

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Committee on Anti-Dumping Practices

MINUTES OF THE MEETING HELD ON
21 AND 24 OCTOBER 1985

Chairman: Mr. U. Mohrmann (Federal Republic of Germany)

1. The Committee met on 21 and 24 October 1985.
2. The Committee adopted the following agenda:
 - A. Adherence of further countries to the Agreement
 - B. Examination of national legislation and implementing regulations (ADP/1 and addenda)
 - (i) Legislation of Austria (ADP/1/Add.10/Rev.1)
 - (ii) Legislation of Canada (ADP/1/Add.6/Rev.1)
 - (iii) Legislation of Poland (ADP/1/Add.20)
 - (iv) Legislation of the United States (ADP/1/Add.3/Rev.2 and Corr.1)
 - (v) Legislation of Australia (ADP/1/Add.18/Rev.1 and ADP/W/92/Rev.1)
 - (vi) Legislation of Singapore
 - (vii) Other legislation
 - C. Semi-annual reports of anti-dumping actions taken within the period 1 January 1985-30 June 1985 (ADP/24 and addenda)
 - D. Reports on all preliminary or final anti-dumping actions (ADP/W/99, 100, 101, 102 and 103)
 - E. Report of the Ad-Hoc Group on the Implementation of the Anti-Dumping Code (ADP/W/82/Rev.2)
 - F. Annual review and report to the CONTRACTING PARTIES
 - G. Other business
 - Interpretation of the notion of domestic industry

A. Adherence of further countries to the Agreement

3. The Chairman informed the Committee that since the last regular session on 24 April 1985, no further country had adhered to the Agreement.

B. Examination of national legislation and implementing regulations (ADP/1 and addenda)

(i) Legislation of Austria (ADP/1/Add.10/Rev.1)

4. The Chairman said that in its communication dated 4 July 1985, Austria had informed the Committee that the Anti-Dumping Code has had, since its acceptance by Austria, the status of law and had been implemented as such. The Anti-Dumping Act of 1971 had now been revised in order for the legislation to correspond closely to the wording of the Anti-Dumping Code. This text was now before the Committee in ADP/1/Add.10/Rev.1.

5. The representative of Canada said that paragraph 23 of the Austrian legislation provided for undertakings to cease exports of a product to Austria. He was not aware that the Code provided for such undertakings.

6. The representative of the EEC referred to several aspects of the Austrian legislation. On Section 14(2) dealing with the definition of industry, he wondered whether it was compulsory to exclude from this definition the domestic producers who were also importers of the dumped products, without any discretion being granted to the administering authority. On Section 22(2) whereby it was stated that "... an anti-dumping duty amounting only to part of the margin of dumping shall be levied if it offers sufficient remedy with respect to the injury", he asked if the authorities would apply this provision on a case-by-case basis, or whether they had established a benchmark different from normal value against which the export price would be measured. As to Section 24 dealing with a sunset clause, his delegation was interested in finding out whether it was possible to ask for a review within a 12-month period or whether it would be necessary to lodge a new complaint in order to maintain the anti-dumping duties. As to the advisory board and its members provided for in Sections 31 and 32, he wanted to know what the status of the members and their voting rights were.

7. The representative of the EEC further referred to the provision on price undertakings (Section 23(1)) and said that their acceptance was excluded once a provisional measure had been taken in accordance with Section 36. The question therefore was whether in a case of preliminary determination, the exporter had an opportunity to comment on the complaint and to make submissions.

8. The representative of Hungary asked for a clarification as to the meaning of the term "contractual obligation" in Section 7(2). He further wondered whether any Party to the Code was bound by this "contractual obligation" which affected the definition of normal value.

9. The representative of Finland was of the view that the condition to cease exports was a rather stringent undertaking (Section 23(1)). On the point that an anti-dumping duty could amount only to part of the margin of dumping if this offered a sufficient remedy with respect to the injury

(Section 22(2)), he said that the question was rather whether under the legislation an undertaking could restrict exports or revise prices upwards so that the dumping effect would be decreased albeit not totally. He finally asked whether there was a misprint in the first line of Section 22(1) so that it should read "... that dumping and injury exists".

