GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

ADP/M/21
27 May 1988

Special Distribution

Committee on Anti-Dumping Practices

MINUTES OF THE SPECIAL MEETING HELD ON 6 MAY 1988

Chairman: Mr. P.S. Randhawa (India)

1. The Committee held a special meeting on 6 May 1988. The purpose of this meeting was to afford the Parties to the Agreement the opportunity of consulting on the matter referred to the Committee by the delegation of Japan under Article 14:1 of the Agreement in document ADP/36. In this document the delegation of Japan had raised a number of issues regarding Regulation (EEC) No. 1761/87 of 22 June 1987 (document ADP/1/Add.1/Suppl.5) amending Regulation (EEC) No. 2176/84 on protection against dumped or subsidized imports from countries not members of the EEC. This amendment provided for the possibility to impose under certain circumstances definitive anti-dumping duties on products introduced into the commerce of the EEC after having been assembled or produced in the EEC if such assembly or production constituted circumvention of anti-dumping duties on imports of like products.

2. The Chairman recalled that the amendment to the EEC anti-dumping legislation referred to in the communication from Japan had been the subject of discussion in the Committee at the regular meeting held in October 1987 (ADP/M/20, paragraphs 15-28). Written questions on this amendment had been submitted by the delegation of Japan in October 1987 (ADP/W/162) and by the delegation of Korea in January 1988 (ADP/W/166). Written replies by the EEC to these questions had been received by the secretariat on the date of this special meeting (ADP/W/174 and 175). The EEC had also submitted a number of Regulations and Decisions adopted in April 1988 upon the conclusion of investigations carried out under Article 13:10 of Regulation No. 2176/84, as amended (these Regulations and Decisions have been reproduced in document ADP/W/174).

3. The representative of Japan introduced the communication from his delegation containing the request for this special meeting (ADP/36) by saying that at the meeting of the Committee held in October 1987, his delegation had presented a list of detailed questions concerning the amendment to the EEC anti-dumping legislation and the consistency of this amendment with the Agreement and the General Agreement. Without presenting answers to these questions, the EEC had decided, on 18 April 1988, to impose definitive anti-dumping duties under Article 13:10 of Regulation No. 2176/84, as amended, on electronic typewriters and electronic scales produced or assembled in the EEC by five companies

related or associated with Japanese exporters of these products. His delegation was seriously concerned about the fact that in this case a Party had applied a provision of its domestic anti-dumping duty legislation without there having been sufficient discussion in the Committee of the consistency of this provision with the Agreement and with the General Agreement. Such a situation could nullify or impair rights of affected Parties to the Agreement or contracting parties to the General Agreement and could also have a serious negative impact upon the significance of the Agreement and the Committee. Japan considered that its interests had been impaired as a result of the recent measures taken by the EEC under the amendment to its anti-dumping legislation and had therefore requested that a special meeting of the Committee be convened to examine in detail this amendment and its consistency with provisions of the Agreement and of the General Agreement.

4. The representative of Japan said that the EEC had explained the need for the amendment to its anti-dumping legislation by pointing to experience which showed that the imposition of an anti-dumping duty was often followed by a substantial increase of imports into the EEC of parts or components of the product subject to the anti-dumping duty and a decrease of imports into the EEC of that product. This had, in the view of the EEC, created the need to take measures in order to prevent circumvention of anti-dumping duties. However, neither the Agreement nor the General Agreement contained specific provisions dealing with the avoidance of circumvention of anti-dumping duties. In the absence of such specific provisions, any measures taken by a Party to deal with this problem had to be consistent with the existing provisions of the Agreement and the General Agreement. However, for a number of reasons (infra, paragraph 5) the amendment to the EEC anti-dumping legislation could not be considered to be consistent with the Agreement and the General Agreement. The amendment constituted a unilateral departure from existing international rules. If such unilateral measures were tolerated, this would undermine the operation of the international trade order embodied in the General Agreement and thus negatively affect the interests of all contracting parties. The representative of Japan further stated that there was a tendency in the EEC to use anti-dumping measures for protectionist purposes; in this regard he mentioned as an example the use of a method of calculation of dumping margins which was likely to result in large margins. The recently adopted amendment to the EEC anti-dumping legislation was another example of this tendency to use anti-dumping measures for protectionist purposes. He urged the EEC to withdraw immediately the duties which had been imposed under Article 13:10 of Regulation No. 2176/84, as amended, and to repeal this amendment or bring it into conformity with the Agreement and the General Agreement.

