase its exports if the anti-dumping duty of 4.46 per cent was revoked was not based on facts. On the contrary, it was based solely on speculation since no review had ever been conducted. Sweden noted that Article 3:6 of the Agreement stated that:

> "A determination of threat of injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent."

This provision gave guidance on how to interpret recurrence of injury, a notion that in Sweden's view, had obvious similarities with "threat of injury". Contrary to the USITC's position, Avesta's allesed

however, conditional fact, clearly be foreseabcle and increase ' exports the of imminent. Unless Avesta

of States production exports that possibility United increase and

remaining producers of stainless steel plate. The plant in Avesta produced both hot- and cold-rolled plate, while the plant in Degerfors produced only hot-rolled plate. Hence, already in 1987, the production of hot-rolled plate was largely concentrated to the plant in Degerfors. In 1992, plate production in Sweden had been totally concentrated to the Degerfors plant. This plant's capacity was fully utilized in supplying the European market, Avesta's own internal fabrication units, Eastern Europe and the Far East. There were no corporate plans to increase this capacity in Sweden, let alone to increase exports to the United States.

177. Sweden said that the USITC's conclusions regarding the possible increase in Avesta's exports to the United States were not supported by the facts. Total Swedish production of stainless steel for Avesta for the period after 1984 was roughly 300,000 tons per year, of which stainless steel plate had comprised 50,000-60,000 tons. Avesta's total exports of stainless steel to the United States had been less than 10,000

USITC had also presumed that any additional imports would automatically injure the US industry, but had never investigated whether that would be the case. For all of these reasons, the USITC assumption was without merit; it had never investigated whether Avesta had unused capacity, and its reasoning implied that the only way Avesta could have shown decreased capacity was to have closed down its mills.

180. Regarding Sweden's argument that the USITC's examination of production capacity in the Swedish industry was not a sufficient basis on which to conclude that there would be a "clearly foreseeable and imminent increase" in Avesta's exports to the United States if anti-dumping duties were revoked[98], the United States said that this argument proceeded from a false premise, namely, that a decision not to initiate a review under Article 9:2 was the equivalent of an affirmative finding of threat of injury under Article 3:6. There was no support in the Agreement for this presumption. For reviews upon request, Article 9:2 placed a clear evidentiary burden on the requesting party to "[submit] positive information substantiating the need for review." Article 9:2 set forth the standard for determining whether a review should be initiated. Article 3:6, by contrast, contained the standard for affirmative determinations of threat of material injury. Nothing in the Agreement required application of Article 3:6 to reviews conducted under Article 9:2. Furthermore, unlike initial investigations governed by Article 3, reviews under Article 9 did not start from a blank slate, but were based on an existing finding of material injury.

181. With regard to Sweden's argument that Avesta did not have a monopoly in the Swedish market, the United States observed that it was true that foreign competition was not shut out of the Swedish market. Nonetheless, consolidation of the four Swedish producers into a single firm meant that there was no longer any competition between different Swedish firms in the Swedish market or elsewhere. Consolidation meant that the new firm could adjust its production and sales strategies for

183. Regarding the grades 253 MA and 254 SMO, Sweden noted that Avesta had also shown that these grades of hot-rolled stainless steel plate, which did not exist in the early 1970's, were being imported from Sweden . These plates were composed of patented grades of stainless steel which were

	Grades excluded	All grades
1980	0.25%	0.57%
1983		

had been almost insignificant, such as in 1980 when imports had represented only 2.4 per cent. In the 1973 determination of injury, it was stated that:

> "For their stainless-steel plate operations alone, net operating profit as a percentage of net sales of stainless-steel plate declined even more precipitously, from 4.4 per cent in 1968 to 1.5 per cent in 1972. Although some of the decline in profitability of these producers may have been due to recessionary factors in 1970 and in 1971, the continued low level of profits in 1972 is directly attributable to increased production costs coupled with LTFV sales of Swedish stainless-steel plate that have held domestic prices at abnormally low levels."

Regarding the state of the US industry, the USITC stated in 1987 that:

> "… the existence of the VRAs does not mean that the U.S.

levels."

On 13 July 1993 Sweden informed the Panel that in its view, a suspension of the Panel's proceedings at that time was not warranted.

VI. FINDINGS

A. Introduction

197. The dispute before the Panel arose from a complaint by Sweden that the continued

203. In July 1987, the USITC dismissed this second request for initiation of a review on the ground that the request did not show changed circumstances sufficient to warrant institution of a review investigation.[106]

204. The decision of the USITC dismissing the request made in July 1985 for initiation of a review under Section 751(b) of the Tariff Act of 1930 was affirmed by the United States Court of International Trade. The decision of the USITC dismissing the request made in April 1987 for initiation of a review under Section 751 (b) of the Tariff Act of 1930 was affirmed by the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, and the United States Supreme Court.

205. Sweden submitted in the dispute before the Panel that the United States was in violation of its obligations under Article 9 of the Agreement by reason of the ongoing application of the anti-dumping duties on imports of stainless steel plate from Sweden.

206. Specifically, Sweden requested that the Panel make the following findings:

(i) The affirmative finding of injury made in 1973 regarding imports of stainless steel plate from Sweden was not

(ii) The decisions taken by the USITC in 1985 and 1987 that the

and remedial nature of anti-dumping duties. The text of this provision indicated that anti-dumping duties were of a temporary and remedial nature and were to be revoked if there was no longer dumping, injury

application of the anti-dumping duties, while Article 9:2 contained a distinct obligation to conduct a review of the need for continued imposition of the anti-dumping duties.

221. The Panel therefore considered that the basic legal question raised by Sweden's claim under Article 9:1 was whether this provision by itself contained an obligation on Parties to the Agreement to examine whether the injury determination made in the original investigation remained a valid basis for the continued application of anti-dumping duties, which obligation would be distinct from the obligation of Parties to conduct reviews under Article 9:2.