10. The representative of Austria reiterated that although the Code had the status of law in his country, the Anti-Dumping Act of 1971 had been revised so that the Austrian legislation corresponded more closely to the wording of the Code. Furthermore, the application of the Code had never been interrupted between the entry into force and the application of this law. He would transmit all questions raised to his capital and give a reply at the next meeting.

11. The representative of Romania said he would submit his questions in writing.

12. The Chairman said that those delegations which so wished could address their questions to the secretariat, in writing, within the next two weeks, for subsequent transmission to the Austrian delegation. The Committee took note of the statements made and agreed to revert to the Austrian legislation at the next meeting of the Committee.

(ii) Legislation of Canada (ADP/1/Add.6/Rev.1)

13. The Chairman said that the Committee had already started the examination of the revised Canadian legislation at its last meeting. Several points had been discussed, such as: disclosure conferences, third country dumping, definition of sale, determination of industry, normal value, price undertakings and cumulation of injury. The Committee had decided to continue the examination of this legislation at this meeting in order to allow delegations to revert to certain points and to ask further questions.

14. In view of the fact that there were no requests for the floor, the Chairman said that the examination of the Canadian legislation was concluded.

(iii) Legislation of Poland (ADP/1/Add.20)

15. The Chairman recalled that in view of the observations made at the last meeting, the Committee had decided to retain the Polish legislation on the Agenda.

16. The representative of the United States noted that the Polish legislation was phrased in rather broad terms and asked that the implementing regulations should be submitted to the Committee for examination.

17. The representative of Poland informed the Committee that Poland was preparing executive regulations. As to the Administrative Procedures mentioned in paragraph 4 of ADP/1/Add.20, a copy in the Polish language was now available for consultation in the secretariat; a translated version of this document in one of the working languages of GATT would soon be available.

(iv) Legislation of the United States (ADP/1/Add.3/Rev.2 and Corr.1)

18. The Chairman told the Committee that at its last meeting a number of points pertaining to the US legislation had been discussed, such as: monitoring programmes, likelihood of sale, definition of industry, cumulation of injury and price undertakings. The question of definition of industry was being discussed elsewhere, and the question of cumulation of injury and price undertakings was now before the Ad-Hoc Group.

19. The representative of the United Kingdom speaking on behalf of Hong Kong referred to the provisions on page 24 of the US legislation (ADP/1/Add.3/Rev.2) whereby the administering authority "may establish a monitoring programme with respect to imports of a class or kind of merchandise from any additional supplier country for a period not to exceed one year ...". The question of monitoring programmes had been before the Ad-Hoc Group but it still remained that this scheme might have adverse effects on trade flows and might lead to the initiation of investigations and unnecessary anti-dumping actions. He wondered whether the United States delegation could give some additional information on how the system operated and if any action had been taken in pursuance of this provision.

20. The Chairman recalled that some information on the question raised by the delegation of Hong Kong was recorded in paragraphs 32 and 33 of the minutes of the previous meeting of the Committee (ADP/M/15).

21. The representative of the United States said that this provision had not been used and that consequently there was no instance where the United States had initiated an anti-dumping case. This provision was limited to those cases where the administering authority concluded that there was an extraordinary pattern of persistent injurious dumping. It was designed for unusual situations where there was a proliferation of anti-dumping actions with regard to a particular product.

22. The representative of India indicated that the provision relating to cumulative injury findings in the US legislation continued to be a matter of concern to his authorities. It was his understanding that in a recent case concerning steel pipes and tubes, the US International Trade Commission (ITC) had cumulated imports from a number of sources. Although imports from India accounted for less than 1 per cent of total US imports, an anti-dumping investigation had been initiated. He expressed his wish to retain the US legislation on the agenda of the next meeting.

23. The Chairman concluded that the US legislation would remain on the agenda.

(v) Legislation of Australia (ADP/1/Add.18/Rev.1 and ADP/W/92/Rev.1)

24. The Chairman recalled that the secretariat had circulated a document on 2 May 1985 (ADP/W/92/Rev.1) informing delegations that the final form of the Administrative Procedures of Australia had been received and were available in the secretariat for consultation by interested Parties. Delegations wishing to raise any questions on this point or on the sunset provision discussed at the last meeting were invited to do so.