5. The representative of Japan pointed to four aspects of the amendment to the EEC anti-dumping legislation which raised questions regarding its consistency with the provisions of the Agreement and the General Agreement:

(i) Firstly, Article 1 of the Agreement provided that "the imposition of an anti-dumping duty is a measure to be taken only under the circumstances provided for in Article VI of the General Agreement and

pursuant to investigations initiated and conducted in accordance with the provisions of this Code." The General Agreement provided that in order to impose an anti-dumping duty, findings had to be made of the existence of dumping and consequent material injury to an industry in an importing country (Article VI:1 and VI:6). Under the amendment recently adopted by the EEC, however, no investigation was required to determine whether imported parts or components were being dumped and causing injury to an industry in the EEC. Instead, the investigations conducted under this amendment examined the value of parts used in the assembly or production in the EEC and originating in the country whose exports of the like product to the EEC were subject to definitive anti-dumping duties as a proportion of the total value of parts used in the assembly or production operation in the EEC. The absence of a requirement to make a determination of the existence of dumping and injury in relation to the imported parts could lead to a situation in which anti-dumping duties would be imposed on imported parts even if such imported parts were neither dumped nor causing injury to an industry producing parts in the EEC. According to the information received by his authorities from companies which had been involved in the recent investigations under Article 13:10 of Regulation No. 2176/84, as amended, the EEC had only examined whether the parts imported by these companies and used in the assembly or production operation in the EEC accounted for more than 60 per cent of the total value of all parts used in these operations, and not whether the imported parts from Japan were being dumped or causing injury to an industry in the EEC. His authorities considered that the absence of a requirement under Article 13:10 of the amended EEC anti-dumping Regulation that there be evidence of dumping and injury with respect to the imports of parts was in conflict with Articles 1 and 16 of the Agreement and Article VI:1 and VI:6(a) of the General Agreement.

(ii) Secondly, the representative of Japan pointed to Article III:5 of the General Agreement, providing that "no contracting party shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amounts or proportion of any product which is the subject of the regulation must be supplied from domestic sources." Article 13:10 of the amended EEC anti-dumping Regulation stipulated that anti-dumping duties could be imposed on products assembled in the EEC if the value of parts used in the assembly operation and originating in the country of which the exports of the product were subject to a definitive anti-dumping duty exceeded the value of all other parts used in the assembly by at least 50 per cent. The amendment in effect allowed the EEC to impose a requirement upon companies located in the EEC and related or associated with exporters subject to anti-dumping duties to procure a fixed proportion of parts in the EEC. The Japanese authorities had been informed by companies involved in the recently concluded investigations under Article 13:10

of the amended EEC anti-dumping Regulation that a condition for the suspension of the anti-dumping duties would be an undertaking by these companies to procure in the EEC more than 40 per cent of the value of the parts used in the assembly operation. It was thus clear that the amendment was intended to ensure that a specified proportion of parts be supplied from sources within the EEC, which was inconsistent with Article III:5 of the General Agreement.

(iii) Thirdly, the representative of Japan stated the view that the amendment to the EEC anti-dumping Regulation conflicted with the requirement of a non-discriminatory application of anti-dumping duties because it provided for the imposition of duties in a discriminatory manner only on parties related or associated with exporters even if domestic independent parties were using the same proportion of imported parts in the production of the same finished product. In fact, the duties imposed under the amendment could be regarded as internal taxes. As such they were in violation of Articles I and III of the General Agreement which required that, as internal taxes, these duties be imposed in a non-discriminatory manner on any products assembled or produced in the EEC with parts imported from the country of which the exports of finished products were subject to anti-dumping duties, irrespective of whether the party carrying out the production or assembly in the EEC was related or associated with the exporters of the product subject to the definitive anti-dumping duty.