222. In its examination of this question, the Panel noted that the obligations of Parties with respect to the duration of anti-dumping duties were governed by Article 9 as a whole, i.e. by Articles 9:1 and 9:2 taken together. The question of whether Article 9:1 required Parties to take the steps referred to by Sweden therefore sETBT1 0 0 1 153.12 6162essita337.92 629.04 Tm/F8 11 235(to) TjETBT1 0 0 1 850.4 6

227. The Panel noted in this regard that, if Article 9:1 were interpreted to contain an obligation of Parties to conduct a form of factual examintual

duties on imports of stainless steel plate from Sweden without undertaking, on its own initiative, a review of the injury finding

247. The United States argued that Article 9:2 was phrased in the disjunctive and that it was therefore sufficient for a Party to provide the opportunity for either self-initiated reviews or reviews upon request by an interested party. This interpretation was supported by the report of the panel in the dispute between Brazil and the United States

dispose of Sweden's claim that the United States had violated Article 9:2 by not undertaking a review on its own initiative.

253. The Panel noted that Article 9:2 required investigating authorities to undertake a review on their own initiative "where warranted". Accordingly, the Panel examined the factors which according to Sweden warranted a self-initiated review in this case. The Panel recalled that it was requested by Sweden to find that the United States had acted inconsistently with Article 9:2 by not self-initiating a review, and to find that the United States had acted inconsistently with Article 9:2 by denying the Swedish exporter's requests for initiation of a review.

254. In this connection, the Panel noted that as support for its argument that a self-initiated review was warranted in this case, Sweden identified several circumstances which in Sweden's view indicated that the current situation, i.e. the situation in 1992, differed substantially from the situation prevailing at the time of the investigation which had led to the injury determination in 1973. The factors mentioned by Sweden in this context were identical to the factors described in the two requests for initiation of a review presented in 1985 and 1987 to the USITC by the Swedish exporter. However, in presenting these factors before the Panel as evidence that a self-initiated review was warranted, Sweden submitted information relating to the period 1973-1991, while the factors presented by the Swedish exporter in the requests for the initiation of a review of course did not cover this period.

255. The Panel first noted that it could not make a finding on whether the United States had acted inconsistently with Article 9:2 by not self-initiating a review during a period in which the Agreement was not in force (1973-1980).

256. The Panel further noted that, while some of the developments mentioned by Sweden to support its argument that a self-initiated review was warranted had occurred during the 1970s, other developments referred to by Sweden, such as the reduction of the production capacity of the Swedish stainless steel plate industry and voluntar[redacted] agreements between the United States and a number of [redacted]porting countries, had o[redacted]nd mid-eighties. Thu[redacted]gether these developments [redacted]d not co[redacted]riod covered by the [redacted]xporter's requests for the [redacted]eden's stater[redacted] self-initiated review was [redacted]992 differe[redacted]ally from that in the ea[redacted] [redacted]rred to by [redacted] its claim that the U[redacted] [redacted]s had faile[redacted]beyond the period cov[redacted]e developments de[redacted] [redacted]e two requ[redacted]by the Swedish expo[redacted]e initiation of a [redacted]

also have self-initiated a review would not be possible in that situation because logically a Party could not at the same time and with respect to the same factual circumstances violate Article 9:2 by dismissing a request for a review and separately violate Article

(ii) This *de minimis* level of the volume of imports resulted not from the dumping finding issued in 1973 but from the acquisition in 1976 of a steel mill in New Castle, Indiana by a predecessor of the Swedish exporter.

(iii) The structure of Sweden's stainless steel plate producing industry had changed dramatically since 1973.

(iv) The level of demand in Western Europe for stainless steel plate from Sweden had changed materially since the injury finding was made in 1973.

(v) Trade agreements between the European Communities and Sweden had eliminated all import duties on Swedish steel and did not impose quantitative restrictions on exports of Swedish plate to the EC.

(vi) Quota arrangements between the United States and the European Communities, Japan, and other major stainless steel plate exporting countries had seriously impeded the ability of Swedish imports to compete in the United States market for stainless steel plate

269. In support of its alternative contention that the facts established the existence of changed circumstances sufficient to warrant the institution of a review investigation to

275. The United States argued that the "positive information" standard in Article 9:2 was closer to the "positive evidence" standard in Article 3 than to the "sufficient evidence" standard in Article 5:1

276. The Panel considered that the standard of evidence implied by the "positive information" requirement in Article 9:2 needed to be interpreted in its proper context, and was thus not persuaded that the references made by the parties to evidentiary standards elsewhere in the Agreement were particularly useful. A decision under Article 9:2 to initiate a review was a decision to begin a fact-finding process in order to determine whether or not the continued imposition of an anti-dumping duty was necessary. It could therefore be said that "positive information substantiating the need for review" was such information as would persuade an objective, unprejudiced mind, that a fact-finding process was necessary in order to determine whether continued application of the duty was necessary. While the words "positive information substantiating the need for review" clearly implied that there was a certain burden on an interested party requesting a review to come forward with information indicating that such a fact-finding process was warranted, this burden had to be seen in conjunction with the threshold nature of the decision on whether or not to initiate a review. Furthermore, a decision to initiate a review naturally did not prejudge the outcome of such a review.

277. Regarding issues of interpretation of Article 9:2, the parties also offered conflicting views on whether the standard applied by the USITC - requiring the presence of "changed circumstances sufficient to warrant review" - was in accordance with Article 9:2.

278. Thus, Sweden argued that the threshold decision on whether or not to initiate a review had to be based on an

281. In this respect, the United States argued that because the information warranting initiation of a review had to tend to indicate that revocation of the anti-dumping duty would not again lead to injury, changes that were merely the expected consequences of the imposition of the anti-dumping duty were irrelevant as a grounds for initiating a review. Thus, a decline in the volume of imports, absent an explanation other than the imposition of the anti-dumping duty, by itself was not a ground for initiation of a review.