25. The representative of Australia recalled that some time ago several delegations had raised questions on the 45-day period required by the

Australian legislation to reach preliminary findings. His authorities had carefully examined the cases where extensions were granted and had decided to increase the period in which preliminary findings should be made from 45 to 55 days. Flexibility would continue to be applied in those cases which merited special consideration.

26. The representatives of the United States and the EEC indicated their wish to retain the Australian regulations on the agenda.

27. The representative of the EEC noted with satisfaction that the period to reach preliminary determinations had been increased to 55 days. However, this period was still short, particularly since four weeks were given to the exporter to prepare his defence, and the normal delay in all countries was much longer. He further referred to the danger that other countries may be under pressure to follow the Australian example in this respect. This was a very serious matter and should therefore be retained on the agenda of the Committee.

28. The representative of Finland referred to the requirement in the Australian regulations that all statements, evidence and other documents provided by Parties abroad should be notarized to be taken into account by the Australian authorities. He wanted to know the legal basis for this procedure which was onerous and time-consuming, particularly when short time-limits were applied.

29. The representative of Australia said that the Australian legislation did not make it obligatory to submit notarized documentation although such documentation would carry greater weight.

30. The Chairman stated that in light of the comments made, the Committee had concluded the examination of the Australian legislation and retained the Administrative Procedures for further examination on its agenda.

(vi) Legislation of Singapore

31. The Chairman recalled that Singapore had accepted the Agreement on 20 June 1984 and that Article 16:6 provided for Parties to ensure the conformity of its laws, regulations and administrative procedures with the provisions of the Agreement. Furthermore, each party was requested to inform the Committee of any changes in its laws and regulations relevant to this Agreement and of the administration of such laws and regulations.

32. The representative of Singapore informed the Committee that her authorities were examining the Singapore Customs Act to ensure that it conformed with the Anti-Dumping Code. This process would take some time and her delegation would inform the Committee about any future developments. At any rate, Singapore had not taken any actions against imports from any other country.

33. The Chairman said that the legislation of Singapore would remain on the agenda of the Committee.

(viii) Other legislation

34. The representative of Sweden announced that his authorities had recently taken a decision on a new legislation concerning anti-dumping and subsidy matters. A notification to this effect would be circulated shortly.

35. The representative of India told the Committee that the amendment to the Indian Customs and Tariff Act had entered into force on 2 September 1985. Copies were to be circulated shortly.

36. The representative of the United Kingdom speaking on behalf of Hong Kong recalled previous discussions in the Committee on the question of review mechanisms and sunset clause provisions in the national legislations. He asked that the secretariat compile, in a document, an inventory of the pertinent sections of the legislation and administrative procedures of Parties to the Code. This inventory would be useful to determine if there was a continued need for an anti-dumping action to be maintained, that is to say, to follow closely Article 9:2 of the Code. The information appearing in the list of outstanding anti-dumping actions annexed to the semi-annual reports, and in particular the dates as of when actions had come into force, were also relevant in keeping track of the duration of actions and the periodicity of the review procedures. Delegations submitting semi-annual reports could be invited to furnish, in the list of outstanding anti-dumping actions annexed thereto, the dates as of when the measures had come in effect, as was already the practice of one Party.

37. The representative of Singapore supported the proposal made by Hong Kong. The representative of the EEC was of the same view. He also stated that according to the sunset clause provisions, actions in the EEC expired five years after entry into force. He finally asked if the secretariat was planning to publish a compendium of the legislation of all Parties as it had done in the past.

38. The Chairman responded affirmatively to the latter question and indicated that the secretariat was only waiting to receive the US implementing regulations to finalize the publication. The representative of the United States said that his authorities were reviewing these regulations and that they would be sent to the secretariat very soon.

39. The representative of Australia noted that for the inventory to be comprehensive, the secretariat might have to consider the Australian regulations and not only the legislation proper. His delegation was agreeable to the request of Hong Kong although there was no obligation under the Code for a sunset provision.

40. The Chairman said that the proposal by Hong Kong had received the support of the Committee. The secretariat would compile the requested inventory and delegations would include in the annex of their semi-annual reports the dates of coming into force of outstanding anti-dumping actions. It was so decided.