(iv) Fourthly, the representative of Japan noted that, during the meeting of the Committee held in October, the EEC had stated that the legal basis of the amendment was Article XX(d) of the General Agreement. This provision, however, did not justify measures necessary to secure compliance with laws or regulations if such laws or regulations were inconsistent with the General Agreement. His authorities considered that the amendment was inconsistent with the General Agreement and that it could therefore not be regarded as an exception permitted by Article XX(d).

6. The representative of Japan further stated that, in addition to the above-mentioned issues regarding the inconsistency of the recent amendment with the Agreement and the General Agreement, his delegation wanted to draw the attention of the Committee to some problems experienced by the companies which had been involved in the recently concluded investigations under Article 13:10 of the amended EEC anti-dumping Regulation. Firstly, although the amendment provided that "in applying this provision, account shall be taken of the circumstances of each case, and, inter alia, of the variable costs incurred in the assembly or production operation and of the research and development carried out and the technology applied within the Community", insufficient account had been taken in these investigations of cases in which the value added in the EEC was high, or in which the ratio of imported parts to the total number of parts used was high during an initial start-up period immediately after the commencement of the assembly

operation, or in which this ratio was high as a result of difficulties in procuring parts in the EEC. The investigations had not sufficiently taken into account these factors and had focused almost entirely on the question whether the value of parts imported from Japan exceeded the value of all other parts used in the assembly operations in the EEC by more than 50 per cent. The representative of Japan pointed out that during the start-up period of such operations foreign companies in the EEC necessarily had to use imported parts and that, as could be seen in the case of electronic typewriters, there were in reality difficulties in procuring parts of some products in the EEC because of their nature. The amendment to the EEC anti-dumping Regulation as applied by the EEC authorities in the recent investigations did not give sufficient consideration to such elements and was thus impeding foreign investment in the EEC. A manufacturer in the EEC related to exporters whose exports of the product to the EEC were subject to an anti-dumping duty faced the possible risk of being subject to an anti-dumping duty and was thus forced to raise the proportion of locally procured parts, regardless of the costs of those parts. A second problem which had arisen in the recently concluded investigations carried out under Article 13:10 of the amended EEC Regulation was the fact that parts used in the assembly in the EEC for which certificates of origin had been granted in the United Kingdom had been treated by the EEC authorities as originating in Japan. This arbitrary practice had made it difficult for the companies using these parts to calculate the proportion of parts procured in the EEC. Thirdly, the representative of Japan pointed to the arbitrary choice of the investigation period used in these investigations (January-July 1987), a period which to a large extent covered a period prior to the effective date of the amendment (27 June 1987). In the view of the Japanese authorities, the EEC could have used a period ending immediately prior to the date of initiation of the investigations. The amount of the definitive anti-dumping duties imposed upon the conclusion of these investigations had been based on the value of the imported parts during the period covered by the investigations; however, since the value of these parts was declining rapidly due to the learning process and increased production, the period selected by the EEC had led to an overvaluation of the imported parts and to the imposition of anti-dumping duties in amounts larger than appropriate.

7. The representative of Japan concluded by saying that his delegation reserved all its rights under the Agreement and under the General Agreement.

8. The representative of the EEC denied that, as alleged by the representative of Japan, the EEC had not been prepared to discuss the amendment to its anti-dumping legislation; at the last regular meeting of the Committee his delegation had replied in detail to questions raised by a number of delegations (ADP/M/20, paragraphs 22-23). While it was true that written answers to the questions put by Japan and Korea had been submitted by his delegation very late, the replies provided orally at the meeting in October were also of significance. Regarding the statement made by the delegation of Japan on the contents and application of the amendment, he considered that this statement contained a number of

allegations which were not correct. He informed the Committee that his delegation had made available for distribution to the Parties to the Agreement the copies of the Regulations and Decisions adopted by the EEC authorities upon the conclusion of recent investigations under Article 13:10 of Regulation No. 2176/84, as amended. These investigations had resulted in the imposition of anti-dumping duties on products assembled or produced in the EEC by five companies whereas for four other companies the investigations had been terminated without imposition of duties. This result showed, in the view of the EEC delegation, that the recently adopted amendment included restrictive criteria to determine whether circumvention of anti-dumping duties occurred.