282. Sweden rejected the view of the United States regarding the irrelevance of changes that were the expected consequence of the imposition of an anti-dumping duty as an indication of the need for a review. In Sweden's view, when the anti-dumping duty had led to a decline in the volume of imports, this was an indication that the duty had fulfilled its purpose. The nature of the anti-dumping duty as a temporary and remedial measure required that at that point a review of the need for the continued application of the duty be initiated. In addition, Sweden argued that, while an anti-dumping duty could affect the volume of imports, it could also affect the price level of those imports. Furthermore, even if imports had declined as a result of the imposition of an anti-dumping duty, it did not necessarily follow that imports would increase upon revocation of the duty, or that if imports increased, they would again cause or threaten material injury to a domestic industry.

283. The Panel was thus presented with significant questions of interpretation of the concept of "positive information substantiating the need for review" in Article 9:2. The Panel decided to refrain from addressing these questions *in abstracto* and considered that it should first proceed to examine the factual issues raised by the parties in order to determine whether it was necessary for the Panel to pronounce itself on these matters of interpretation. The Panel noted in this regard that, with the exception of the issue of the decline in the volume of Swedish imports of stainless steel plate into the United States, the USITC had not mentioned in its decision that the factors mentioned by the Swedish exporter were insufficient because they related to developments which were merely the expected consequence of the imposition of anti-dumping duties. With respect to the issue of declining Swedish imports into the United States, the Panel considered that it should first examine the factual basis of the finding of the USITC that the decline in imports was merely the expected consequence of the imposition of anti-dumping duties, before pronouncing itself on whether the USITC's dismissal of this factor on this ground rested on an interpretation which, as a matter of law, was inconsistent with Article 9:2.[113]

284. Regarding the factual issues raised by the parties, the Panel considered that in its examination of whether the United States had properly determined that the information submitted by the Swedish
expTBT1 0 0 1 359.04 434.4 T06increl.84 Tm/F8 11 Tf(ex TjETBT1 0 0 1 399.cf(tTm/F8 11 Tf(ex TjETijETB

286. The Panel proceeded to consider the USITC's decision on the first point raised in the reques for review by the Swedish exporter, i.e. the contention that the facts established "changed

> Commission again finds that petitioners have offered no legally sufficient reason why the current levels of plate imports are the result of anything other than import relief."[116]

Regarding the contention of the exporter on the effect of the acquisition in 1976 of a US steel mill on the evolution of the volume of imports of stainless steel plate from Sweden, the USITC observed:

> "… the volume of imports of Swedish plate declined sharply in 1974. As we found in 1985, the level of imports from Sweden has not decreased since that purchase. In fact, current data show notable increases in the most recent periods. Unlike their 1985 petition, petitioners now assert that acquisition of the mill caused a substantial shift in their market strategy and that the New Castle mill is used to supply the majority of petitioner's hot-rolled plate for the U.S. market. They state that they intend to use the U.S. facility for hot-rolled plate except for specialty types.

thev

had relied on data in Table 3B in the request of the Swedish exporter.[118] This Table included in the import statistics the three products claimed by Sweden to have been exempted from the

"the facts made available in

310. The Panel observed that it was factually correct, as argued by the United States, that even with the adjusted

317. The United States argued that the

made not by the Swedish exporter but by unrelated parties through third countries. If the data in this Table were indeed the basis for this statement of the USITC, one would

utilization of the

332. The United States argued that the USITC had correctly found, based on an examination of the evidence before it, that the consolidation of the Swedish stainless steel

into the EC and did not impose quantitative restrictions on imports of stainless steel plate from Sweden into the EC.[127]

347. Regarding the increased level of demand in Western Europe for Swedish stainless steel plate as a factor indicating that a review of the 1973 injury finding was warranted, the Swedish exporter observed that in its finding made in 1973 the Tariff Commission had found that the decline in demand in Western Europe, Sweden's largest market, was one of the main causes of increased concentration of Swedish stainless steel plate exports on the US market. According to the exporter, in contrast to the short-term cyclical decline in demand in Western Europe during the period 1968-1971, "Western Europe has represented a strong and consistently growing market for Swedish stainless steel plate during the past five years".[128] In addition, the exporter alleged that current total demand for Swedish stainless steel plate in the EC was "substantially greater than it was at the time of the 1973 Determination".[129]

348. The Swedish exporter provided in Table 5 of the request for initiation of a review data which showed that "Sweden's exports of hot-rolled stainless steel plate to the European Community have increased by 168 per cent between 1971 and 1985" and that "Sweden's total exports of hot and cold-rolled plate (and thick cold-rolled sheet) to the EC have increased by 272 per cent between 1971 and 1985 from 13,846 net tons in 1971 to 51,467 net tons in 1985".[130]

349. The Swedish exporter also alleged that "a major change in the circumstances on which the 1973 Determination was based" had resulted from free-trade agreements between the EC and Sweden which had entered into force on 1 January 1974. The exporter mentioned in this regard the complete elimination of all customs duties on 1 July 1977 and the absence of quantitative restrictions

> then increased irregularly through 1985. In 1985, Swedish exports to the E.C. were just five percent higher than in 1972. Thus, the Commission again finds that there is no sufficient changed circumstance with regard to this allegation."[132]

In the

356. Referring to import statistics presented in proceedings before the United States Court of Appeals for the Federal Circuit, Sweden alleged that Swedish exports of hot-rolled sheet and plate to the EC-10 increased by more than 30 per cent from 1972 to 1985 (from 22,494 metric tons in 1972 to 29,407 metric tons in 1985). At the same time, Sweden's total exports of hot-rolled sheet

exports were not a sufficient basis to initiate a review, it could have regard only to the alleged distortion of the import statistics resulting from the fact that they did not take into account the change in EC membership since 1972.

362. The Panel examined the statistics on imports into the EC in Table 5 of the Swedish exporter's requests for a review and found that these import statistics did not have a constant base in terms of importing countries covered. A footnote to the Table explained that for the years 1971-1973 the statistics covered imports into the original six EEC member States. For the period 1974-1980 the statistics covered in addition to the six original member States, imports into the United Kingdom, Ireland and Denmark.

exporter, this might have raised a serious question with respect to due process. However, there was no factual information before the Panel indicating that such different treatment had taken place.