41. The Chairman further noted that the Committee would maintain this item on the agenda in order to allow the Parties to revert to particular aspects of some legislations at a later stage or in the light of the actual implementation of a legislation.

C. Semi-annual reports of anti-dumping actions taken within the period 1 January 1985-30 June 1985 (ADP/24 and addenda)

42. The Chairman recalled that an invitation to submit semi-annual reports under Article 14:4 of the Agreement had been circulated in ADP/24 of

10 July 1985. Responses to this request had been issued in addenda to this document. The following Parties had notified the Committee that they had not taken any anti-dumping action during the period 1 January 1985-30 June 1985: Brazil, Czechoslovakia, Egypt, Finland, Hungary, Japan, Norway, Pakistan, Poland, Romania, Singapore, Sweden, Switzerland, United Kingdom on behalf of Hong Kong, and Yugoslavia (ADP/24/Add.1). Anti-dumping actions had been notified by Australia, Canada, the EEC, Spain and the United States. No reports had been received from Austria and India. The Chairman expressed the hope that the Committee would receive the reports from these two Parties without further delay.

43. The representative of India informed the Committee that his country had not taken any anti-dumping action during the six-month period under consideration. The representative of Austria said that the Austrian report would be sent to the secretariat for circulation as soon as possible.

Australia (ADP/24/Add.2 and Corr.1)

44. The representative of the United States welcomed the fact that no provisional measures had been imposed on the same day as the investigation had been initiated, and that the rates of duty of both provisional and definitive actions had been listed. He further requested some improvement on column 13 (percentage of trade volume investigated), as a blank or the term "nil" appeared in a number of cases. As to column 14 (basis for determination), he recognized that it was not always possible to submit this information but this was indeed necessary in those cases where a duty had been imposed.

45. The representative of Australia, referring to the question on column 13, said that it was only completed when an investigation had been concluded. The term "nil" was used when an action had been taken as a result of a third country investigation. He finally took note of the comments on column 14 and hoped that his delegation would do better subsequently.

46. The representative of the United Kingdom speaking on behalf of Hong Kong drew the Committee's attention to a case concerning ceiling sweep fans appearing on page 10 of the Australian report. Action had been taken in respect of this product in August 1984, and according to the Administrative Guidelines, normal values were reviewed at 6-monthly intervals. His delegation was therefore asking for information about the result of this review.

47. The representative of Australia said that after action was taken, the importers and exporters had challenged the decision in the Federal Court. Since the matter had been before this Court for some time his authorities, on legal advice, had taken no action to review the normal values at that particular stage. As a result of the request received by the importers and exporters, his authorities would proceed with a review in conjunction with the matter before the Federal Court.

48. The representative of India referred to three cases against his country concerning electric motors, files and rasps, and power hacksaws, which had been initiated nearly four years ago. The Committee had already taken note of the problems those cases raised. Australia should have better observed

the procedures of the Code and, for instance, given the Indian exporters the opportunity to study the information alleging dumping furnished by the domestic industry to the Australian Government. In the absence of this information the exporter could not respond to the questions. Moreover, if the information was confidential, as claimed by the petitioners, non-confidential summaries should have been provided. Furthermore, in the calculation of normal value, no allowance had been made for duty drawbacks nor for the refund of indirect taxes to exporters. It was only recently that the Australian Government had agreed to allow for these refunds in respect of files and rasps; the situation had not changed concerning the other two products. As a result of the imposition of anti-dumping duties without full regard to the provisions of the Code, India's exports of files and rasps to Australia had declined from \$A 317,000 in 1981/83 to \$A 4,165 in 1983/84. Exports of electric motors had declined from \$A 800,048 in 1980/81 to \$A 45,556 in 1983/84. He finally made the point that the Australian authorities should at least have given immediate allowance for the Indian Cash Compensatory Programme and duty drawback since the case under consideration was an anti-dumping and not a subsidy case.

49. The representative of Singapore referred to five cases against her country concerning dextrose monohydrate, metal filing cabinets, steel pipes and tubes, correcting fluids and polyvinyl chloride. Her delegation had two major complaints: first, actions had been instituted against exports whose market shares were too small to damage the domestic producers; Australia claimed that it had the right to cumulate imports for purposes of the injury determination because Article 3:4 of the Code was vague on the legality of cumulation. Second, Australia had failed to provide adequate transparency of its actions by not disclosing, for example, the computations for the calculation of normal prices for the purpose of imposing anti-dumping actions. Many other countries had also complained on this point.