9. Before addressing in detail the questions raised and comments made by Japan in document ADP/W/162 and in its statement at this special meeting, the representative of the EEC made a number of general observations in order to explain the nature and underlying principles of the recently adopted amendment to the EEC anti-dumping Regulation concerning avoidance of circumvention of anti-dumping duties. He explained that the amendment had been adopted after experience had shown that the opening of an anti-dumping duty proceeding was likely to be followed by the establishment in the EEC of operations whereby the product subject to the proceeding was assembled by European subsidiaries of the exporting companies concerned or other parties associated or related to them. The parts assembled were essentially imported from the exporting country. Since the anti-dumping duty eventually imposed did not apply to the finished products resulting from this process, the exporters were thus able to sell in the EEC without being subject to the duty, although they had been found to dump and to cause injury to the EEC industry. This was typically a circumvention situation against which Parties to the Agreement were entitled to take action. In so doing, the EEC had taken great care to provide in the amendment to its anti-dumping Regulation a precise definition of the conditions under which the evasion of anti-dumping duties was obvious. These conditions were:

(i) a definitive anti-dumping duty must have been imposed on the finished product in question (which of course implied that dumping as well as injury had been established);

(ii) there must be a relationship or association between the firm carrying out the assembly operation in the EEC and the firm which had been found to dump the finished product;

(iii) the assembly operation must have been started or substantially increased after the opening of the anti-dumping investigation;

(iv) regarding the origin of the components of the product assembled, there must be a preponderance of parts originating in the exporting country. The EEC legislation required the value of those parts to exceed the value of all other parts or materials by at least 50 per cent.

If all these conditions were fulfilled, the definitive anti-dumping duty on the finished product in question could be extended to the product assembled in the EEC. When taking this decision, account would be taken of the particular aspects of each case such as the level of research, development and technology applied in the EEC. The level of the extended duty would be proportional to the value of the parts or materials imported from the country of exportation of the completed product found to have been dumped. Since anti-dumping duties were imposed after lengthy and detailed investigations into injurious dumping regarding imported finished products, the essential question, when confronted with assembly operations, was not the dumping and injury caused by the imported finished products or by imported parts, but whether the assembly operations constituted circumvention of the anti-dumping duties on the finished products. Accordingly, the investigations carried out by the EEC authorities under the amendment to the EEC anti-dumping Regulation concentrated exclusively on this point. The representative of the EEC noted that the delegation of Japan had raised the question as to which Article of the General Agreement constituted the legal basis for the amendment to the EEC anti-dumping Regulation. In this regard he noted that at least one other Party to the Agreement, when faced with the problem of circumvention of anti-dumping duties, had taken measures which seemed to be based on Article VI of the General Agreement, apparently on the basis that parts and finished products should be considered as like products. The EEC did not want to take a position on this approach but considered that, in any event, anti-circumvention measures were justified under Article XX(d) of the General Agreement which provided for the adoption by any contracting party of measures necessary to secure compliance with laws or regulations which were not inconsistent with the provisions of the General Agreement.

10. The representative of the EEC made a number of remarks of a more specific nature in response to comments made and questions raised by the delegation of Japan in document ADP/W/162 and in its statement at this meeting.