367. Based on the foregoing considerations, the Panel found that the USITC's decision not to rely on the import statistics in Table 5 of the Swedish exporter's request for a review, on the ground that these statistics did not account for the enlargement of the EC, was adequately explained and was supported by the information before the USITC.

368. The Panel then turned to the issues raised by the parties regarding the factual basis for the USITC's finding that Swedish exports of stainless steel plate to the EC had increased by just five per cent between 1973 and 1985.

369. The United States had indicated in the proceedings before the Panel that this finding was based on import statistics in Table 7 of the memorandum submitted by the US domestic industry in opposition to the Swedish exporter's request for a review. The Panel reviewed these statistics and found that they supported the USITC's statement as far as exports of hot-rolled sheet and plate were concerned.

Panel's examination of the USITC's finding on increased

the United States had declined sharply and then remained at *de minimis* levels after the free-trade agreements with the EC became effective.[134]

381. The Panel reviewed the USITC's decision dismissing the exporter's request for a review and found that, while the USITC had expressly addressed the exporter's contention regarding the growth in demand for Swedish stainless steel plate in Western Europe[135], it had not specifically addressed the exporter's contentions regarding the effect of the free-trade agreements between the EC and Sweden.

382. In the proceedings before the Panel, Sweden raised the issue of the effect of the free-trade agreements in conjunction with the issue of the alleged growth in demand in Western Europe for Swedish stainless steel plate.[136] Sweden argued that the USITC had failed to examine the impact of the free-trade agreements, both on Swedish exports to the EC and on Swedish exports to the United States. The United States' arguments focused on the inadequacy of the statistical data provided by the Swedish exporter, and on the limited extent of the increase in Swedish exports to the EC.

383. Consistent with its approach to other issues disputed between the parties, the Panel reviewed the USITC's decision that the alleged effect of the free-trade agreements between the EC and Sweden was not a relevant changed circumstance in the light of the reasons articulated in the USITC's decision.

384. As noted above, the Panel found that there was no specific analysis in the USITC's decision of the effects of the free-trade agreements between the EC and Sweden, as distinguished from the issue of the alleged changes in the level of demand for stainless steel plate in Western Europe.

385. In the Panel's view, it could not be contested, as a factual matter, that the issue of the effect of the free-trade agreements between the EC and Sweden had indeed been raised by the Swedish exporter as an issue distinct from the changed circumstance resulting from the growth in demand for Swedish stainless steel plate in Western Europe. The two issues were dealt with in separate sections of the exporter's request for a review and raised different factual issues. Thus, in connection with the alleged effect of the free-trade agreements between the EC and Sweden, the Swedish exporter focused not only on the increase in exports of (the) TjETBT1 065 1 6f(exporter) TjTBT T1 0(in) TjETBT1 078 11 Tf(exporter) TjTBT T

steel

387. The Panel realized that it was possible that the USITC might have considered that, because of its findings on the limited extent of the increase in Swedish stainless steel plate exports to the EC and the absence of a decline in imports into the United States since 1976, there was no merit to the argument of the Swedish exporter regarding the effect of the free-trade agreements between the EC and Sweden. However, the Panel considered that, where the USITC had failed to provide a reasoned finding on one of the factors raised by the exporter, it was inappropriate for the Panel to substitute for that lack of reasoning its own speculation as to how the USITC might have evaluated the exporter's contentions and the evidence provided in support thereof. Nor was it for the Panel to provide its own assessment of whether there was merit to the exporter's allegations on this issue. To do so would be inconsistent with the Panel's view that its task was not to undertake a

arrangement with the United States, remained subject to the safeguard measures introduced in July 1983 and to the anti-dumping and countervailing duty laws.

393. Only the second of these two arguments was elaborated in detail by the exporter in Section F of the request for initiation of a review, in which the exporter claimed that "The quota arrangements between the United States and the European Communities, Japan and other major stainless steel plate exporting countries have seriously impeded the ability of Swedish imports to compete in the US market for stainless steel plate."[138]

394. In its decision dismissing the Swedish exporter's request for initiation of a review, the USITC made the following comments on the issues raised by the exporter

voluntary export restraint arrangements to the question of the volume and price effects of imports of stainless steel plate from Sweden, which were not subject to any quantitative import restrictions.

398. The United States argued further that the Swedish exporter in

> "… face a 'three-tier' barrier to entry into the United States: the regular duties, the additional '201' duties, and the application of the antidumping and countervailing duty laws. On the other hand, exports from the major exporting countries face a single barrier - the regular customs duties - and will be able to be sold in the U.S. without regard to the U.S. antidumping or countervailing duty laws."[140]

402. The Panel observed that the limitation of exposure to US anti-dumping and countervailing duty actions, and the elimination of the additional customs duties imposed in July 1983, were the counterpart of the quantitative restrictions on exports of steel provided for in the bilateral steel voluntary export restraint arrangements. Such agreed restrictions on exports did not exist with respect to stainless steel plate from Sweden. The Panel therefore considered that the USITC did not err in finding that the exporter's argument was flawed, on the ground that "because of the absence of a VRA with Sweden, the Swedish producer may continue to export to the United States in whatever quantities it wishes".

403. The Panel therefore was of the opinion that regarding the principal argument of the exporter concerning the existence of voluntary export restraint arrangements as a "changed circumstance warranting the initiation of a review", the USITC had adequately explained its determination that this factor did not constitute a ground for initiating a review, and that this determination was supported by the information before the USITC.

404. The Panel then considered the USITC's statement that "the existence of the VRAs does not mean that the US stainless steel industry is any less vulnerable to the impact of dumped imports". By way of explanation of this statement, the USITC referred in a footnote to a determination it had made in May 1987 in an investigation under Section 203 of the United States Trade Act of 1974 on the probable economic effects of the termination of the safeguard measures introduced in July

voluntary export restraint arrangements on the condition of the domestic industry was clearly of a secondary nature, and that the exporter had provided very little information in support of this argument. The Panel therefore did not consider that the questions which could be raised regarding the adequacy of the

free-trade agreements between Sweden and the EC did not substantiate the need for the initiation of a review.