50. The representative of Canada asked for an explanation of the letter "D = undertaking to cease exporting to Australia" appearing as a footnote on page 8 of the Australian report.

51. The representative of Australia said that since there was no concrete case in the report where this method had been used, it was probably the result of an old case where the exporter had decided not to export rather than to offer a price undertaking.

52. The representative of the United States wondered whether the problem of confidentiality of information was also involved in the question about transparency.

53. The representative of Australia confirmed that anti-dumping actions remained in force for three commodities exported from India, i.e. files and rasps, power hacksaws and electric motors. In the case of the latter two, anti-dumping actions were also in force for exports from other sources and material injury had been assessed on a cumulative basis. Normal values for each of the three commodities had been reviewed since the initial action had been taken. The most recent review which had taken place some four months ago involved files and rasps. During this review the issue of due allowance

for rebates under the Cash Compensatory Support Scheme (CCS) had again been raised. Previously some doubts had existed whether refunds or rebates paid under the Scheme were solely for internal taxes (including duties and drawbacks) or whether they also included a subsidy element. On the basis of information received that the amount rebated on the export of files and rasps did not exceed the total of internal taxes, due allowance claims for this product had been granted. Subsequently a request had been received for similar due allowance claims to be granted for the other two products. The exporters had been invited to submit evidence of the amounts of rebate paid similar to that provided in the rasps and files case so that the requests could be given favourable consideration; however to date no such information had been provided. In order to finalise the matter he could arrange for on-site consultations with the exporters concerned.

54. As to the issues raised by Singapore (assessment of material injury on a cumulative basis and lack of transparency in normal value calculations), the representative of Australia indicated that Australia determined material injury on a cumulative basis irrespective of whether the dumped imports originated from a number of small sources or a mixture of large and small sources. This practice was believed to be consistent with the provisions of Articles 3:1 and 8:2 of the Anti-Dumping Code. In addition, the practice had been tested in the Federal Court of Australia. Moreover, in each case when the question of material injury was being assessed, the volume of dumped imports from each of the sources of supply was carefully considered. Where that volume was "de minimis" and there had not been any significant increase in the level of the dumped imports during the period under enquiry, the case against that particular source was terminated. While this principle and its application was defensible, his delegation was available for consultations. On the question of transparency, he indicated that at the completion of each dumping investigation a detailed report on all aspects of the investigation was released to the public. Details on the basis for and manner in which normal values were assessed were contained in that report. Actual calculations and details of due allowance claims which were based on confidential information made available by the exporter were contained in a confidential annex to the report which was not released. This detailed information was not made available to any party (including government officials of the exporting country) without the express consent of the exporter. He did not know of any instance where an exporter had been denied the opportunity to discuss details of normal value calculations or had not been provided with access to the information.

55. The representative of Australia offered the following brief comments on cases dealing with Singapore: polyvinyl chloride (PVC): there had been two cases of alleged dumping from Singapore; both were terminated on a finding of no dumping. Dextose monohydrate: a final decision on this case had been released only some three days ago and a copy of the report would be provided to the Singapore delegate. Microwave ovens: enquiries into this complaint had not yet been completed and a final report had not been released. Small diameter pipe and tube: the decision on this case had been challenged in the Federal Court of Australia; all relevant information, particularly in relation to normal value calculations, had been made available to the interested parties. Certain pigments: this commodity had been the subject of anti-dumping action for some time; Australia had no record of any request for discussions of normal value details since the decision was taken. The

Australian delegate offered to have further bilateral discussions with India and Singapore on any of the matters they had raised if they considered that this might be useful.

56. The representative of India recalled that the Ad-Hoc Group was discussing the question of cumulation, and that the Australian delegate had not mentioned this element. He also requested information on how the Australian Federal Court had supported and tested the notion of cumulation.

EEC (ADP/24/Add.3)

57. The representative of the United States noted that since the outstanding actions appearing in the second half of the report of the EEC were actions taken by the EEC and not by member States, it would be interesting to know the status of outstanding actions taken by the latter.