(i) Regarding the absence in the amendment to the EEC anti-dumping Regulation of a requirement to make determinations of the existence of dumping and consequent injury, he said that Article XX(d) did not require an investigation into the dumping and injury aspects of imported parts and materials to be used in assembly operations in the EEC. What was required by Article XX(d) was (a) that there was a measure of commercial policy which was in conformity with the General Agreement, and (b) that there was circumvention of this measure. The conformity with the General Agreement of EEC anti-dumping measures resulted from the investigation into dumping and injury regarding the imported finished product; there was, consequently, no question of contravention of Article VI of the General Agreement and of Article 1 of the Agreement. The existence of circumvention had to be established on the basis of the criteria laid down in Article 13:10 of Regulation (EEC) No. 2176/84, as amended. Anti-circumvention investigations conducted under this provision concentrated essentially on this point.

(ii) Regarding a question raised by the delegation of Japan in ADP/W/162 on the consistency of the amendment of the EEC anti-dumping Regulation with the non-discrimination requirement laid down in Article 8:2 of the Agreement, the representative of the EEC explained that the duties which could be imposed under the amendment would be based on the objective criteria set out in the amendment which defined when there was circumvention of an anti-dumping duty as a result of assembly of products in the EEC. Since only parties subject to an anti-dumping duty could circumvent such duty, the amendment only applied to assembly operations carried out on behalf of such parties, i.e. parties related or associated to any of the manufacturers whose exports of the like product to the EEC were subject to a definitive anti-dumping duty. Thus, the definition of the scope of application of the amendment resulted logically from the concept of duty evasion and was by no means discriminatory in the meaning of Article 8:2 of the Agreement. The representative of the EEC also rejected the view expressed by the delegation of Japan in document ADP/W/162 that the recently adopted amendment to the EEC anti-dumping Regulation conflicted with the provisions of Articles III:1 and III:5 of the General Agreement. The amendment made a distinction between parts and materials originating in the country of exportation of the product subject to the anti-dumping duty and all other parts. Contrary to the assertions of the Japanese delegation there was no provision that a specific proportion of parts had to be of EEC origin. There was therefore no conflict with Articles III:1 or III:5 of the General Agreement.

(iii) In response to the view expressed by the delegation of Japan in document ADP/W/162 that Article VI of the General Agreement and Article 8:2 of the Agreement only permitted the imposition of anti-dumping duties on products imported from the territory of another country, the representative of the EEC said that the amendment to the EEC anti-dumping Regulation was aimed solely at products which would normally be subject to an anti-dumping duty but which would evade payment merely by being assembled in the EEC. The sole purpose was to counter circumvention of anti-dumping duties by assembly in the EEC. Article VI of the General Agreement and Article 8:2 of the Agreement were therefore not relevant in this case.

(iv) The representative of the EEC rejected the qualification of the duties which could be imposed under the amendment as internal taxes (see, e.g. ADP/W/162, page 2). In this respect he pointed out that the amendment merely secured the collection of anti-dumping duties which would otherwise be evaded by assembly operations. The duty designed to counteract circumvention necessarily had the same nature as the duty evaded. Its collection was assured by the same authorities, i.e. the customs authorities. There could, therefore, be no question of such measures being internal taxes.

(v) In response to the view expressed by the Japanese delegation in ADP/W/162 that the amendment could not be justified under Article XX(d) of the General Agreement, the representative of the EEC said that securing compliance with domestic regulations imposing anti-dumping duties was legitimate under Article XX(d) since these regulations were as such consistent with the provisions of the General Agreement. It was a general feature of customs legislation that any action leading to evasion of duties was normally illegal. Countering circumvention was therefore neither an unjustifiable discrimination nor a disguised restriction on international data.

(vi) In addition to the above-mentioned comments on the legal status of the amendment in terms of certain provisions of the Agreement and the General Agreement the representative of the EEC provided detailed replies to a number of questions raised by the delegation of Japan in ADP/W/162 regarding the interpretation and implementation of the amendment. The full text of these replies has been reproduced in document ADP/W/174.