2.1.6 The USITC's dismissal of the request for initiation of a review to modify the 1973 dumping finding

410. The Panel recalled that the Swedish exporter had in its petition submitted in February 1987 presented two bases for the initiation of a review. First, the existence of "changed circumstances warranting initiation of a review" to revoke the 1973 dumping finding, and, second, the existence of "changed circumstances warranting initiation of a review" to modify the 1973 dumping finding by changing its product coverage. This second, more limited, ground for initiation of a review was presented as an alternative to the first ground for initiation of a review.

411. Having concluded its examination of the issues disputed between the parties concerning the USITC's decision on the exporter's request for initiation of a review in order to revoke the 1973 dumping finding, the Panel proceeded to examine the USITC's decision on the exporter's request for a review in order to modify the 1973 dumping finding. The Panel was aware that it could be argued that, in light of its conclusion in paragraph 409, it was not necessary for the Panel to make a finding on the USITC's treatment of this alternative and more limited ground for initiation of a review advanced by
was stry the Swedish exporter in its petition to the USITC. However, the Panel was not persuaded that that conclusion entirely obviated the need for it to address this issue.

412. The Panel noted that, in support of the request for a review to modify the product coverage of the 1973 dumping finding, the Swedish exporter argued that three types of stainless steel plate which did not exist in 1973 were now being imported into the United States in minimal quantities. Regarding one of these products, continuously cold-rolled "KBR" plate, the exporter contended that the domestic industry

of stainless steel plate to warrant a finding that there is no domestic like product (footnote omitted).

419. Regarding both KBR plate and the two new patented grades of stainless steel plate imported from Sweden, the United States argued that, because of the minimal quantities in which these products were imported, their exclusion would not have an impact on the USITC's injury analysis.

420. The Panel observed that it was not clearly discernable from the text of the USITC's decisions whether the USITC had treated the Swedish exporter's request for a review to modify the 1973 dumping finding as an alternative to the exporter's request for initiation of a review to revoke the dumping finding. The decision did not distinguish between the two requests and did not discuss the factors mentioned by the exporter as support for modification of the dumping finding separately from the factors mentioned by the exporter as a ground for the initiation of a review to revoke the finding.

421. The Panel noted in this regard that the USITC had dismissed the exporter's allegations on the two new patented products, in part, on the following ground:

> "… the data show that the two patented types of plate are being imported in only small quantities and, as noted above, Avesta continues to export very significant quantities of standard types of hot-rolled plate to the United States."

This statement was in response to what the USITC considered to be the argument of the Swedish exporter:

> "Petitioners have also argued that they now predominantly export specialty types of stainless steel plate that are not produced in the United States."

The Panel's review of the section of the exporter's petition which discussed the reasons why in the exporter's view a modification of the product coverage was warranted revealed that the exporter had referred to the fact that the two patented grades of Swedish stainless steel plate and KBR plate were imported in minimal quantities and did not compete with a domestic like product. The exporter's argument in favour of a modification of the product coverage was not based on the relative importance of the quantities of the three specialty stainless steel plates compared to the quantities of imports of standard types of stainless steel plate. There was no argument in this section that the exporter was now predominantly exporting the three specialty stainless steel plates into the United States.

422. The Panel therefore found it difficult to understand why in this context the USITC attached significance to the fact that the two specialty types of stainless steel plate were imported in minimal quantities, whereas the exporter continued to export very significant quantities of standard types of stainless steel plate.

423. The Panel further recalled its observations in paragraphs 321-323 regarding the unclear factual basis for the USITC's statement that "Avesta continues to export very significant quantities of standard types of hot-rolled plate to the United States."

424. Based on the above considerations, the Panel was not persuaded that the USITC adequately addressed the issues raised by the Swedish exporter in his request for a modification of the product coverage of the 1973 dumping finding when it contrasted the small quantities of imports of the two patented types of specialty steel with the allegedly significant quantities of imports of standard types of hot-rolled plate.

425. However, the Panel noted that the USITC had mentioned additional reasons for its determination that the existence of the new products was not a sufficient basis to initiate a review. In particular, the USITC discussed why in its view the new products were not outside the scope of the domestic "like product" definition. Thus, it stated:

"Simply because a new

437. The Panel **concluded** that the United States had acted inconsistently with its obligations under Article 9:2 of the Agreement by dismissing the request made in 1985 by the Swedish exporter for the initiation of a review of the 1973 dumping finding on stainless steel plate from Sweden, because the USITC had concluded based on factually incorrect data that the information on the purchase in 1976 of a steel mill in New Castle by a predecessor of the Swedish exporter did not substantiate the need for the initiation of a review.

438. Having concluded its examination of Sweden's claims under Article 9:2 of the Agreement, the Panel recalled its observation in paragraph 228 that it could be argued that a violation of Article 9:2 could also entail a violation of Article 9:1 of the Agreement. While the Panel did not exclude the possibility that, had the United States initiated a review in 1985 and/or in 1987 of the dumping finding on imports of stainless steel plate from Sweden, such a review would have led to the revocation of this finding, the Panel did not consider that on the basis of the information presented to the USITC by the Swedish exporter in its two requests the outcome of such a review could be prejudged. Nor did the Panel consider that it was presented with sufficient information on the period subsequent to the USITC's dismissal of the second request of the Swedish exporter to enable the Panel to draw a conclusion on whether or not in this case the continued imposition of the anti-dumping duties was necessary. Accordingly, while the Panel had found that by dismissing the requests for the initiation of a review the United States had acted inconsistently with its obligations under Article 9:2, the Panel did not consider that this finding enabled it to conclude that the United States had also acted inconsistently with Article 9:1 by maintaining the anti-dumping duties.