58. The representative of the EEC said that only a few actions were still in force in member States. He also recalled the recent introduction of a sunset clause provision and a publication (Official Gazette) drawing the attention of member States to the fact that national anti-dumping actions should expire within a given time frame. Actions which would not lapse would be subject to review by the Commission of the EEC.

United States (ADP/24/Add.4)

59. The representative of India referred to an anti-dumping investigation on iron construction castings. In June 1985 the USITC had made a preliminary determination that there was reasonable indication that the industry in the United States was materially injured by imports from India and certain other countries. Some of the items covered were already subject to countervailing duties, and in addition the Department of Commerce had in 1981 already determined that Indian castings were not being dumped in the United States. Initiation of further of anti-dumping investigations on this item would again have an adverse effect on exports. Nevertheless, responses to the anti-dumping questionnaire had been furnished by the Indian exporters. The second case on which the Indian representative drew the attention of the Committee pertained to steel pipes and tubes on which the United States had initiated anti-dumping investigations in July 1985; this case was therefore not mentioned in this semi-annual report. As had already been pointed out, the USITC had cumulated imports from a number of sources including India, and determined injury to domestic industry, even though imports from India alone accounted for less than 1 per cent of the total US imports of the item. An anti-dumping investigation had been initiated, and the time given to respond to the lengthy questionnaire was very short, considering that it would take about two weeks for the questionnaire to reach India and go back to Washington, and the further time to collect material from the various sources including local authorities. Also, information required on a number of points in the questionnaire was not germane to the investigation; for example, the firms had been asked to give information relating not only to exports of products under investigation but all other products manufactured by them and exported to all destinations. Firms further had been requested to send their responses on computer tapes which were practically unknown in India and copies of all invoices (thousands) concerning sales in the domestic market.

60. The representative of the United States, referring to the iron construction castings case, assured the delegate from India and members of the Code that the United States was cognizant of, and would abide by, the provisions of Article VI, paragraph 5 of the GATT in this, as in all cases, and that his authorities would not impose both anti-dumping and countervailing duties, in consonance with Code obligations. With respect to the question of why this investigation was proceeding since there had been an investigation in 1981, he pointed out that several years had passed and the information available to his authorities at this time had shown that there was a sufficient possibility of injurious dumping to warrant an investigation. This action was in full consonance with the letter and spirit of the Code. He then referred to the questions concerning steel pipes and tubes. On the time-limit for the questionnaire, he drew the Committee's attention to the paper adopted by the Committee on time-limits. His delegation was aware that time-limits for responses could be somewhat problematic for exporters; it had to be recognized, however, that the administrative process involved in anti-dumping duty investigations required certain time-limits. The United States believed that the time permitted for response to its questionnaires was the maximum period permissible while at the same time allowing for reasoned and full decisions to be made within the statutory time-limits provided by the law. On the second point that the questionnaire asked for information on products not subject to investigation and about shipments to other countries, he could not provide an answer at this time. He was nevertheless highly surprised to hear that his authorities had asked for information about products not subject to the investigation. On the insistence of information on computer tape, he drew the Committee's attention to the paper on Best Information Available, prepared by the Ad-Hoc Group and approved by the Committee. If the United States had asked the companies involved for information in computerized format, the request was most certainly couched in terms that such information should be supplied in this format if it existed in the company's normal state of affairs. He finally hoped that these responses were of some assistance to the Indian delegation, but if this was not the case, a more detailed reply could be offered through Washington.

Spain (ADP/24/Add.5)

61. The representative of the United States asked whether Spain had submitted its anti-dumping legislation for the examination of the Committee. The Chairman replied that the Spanish legislation had been circulated on 19 July 1982 as set out in document ADP/1/Add.17/Rev.1.

Canada (ADP/24/Add.6)

62. No comments.

63. The Chairman concluded the discussion on this item and invited delegations submitting semi-annual reports to supply all information requested in the agreed standard form (ADP/3). Future semi-annual reports should also contain information on the dates of outstanding anti-dumping actions, as suggested by Hong Kong and agreed by the Committee, and that delegations would submit these reports within the usual time limits.