11. The representative of Korea recalled that in January 1988 his delegation had submitted written questions on the amendment to the EEC anti-dumping legislation; so far the EEC had not provided replies to these questions. His delegation considered that this amendment was inconsistent with the provisions of the Agreement and with Article VI of the General Agreement; in this respect his authorities shared the views expressed by the delegation of Japan. In light of the inconsistency of the amendment with the General Agreement his delegation did not consider that this amendment could be justified under Article XX(d) of the General Agreement. If Parties to the Agreement considered that the Agreement was not balanced in terms of rights and obligations of Parties, this was a matter which should be discussed in the Uruguay Round; in the meantime, however, Parties should strictly observe the existing multilateral rules. He noted that in the Uruguay Round Negotiating Group on MTN Agreements and Arrangements the EEC had submitted a proposal on the issue which was the subject of this special meeting and said his delegation was prepared to discuss this proposal in the context of the Uruguay Round. He reiterated his authorities' concerns about the unilateral action of the EEC and said that a multilateral solution to the question of the alleged circumvention of anti-dumping duties had to be found in the near future.

12. The Chairman noted that the delegation of the EEC had recently submitted written replies to the questions raised by Korea in ADP/W/166 and that these replies would be shortly circulated to the Parties (see document ADP/W/175).

13. The representative of Singapore said her delegation's concerns about the amendment to the EEC anti-dumping legislation were caused by its broader implications for the operation of the multilaterally agreed rules of the Agreement and of Article VI of the General Agreement. Although the Committee had not completed its examination of the consistency of the

amendment with these rules, the EEC had already taken measures under its amended legislation. Her delegation was seriously concerned about such unilateral implementation of legislation inconsistent with the international obligations of the EEC. She shared the view expressed by the delegations of Japan and Korea that the anti-dumping duties provided for in the amendment to the EEC anti-dumping legislation had no basis in the Agreement or in Article VI of the General Agreement. Any solution to the problem of circumvention of anti-dumping duties on a finished product through importation and subsequent assembly of components of such a product should be based on a strict observance of two basic requirements of the Agreement and of Article VI of the General Agreement. Firstly, the imposition of anti-dumping duties required that there be determinations of the existence of dumped imports and consequent injury to a domestic industry. Secondly, these determinations had to be based on comparisons between like products. These two basic requirements had been completely ignored by the EEC in the enactment of the amendment to its anti-dumping legislation; this amendment had introduced new concepts which went beyond the existing multilateral rules on the application of anti-dumping measures. Her delegation also disagreed with the view expressed by the EEC that the amendment could be justified under Article XX(d) of the General Agreement; in this regard she pointed out that this provision only allowed measures "necessary to secure compliance with laws or regulations which are not inconsistent with the provisions" of the General Agreement. Regarding the replies provided by the EEC to the written questions submitted by the delegations of Japan and Korea, she said her delegation wished to have the opportunity to study the replies in detail. She concluded by reserving her delegation's rights under the Agreement and under the General Agreement.

14. The representative of Hong Kong said that at the meeting of the Committee held in October 1987 his delegation had already expressed its views on the amendment to the EEC anti-dumping legislation (ADP/M/20, paragraphs 18 and 25). In particular, his delegation had pointed at that meeting to the basic requirements of the multilateral rules that there be determinations of the existence of dumping and injury and that in such determinations comparisons be made between like products. He added that it was not clear from the explanations provided so far by the delegation of the EEC whether measures pursuant to Article 13:10 of Regulation No. 2176/84, as amended, were to be considered as anti-dumping measures. Further clarification on this point was necessary in order to determine the relevant provisions of the Agreement and the General Agreement in light of which the amendment had to be examined. The representative of Hong Kong further referred to one of the written replies provided by the EEC to questions by Japan in which the EEC had stated that "Contrary to the assertions of Japan, there is no provision that a specific proportion of parts must be of Community origin" (ADP/W/174, paragraph 4). However, while there was thus no explicit requirement in the text of Article 13:10 of Regulation 2176/84, as amended, that a specific proportion of parts must be of EEC origin, one could nevertheless raise the question whether in actual investigations carried out under that Article such a requirement