VII. CONCLUSIONS

439. The Panel **concluded** that:

(i) The United States had acted inconsistently with its obligations under Article 9:2 by dismissing the request made in 1987 by the Swedish exporter for the initiation of a review to revoke the dumping finding on stainless steel plate from Sweden, as a result of (1) the factual insufficiency and inadequate explanation of the USITC's determination that the information on the purchase in 1976 of a US steel mill by a predecessor of the Swedish exporter did not substantiate the need for the initiation of a review, and (2) the inadequate explanation of the USITC's determination that the information on the changed structure of the em/F8 11 Tf(that) TjET19.12 304.8 Tm/F8 11 Tf(ste 11 Tf(structure)

440. The Panel noted Sweden's request for revocation of the dumping finding on imports

ANNEX I

Section 751 of the United States
Tariff Act of 1930, as Amended[150]

"SEC. 751. Administrative Review of Determinations

(a) Periodic Review of Amount of Duty.--

(1) In general.-- At least once during each 12-month period beginning on the anniversary of the date of publication of a countervailing duty order under this title or under section 303 of this Act, an antidumping duty order under this title or a finding under the Antidumping Act, 1921, or a notice of the suspension of an investigation, the administering authority, if a request for such a review has been received and after publication of such review in the Federal Register, shall --

(A) review and determine the amount of any net subsidy,

(B) review, and determine (in accordance with paragraph (2)), the amount of any antidumping duty, and

(C) review the current status of, and compliance with, any agreement by reason of which an investigation was suspended, and review the amount of any net subsidy or margin of sales at less than fair value involved in the agreement,

and shall

its determination under section 704(h)(2) or 734(h)(2), the Commission shall consider whether, in the light of changed circumstances, an agreement accepted under section 704(c) or 734(c) continues to eliminate completely the injurious effects of imports of the merchandise. During an investigation by the Commission, the party seeking revocation of an antidumping or countervailing duty order shall have the burden of persuasion with respect to whether there are changed circumstances sufficient to warrant revocation of the antidumping or countervailing duty order.

(2) Limitation on period for review.-- In the absence of good cause shown --

(A) the Commission may not review a determination under section 705(b) or 735(b), and

(B) the administering authority may not review a determination under section 705(a) or 735(a), or a suspension of an investigation suspended under section 704 or 734,

less than 24 months after the date of publication of notice of that determination or suspension."

(c) Revocation of Countervailing Duty Order or Antidumping Duty Order.-- The administering authority may revoke, in whole or in part, a co duty order or an antidumping duty order, or terminate a suspended inv er review under this section. The administering authority shall not rev or in part, a countervailing duty order or terminate a suspended investig asis of any export taxes, duties or other charges levied on the export of lise to the United States specifically intended to offset the subsidy receive evocation or termination shall apply with respect to unliquidated entries e entered, or withdrawn from warehouse, for consumption on and after ned by the administering authority.

(d) Hearings.-- Whenever the administering authority or t conducts ection it shall, upon the request of an ty, hold a ection 774(b) in connection wit

for Suspension No Lo -- determination of the C the last sentence of sub s the agreement shall be t cepted,

ANNEX II*

Stainless Steel Plate from Sweden

AGENCY: International Trade Commission.

ACTION: Dismissal of a request to institute a section 751(b) review investigation concerning affirmative determination in Investigation No. AA1921-114, Stainless Steel Plate from Sweden.

SUMMARY: The Commission determines, pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) and rule 207.45 of the Commission's rules (19 CFR § 207.45), that the petition does not show changed circumstances sufficient to warrant institution of an investigation to review the Commission's affirmative determination in investigation No. AA1921-114 regarding stainless steel plate from Sweden provided for in items 607.76 and 607.90 of the Tariff Schedules of the United States.

SUPPLEMENTARY INFORMATION: On May 1, 1973, the Commission determined that an industry in the United States was injured within the meaning of the Antidumping Act, 1921, by reason of imports of stainless steel plate from Sweden determined by the Secretary of Treasury to be sold or likely to be sold at less than fair value (LTFV).

On June 8, 1973, the Department of the Treasury issued a finding of dumping (T.D. 73-157) and published notice of the dumping finding in the Federal Register (38 FR 15079).

On July 8, 1985, the Commission received a request to review its affirmative determination in investigation No. AA1921-114. The request was filed pursuant to section 751(b) by the law firm of Freeman, Wasserman and Schneider on behalf of Avesta AB, the sole Swedish producer and exporter of stainless steel plate, and its affiliated company, Avesta Stainless Inc., a U.S. producer of stainless steel plate.

On July 31, 1985, the Commission published a notice in the Federal Register (50 FR 31056) requesting public comment concerning whether the following alleged changed circumstances were sufficient to warrant institution of a review investigation: (1) Imports of Swedish plate into the United States are commercially insignificant and statistically de minimis, representing less than one per cent of apparent U.S. consumption of plate in every year but one since 1976; (2) The number of companies producing stainless steel plate in Sweden has fallen from four producers with four mills in 1972 to one producer with one mill in 1985; (3) In 1976, a predecessor of Sweden's sole remaining producer of stainless steel plate acquired Borg Warner Corporation's Ingersoll Division mill at New Castle, IN., and by 1984 this mill's share of apparent U.S. consumption of stainless steel plate had greatly increased; and (4) In 1972, Sweden and the European Community (EC) entered into a bilateral trade agreement which allowed Swedish plate duty-free entry into the EC; today, Swedish exports to the EC are almost 20 times the quantity exported to the United States.

The Commission received comments from the law firm of Collier, Shannon, Rill and Scott on behalf of Allegheny Ludlum Steel Corp., Armco Inc., LTV Steel Co., Washington Steel Corp., and the United Steelworkers of America. Their statement argued that the

of

[redacted]tition, the Commission has
det[redacted]hat the petition does not show
[redacted]estigation regarding stainless
[redacted]
pla[redacted]
countries.[redacted]
Community (EC) which[redacted]
period of restricted imports. Petition at 3[redacted]
Commission's 1973 determination, it cannot constitute a changed circumstance.

Moreover, the level of Swedish stainless steel plate exports to the EC, although it has fluctuated, has shown a decreasing trend since 1973 and petitioners' reliance on apparent recent increases in exports

incrdictedbn

plate have remained relatively constant since then, although increases are apparent in 1984. We note that in addition to the antidumping duty, imports of stainless steel plate from Sweden have been subject to quotas and additional duties during portions of the intervening years. The level of imports, while clearly a change from the situation at the time of our 1973 determination, is not sufficient here. The petitioners have offered no persuasive reason why the current level of Swedish plate imports is the result of anything other than import relief.