D. Reports on all preliminary or final anti-dumping actions (ADP/W/99, 100, 101, 102 and 103)

64. The Chairman informed the Committee that notifications under these procedures had been received from Australia, Canada, the EEC and the United States.

65. The representative of Japan referred to a case in the EEC report (ADP/W/103) concerning electronic typewriters where two completely different methods had been applied in the determination of export price and normal value. In determining the export price the EEC authorities had deducted the full cost of the subsidiary sales company including its profits. In determining normal value, only the direct selling cost of the subsidiary sales company had been deducted. The result of this was that the profits of the Japanese parent company had become unusually large. He further recalled the wording of Article 2:6 of the Code and expressed the concern of his delegation on this dual method of calculation.

66. The representative of the EEC said that the reconstruction of export prices when the importer and exporter were related, and the determination of normal values were the subject of different rules under the Code. Article 2:5 of the Code provided that if the exporter and importer were related, there had to be a deduction, from the first open market price, of all costs and profits realized by the related importer; thus, the deduction of a profit margin was expressly foreseen by the Code. On the other hand, in the determination of normal value there was no deduction for profits. Normal value was the price normally realized on the domestic market of the country of exportation, and it consequently included profits. The Code provided for this course of action. His delegation had closely followed the Code and acted correctly.

67. The representative of Japan did not share the comments of the previous speaker and indicated that his delegation would pursue the matter subsequently.

68. The representative of Czechoslovakia referred to a case now pending in the EEC concerning exports of silicon carbide from Czechoslovakia where the notion of cumulation was being applied. Although the share of his country's exports to the EEC market was only 0.6 per cent, it was said that they caused injury when added to the shares of other exporters. Furthermore, Czechoslovakia exported only 500 tons per annum whereas the leading exporter, a Norwegian company, exported nearly 30,000 tons per annum. The cumulative injury assessment was contrary to the Code, and particularly to Article 3:1 which referred to the consequent impact of the imports on domestic producers.

69. The representative of the EEC indicated that his delegation had taken note of the concern of the previous speaker and that as he himself had pointed out, the case was not yet terminated. His authorities would look at this case again, bearing in mind the problem with the notion of cumulation, and all other relevant factors such as the fungibility of the product, its impact on the market, the various sources of supply and the production capacity in Czechoslovakia.

E. Report of the Ad-Hoc Group on the Implementation of the Anti-Dumping Code

70. The Chairman drew the Committee's attention to the fact that at its April 1985 meeting the Ad-Hoc Group had examined a list of outstanding issues which had been proposed for its consideration. Most of these issues had been the subject of preliminary discussion but no substantial progress had been made on any of them. The Group had agreed to revert to some of these issues on the basis of new submissions or written comments which delegations would submit by 13 September 1985. At its meeting of 21-22 October 1985 the Group had started examination of the following issues: Constructed Value, Cumulation of Injury, Revision and/or Renunciation of Undertakings, and Price Undertakings.

71. The Chairman further recalled that at the last meeting the Committee had examined a draft recommendation concerning the determination of threat of material injury (ADP/W/82/Rev.2). As some delegations had needed more time to clarify certain matters, the Committee had agreed to postpone the adoption of this recommendation until the present meeting. The document had received the broad support of the Committee. If there were no additional elements on this and if all matters had been clarified, the Committee could proceed with the adoption of this recommendation.

72. The representative of Romania recalled the position of his delegation at the last meeting of the Committee and indicated that Romania would not object to the consensus. His delegation wished to make a statement after the adoption of the draft recommendation.

73. The Chairman declared the draft recommendation concerning the determination of threat of material injury (ADP/W/82/Rev.2) adopted by the Committee.

74. The representative of Romania stated that his delegation considered that the purpose of the recommendation concerning the determination of threat of material injury was to limit recourse to anti-dumping measures. His delegation was therefore in favour to continue the efforts within the Committee to recommend more objective criteria to determine threat of material injury.