might be imposed. In this regard he referred in particular to the fact that the amendment provided for the possibility to accept undertakings. In normal anti-dumping investigations undertakings related to export prices but undertakings under the amendment obviously were of a different type. The lack of clarity regarding the nature of such undertakings could well give rise to the suspicion that such undertakings could perhaps be used to impose a requirement that a minimum proportion of parts be procured locally. The representative of Hong Kong further noted that one criterion to judge whether circumvention occurred was whether assembly or production of a product was carried out by a party "related or associated" to any of the manufacturers whose exports of the like product were subject to an anti-dumping duty and asked whether this criterion might not in the future be used to extend the scope of application of measures under Article 13:10 of Regulation No. 2176/84, as amended, to include assembly or production operations carried out by "related or associated" parties in third countries.

15. The representative of the United States said his authorities believed that measures to prevent circumvention of anti-dumping measures were permitted by Article VI and Article XX(d) of the General Agreement. Article VI authorized a contracting party to take anti-dumping measures, while Article XX(d) authorized a contracting party to take measures "relating to customs enforcement". Accordingly, his authorities believed that contracting parties had a clear right to prevent efforts by importers to evade legitimate anti-dumping measures by importing disassembled like products, products that had been minimally altered, or products essentially transshipped through third countries. The United States shared the concerns of the EEC regarding the circumvention of anti-dumping measures which constituted a serious practical problem; the United States had experienced problems as a result of efforts of exporters to circumvent anti-dumping orders by engaging in minor alterations of the product in question, by engaging in third-country assembly operations, or by assembling the like product in the United States. However, the United States did not necessarily endorse the application by the EEC of anti-circumvention duties in the cases recently decided under the amendment to the EEC anti-dumping legislation. Anti-dumping investigations were highly facts-specific; the United States authorities were not familiar with the relevant facts of these cases and with the rules and interpretations applied by the EEC authorities in these cases. His authorities would therefore carefully study the points made by the delegation of Japan and the information provided by the EEC.

16. The representative of the EEC, referring to one of the written questions raised by Korea in ADP/W/166, said that the measures allowed under the amendment were designed to avoid circumvention of anti-dumping duties on imports of finished products which had been imposed in accordance with all requirements of the Agreement. The rate of duty imposed on the product assembled in the EEC corresponded to the rate of duty applied to the imports of the finished product found to have been dumped and causing injury. Thus, the amendment did not provide for the imposition of duties

on imports of parts used in assembly operations in the EEC. In response to a concern expressed by the delegation of Hong Kong, he referred to the first Regulations and Decisions adopted under the amendment which showed that the criteria laid down in the amendment were very strict and had been applied in a rigorous manner by the EEC authorities.

17. The representative of Japan said he had listened carefully to the statements made by the EEC and other Parties. His delegation considered that the written replies by the EEC to the questions raised by Japan were disappointing. Before making some initial comments on those replies he pointed out that Japan did not deny that there could be a need to prevent certain types of circumvention of anti-dumping duties; however, his authorities considered unacceptable the introduction of legislation the stated purpose of which was to prevent circumvention but the actual objective and effect of which raised several problems in light of the Agreement and the General Agreement, e.g. regarding the imposition of a local content requirement. Regarding the view expressed by the EEC that in order to impose duties to prevent circumvention of existing anti-dumping duties it was not necessary to examine whether imported parts were dumped and causing injury, the representative of Japan said that his authorities had compared price levels of products subject to the recent investigations and produced or assembled in the EEC by parties related to Japanese manufacturers with price levels of equivalent models made by European manufacturers. This comparison had indicated that, in general, the prices of products made by companies related to Japanese manufacturers were higher, with respect to both the dealer net price and the retail price. The only logical conclusion that could be drawn from this finding was that the products made in the EEC by the parties related to Japanese manufacturers were not causing injury to the domestic industry in the EEC. His authorities could see no good reason why in the cases in question the EEC authorities had not examined the existence of dumping and injury.