For all the foregoing reasons, the Commission has determined that the petition does not show changed circumstances sufficient to warrant institution of a review investigation and has, therefore, dismissed the petition.

By order of the Commission.

Issued: October 25, 1985.

ANNEX III*

Stainless Steel

steel plate, and its affiliated company, Avesta Stainless Inc., a U.S. producer of stainless steel plate. On March 25, 1987, the Commission requested written comments in the Federal Register (52 FR 9551) as to whether the changed circumstances alleged by the petitioner were sufficient to warrant a review investigation. Comments were supplied by counsel on behalf of Allegheny Ludlum Steel Corp., Armco Inc., LTV Steel Co., Washington Steel Corp., and the United Steelworkers of America opposing the institution of a review investigation and by counsel on behalf of the petitioner supporting the institution of a review investigation.

After review of the petition for review and the responses to the notice inviting comments, the Commission has determined (Chairman Liebeler and Vice Chairman Brunsdale dissenting), pursuant to 19 U.S.C. § 1675(b) and rule 19 C.F.R. § 207.45, that the petition does not show changed circumstances sufficient to warrant institution of a review investigation regarding stainless steel plate from Sweden. A Memorandum Opinion, setting forth the reasons for dismissing this request, will be made available in the Secretary's office.

Issued: June 26, 1987.

By order of the Commission.

(Memorandum Opinion)
VIEWS OF COMMISSIONERS ALFRED ECKES,
SEELEY LODWICK, AND DAVID ROHR

Background

On May 1, 1973 the US Tariff

2. Imports of hot-rolled stainless steel plate from Sweden have been and remain at de minimis levels;

3. The de minimis levels of imports from Sweden result from the 1976 acquisition by Avesta of a hot-rolling plate producing mill in the United States;

4. In contrast to the early 1970's, the European Community (EC) is a growing market for Swedish plate and Swedish plate enters the EC without quantitative restrictions and

ANNEX IV*

Apparent U.S. Consumption of Stainless Steel Plate, 1970-1991
(net tons)

Year	US producers' shipments	Total imports	Total exports	Apparent

Year	US producers[1] shipments	Total imports	Total exports	Apparent US consumption	Total imports as % AC	Imports from Sweden	Imports from Sweden as % AC	Imports from Sweden as % TI
1990	206,065	19,188	35,567	189,686	10.1%	1,217	0.64%	6.3%
1991	179,520	21,133	15,908	184,745	11.4%	659	0.36%	3.1%

Sources: US producers' shipments:
1970-1972, Stainless Steel Plate from Sweden, Staff Report, Inv. No. 1921-114, TC Pub. 573, at 58 Table 2 (1973) [1973 Anti-Dumping Injury Determination];
1973-1977, Stainless Steel and Alloy Tool Steel, Inv. No.TA-203-5, USITC Pub. 968, at A-94 Table 18 (1979);
1978-1982, American Iron and Steel Institute, reprinted in American Metal Market, Metal Statistics 1985 at 174 (1985) (same data, rounded, are also used in Stainless Steel and Alloy Tool Steel, Inv. No. TA-201-48, USITC Pub. 1377, at A-91 Table 8 (1983));
1983-1986, Stainless Steel and Alloy Tool Steel, Inv. No. TA-203-16, USITC Pub. 1975, at A-23 Table 5 (1987);
1987-1990, American Iron and Steel Institute, reprinted in American Metal Market, Metal Statistics 1992 at 165 (1992);
1991, estimate, based on market research conducted for Avesta.

Imports:

U.S. Department of Commerce, Bureau of the Census. 1970-1988, Tariff Schedule items 607.7603, 607.7606, & 607.9005, and predecessor item numbers, all covering stainless steel plate; 1989-1991, Harmonized Tariff Schedule subheadings 7219.11.00, 7219.12.00, 7219.21.00, 7219.22.00, and 7219.31.00.

Exports:

U.S. Department of Commerce, Bureau of the Census. 1970-1988, Schedule B number 608.8117. 1989-1991, Schedule B numbers 7219.11.0000, 7219.12.0000, 7219.21.0000, 7219.22.0000 and 7219.31.0000.

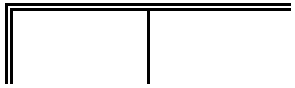
Note on 1988 total imports and imports from Sweden:

The officially reported US import statistics for 1988 for total imports and imports from Sweden include 1,382 net tons of stainless steel sheet bar imported by Avesta at the Port of Baltimore that was misclassified by the local customs officials as stainless steel plate in item 607.7606, TSUS. Avesta has obtained a ruling from Customs Service Headquarters determining that this classification was incorrect, and Avesta is in the process of seeking a correction in the official import statistics. The 1,382 tons have been excluded from the figures for total imports and imports from Sweden in the preceding Table.

*This table was presented to the Panel by Sweden.

ANNEX V*

Swedish Export of Stainless Cold Rolled and Hot Rolled Products > 4.75 mm
1970-1991



	EC-12 C.R.	H.R.	TOT.	USA C.R.	H.R.	TOT.	OTHERS C.R.	H.R.	TOT.	TOTAL C.R.	H.R.	TOT.
1990	9,236	37,196	46,432	416	164	580	3,498	21,136	24,634	13,150	58,496	71,646
1991	9,839	33,064	42,903	251	127	378	3,856	15,270	19,126	13,946	48,461	62,407

Source: Jernkontoret, (their source: Swedish customs statistics).

*This table was presented to the Panel by Sweden.