75. The representative of Brazil said that notwithstanding the fact that Brazil had taken part in the consensus on the adoption of the recommendation (ADP/W/82/Rev.2), he would like to make some comments, without prejudice to the consensus achieved. The list of elements enumerated in paragraph 9 could indeed not be considered exhaustive, for factors such as technological innovations in the importing country were liable to eliminate a possible threat of material injury from imports. Furthermore it was not always possible for exporting countries to evaluate, in precise terms, the extent of its freely disposable capacity or to foresee a potential increase in demand for imports in specific markets. Finally, it was important to bear in mind in this context that Article 13 of the Code recommended that constructive remedies should be explored before applying anti-dumping duties where they would affect the essential interests of developing countries.

76. The representative of the United Kingdom speaking on behalf of Hong Kong indicated that there were a number of elements of concern to his delegation

in the recommendation (ADP/W/82/Rev.2). The various factors enumerated in this recommendation depended largely on circumstantial evidence, and because of the nature of such evidence, the benefit of doubt in any investigation should go to the exporter. Only in this way could it be ensured that the threat of material injury was based on facts and not merely on allegation, conjecture or remote possibility.

77. The Chairman recalled that the outgoing Chairman of the Ad-Hoc Group had informed the Committee at its last meeting about the work carried out by the Group on the question of input dumping (ADP/W/83/Rev.2). The Committee had agreed to revert to this item at a subsequent meeting. He enquired whether the Committee could adopt now this recommendation.

78. The representative of the United States, the United Kingdom speaking on behalf of Hong Kong, and Hungary said that they were not in a position to adopt the recommendation.

79. The representative of the EEC wanted to know the reasons for this view and enquired if other delegations shared this view.

80. The representative of Finland reiterated the position of his delegation at the last meeting and expressed the concern and regret of the Nordic countries with the non-adoption of the recommendation.

81. The representative of Hungary explained that his delegation had not expected this recommendation to be the subject of discussion as it had not been included in the agenda. The Chairman reiterated his opening comments in paragraph 77 supra.

82. The representative of the United States said that in view of the concern expressed by various delegations, the best course of action would be to return the recommendation to the Ad-Hoc Group. His delegation was not in a position to discuss this subject until subsequent meetings of the Ad-Hoc Group.

83. The representative of Australia was of the opinion that the discussions in the Ad-Hoc Group had been exhausted because all concerns relating to drafting had been taken care of.

84. The representatives of the EEC, Canada and Japan echoed the remarks of the previous speaker.

85. The Chairman concluded by saying that in view of the comments made, it would seem that the Committee was in favour of retaining this recommendation on its agenda. It was so decided.

F. Annual review and report to the CONTRACTING PARTIES

86. The Chairman recalled that the Committee had met informally on 11 July and 16 September 1985 to discuss the preparation of the annual review and of the report to the CONTRACTING PARTIES. It was his impression, from these informal meetings, that the idea of extending the scope of the discussion and of the report had not met with a consensus. Consequently, the items included in the present report were those which traditionally had been covered by the annual reports of the Committee.

87. The representative of India found it very positive that the Chairman had tried to conduct a different kind of annual review. This kind of exercise was indeed meaningful and it was regretful that there had not been enough support for it. The representative of Finland indicated that the Nordic countries fully shared the remarks made by India; it was certain that the report would have been more informative and valuable than the present report. The representatives of the United Kingdom speaking on behalf of Hong Kong, and Singapore associated themselves with the previous speakers.

88. The Committee adopted the report, the full text of which appears in document L/5901.

G. Other business

Interpretation of the notion of domestic industry

89. The representative of the EEC drew the attention of the Committee to the practice of certain parties, which was becoming more and more frequent, to start and conduct investigations on the basis of complaints lodged by producers of products not falling within the category of "like products" of the imported product. These domestic producers either produced inputs of the imported product or goods of a different nature - not "like products". This was the case, for instance, of live animals in the case of imports of beef. The rules of the Code contained in Article 2:2 were clear in this respect. The question of the relationship between the producer of an input and the producer of a final product might be interesting, but the fact was that the rules of the Code had to be respected. His delegation was very concerned about this situation and hopeful that it would not be necessary to appeal to the dispute settlement mechanism, as had occurred in the past.

90. The Committee took note of this statement.

Date of next meeting

91. According to the decision taken by the Committee at its April 1981 meeting (ADP/M/5, paragraph 51), the next regular session of the Committee will take place on 21 April 1986.