ANNEX VI*

Imports of Competitive Grades and Types of Stainless Steel Plate from Sweden:
Share of Apparent United States Consumption
(net tons)

Year	Total shipments by US producers	Total imports from all sources*	Total exports	Apparent US consumption	Total imports as % of apparent US consumption	Total imports from Sweden[0]	Imports from Sweden as % of apparent US consumption
1970	73,972	7,845	3,089	78,728	10.0%	1,125	1.43%
1971	61,427	10,083	2,969	68,541	14.7%	3,683	5.37%
1972	71,623	16,391	2,054	85,960	19.1%	9,264	10.78%
1973	82,000	11,108	4,100	89,008	12.5%	4,413	4.96%
1974	140,200	12,345	6,900	145,646	8.5%	1,201	0.82%
1975	109,700	17,252	4,400	122,552	14.1%	1,760	1.44%
1976	93,700	18,356	3,200	108,856	16.9%	1,027	0.94%
1977	98,600	6,995	2,900	102,695	6.8%	404	0.39%
1978	114,000	10,586	5,000	119,586	8.9%	699	0.58%
1979	146,000	6,283	12,000	140,283	4.5%	561	0.40%
1980	124,000	2,643	16,000	110,643	2.4%	278	0.25%
1981	122,000	7,597	10,000	119,597	6.4%	200	0.17%
1982	98,000	12,617	5,000	105,617	11.9%	402	0.38%
1983	99,090	5,019	8,094	96,015	5.2%	84	0.09%
1984	116,803	6,922	3,371	120,354	5.8%	973	0.81%
1985	145,644	11,209	8,031	148,822	7.5%	392	0.26%
1986	119,073	14,719	3,523	130,269	11.3%	[265]	[0.20%]

Sources: 1970-1972, 1973 Determination (Staff Report), at 58 Table 2;

ANNEX VII

1973-1977, Stainless Steel and Alloy Tool Steel, Inv. No. TA-203-5, USITC Pub. 968, at A-88 Table 13, A-94 Table 18 (1979);
1978-1982, Stainless Steel and Alloy Tool Steel, Inv. No. TA-201-48, USITC Pub. 1377, at A-91 Table 8, A-96 Table 13 (1983);
1983 to September 1986 Shipments by US producers, Quarterly Survey on Certain Stainless Steel and Alloy Tool Steel (Covering the Third Quarter of 1986), Inv. No. 332-167, USITC Pub. 1908, at 6, Table 3 (November 1986); all other data, U.S. Department of Commerce.
October, November and December 1986 shipments, American Iron and Steel Institute; all other data, U.S. Department of Commerce.

*Table 3B of Avesta's Petition (23 February 1987) to the USITC for Review Investigation of the "Finding of Dumping" Against Stainless Steel Plate from Sweden Issued on 7 June 1973.

ANNEX VIII*

Shipments[1] of Stainless Steel Plate to
U.S. Markets from Swedish-Owned Mills
in the U.S. and Sweden 1974-1986
(net tons)

Year	Shipments from mills in Sweden	Shipments from Swedish-owned mill in U.S.	Total shipments from Swedish-owned mills in U.S. and Sweden	Shipments from Sweden as percentage of total shipments from Swedish-owned mills in U.S. and Sweden
1974	1,201			
1975	1,760			
1976	1,027			
1977	404			
1978	699			
1979	561			
1980	278			
1981	200			
1982	402			
1983	84			
1984	973			
1985	392			
1986	265			

[1]Source: Table 3A and Table D, *supra*.**

*Confidential Table E of Avesta's Petition (23 February 1987) to the USITC for Review Investigation of the "Finding of Dumping" Against Stainless Steel Plate from Sweden Issued on 7 June 1973.

**Table 3A is contained in Annex VI, *supra*; Table D is contained in Annex IX, *infra*.

ANNEX IX*

Shipments by Avesta Inc.'s Plant at New Castle, Indiana
and Shares of Apparent U.S. consumption, 1976-1986
(net tons)

Year	Total shipments by US producers	Total shipments by Avesta Inc. (formerly, "The Ingersoll Division")[1]	Apparent US consumption	Shipments by Avesta Inc. as % of apparent US consumption
1976	93,700		108,856	
1977	71,623		102,695	
1978	114,000		119,586	
1979	146,000		140,283	
1980	124,000		110,643	
1981	122,000		119,597	
1982	98,000		105,617	
1983	99,090		96,015	
1984	116,803		120,354	
1985	145,644		148,822	
1986	119,073		130,269	

[1]Sources: Avesta Inc.; other data, Table 3A.

*Confidential Table D of Avesta's Petition (23 February 1987) to the USITC for Review Investigation of the "Finding of Dumping" Against Stainless Steel Plate from Sweden Issued on 7 June 1973.

ANNEX X*

Imports of Stainless Steel Plate for Sweden

	1970-April 1973	May 1973-1975	1976-1986
Total imports from Sweden (short tons)[1]	15,543	5,903	5,284
Length of period	40 months	30 months	132 months
Average monthly quantity of imports (short tons)	389	197	40

[1] Source: Table 3A, *supra*. Monthly imports for 1973 were obtained by prorating the imports for the full year. (Monthly import data were not available until 1976).

*Table 4 o re fBT1 0 0 1 226.08 6Ih734 Tm/F271 8 Tf(o reu8 586.8 1600.32 637.9qmh31 60lj8 Tm/F271 8 Tf(moo re fBT1 0 0 1 226.0591.84 Tm/F271 8

ANNEX XI*

European

ANNEX XIII*

Capacity Utilization of KBR Mill at Avesta, Sweden
(000's of net tons)

	1982	1983	1984	1985	1986
Mill capacity to produce cold-rolled ("KBR") sheet and plate	40.8	40.8	45.2	44.1	49.0
Actual production of KBR sheet and plate	30.5	30.9	40.2	44.1	49.0
Actual production of KBR plate	9.6	10.3	12.3	14.6	13.1
KBR plate as % of all KBR products	31.5%	33.3%	30.7%	33.1%	26.7%
Capacity utilization (%) [All KBR products]	74.8%	75.7%	88.9%	100.0%	100.0%

*Confidential Table I of Avesta's Petition (23 February 1987) to the USITC for Review Investigation of the "Finding of Dumping" Against Stainless Steel Plate from Sweden Issued on 7 June 1973.