18. The representative of Japan further stated that the manner in which the EEC had invoked Article XX(d) of the General Agreement as the legal basis of the amendment to its anti-dumping legislation was unacceptable. The drafting history of Article XX(d) made it clear that this provision was intended to cover clearly defined situations such as those mentioned in this provision, namely, state monopolies and the protection of patents, trade marks and copyrights. This provision was not intended to leave to each contracting party the right to create in an arbitrary manner new rights through legislation. If the logic behind the reasoning of the EEC were accepted, any contracting party could enact new laws to create and protect new rights as it saw fit, and claim that the purpose of such new legislation was to protect the effectiveness of existing legislation. He reiterated the view of his delegation that the amendment to the EEC anti-dumping legislation was inconsistent with the General Agreement and said that the objective of Article XX(d) was not to provide contracting parties with a justification for the adoption of measures under laws or regulations inconsistent with the General Agreement. In addition, as the amendment imposed a local content requirement, it also resulted in a

disguised restriction of international trade, which was inconsistent with the opening paragraph of Article XX. He welcomed the statement by the EEC delegate that no local content requirements had been and would be imposed under the amendment but believed that the facts were in contradiction with this statement. Companies involved in the recent investigations had been requested to raise the proportion of parts used in their assembly operations procured from EEC sources. Thus, in practice the amendment had been used to impose local content requirements inconsistent with Article III:5 of the General Agreement.

19. The representative of Canada said he had listened carefully to the statements made by other delegations. His delegation wished to examine in detail the points raised by Japan and the explanations provided by the EEC. The Canadian authorities were of the view that it was important for the Committee to recognize that the amendment to the EEC anti-dumping legislation dealt with a real problem which could not be ignored. His delegation was not in a position to judge the application by the EEC of this amendment in particular cases. The discussions in the Committee on this problem showed that there was a need to develop multilateral rules on the issue of the circumvention of anti-dumping duties.

20. The representative of the EEC noted that the delegation of Japan continued to suggest that the amendment to the EEC anti-dumping legislation operated as a local content requirement. In this respect he pointed to the text of Article 13:10(a) of Regulation No. 2176/84, as amended, which provided that one of the three conditions required to make a finding of circumvention was that "the value of parts or materials used in the assembly or production operation and originating in the country of exportation of the product subject to the anti-dumping duty exceeds the value of all other parts or materials used by at least 50 per cent." From the use of the expression "the value of all other parts or materials used" it was clear that this provision could not be interpreted as imposing a local content requirement. Should the EEC authorities try to impose such a requirement, there could be no doubt that the EEC Court of Justice would annul such a measure as being unlawful under the amendment.

21. The representative of Korea said his delegation would like to react at the next meeting to the replies provided by the EEC to the written questions submitted by his delegation.

22. The representative of Brazil said his delegation had followed the discussions with great interest. The subject matter of the meeting was new and was not specifically dealt with in the Agreement. It was still not clear whether the measures provided for in the amendment to the EEC anti-dumping Regulation were anti-dumping measures, which, in principle, could apply only to imports of products. What was clear, however, was that the General Agreement was not so flexible as to allow each contracting party to create new rights. His delegation would study in detail the answers submitted by the EEC and revert to this matter at a later stage.

23. The representative of Japan made a number of comments on Parts II and III of the written replies provided by the EEC (ADP/W/174). Firstly, the EEC had argued in its replies that the cases which had been investigated recently had shown that alleged difficulties in obtaining parts or materials from alternative, local sources were virtually non-existent. In this regard, tne representative of Japan pointed out that in the case of electronic typewriters, certain parts were particularly difficult or impossible to procure locally in the EEC and that even European producers of electronic typewriters were using large numbers of Japanese parts in the production of their electronic typewriters. Secondly, he reiterated that in the recently concluded investigations the EEC authorities had not given sufficient consideration to the variable costs incurred by the companies in question in their assembly or production operations in the EEC. Thirdly, he disagreed with the view expressed by the EEC that experience had shown that it was not necessary that during the start-up period of an assembly or production operation in the EEC more than 60 per cent of the value of the parts used be imported from Japan. In practice, a period of 1-1½ years was necessary for the training of employees and suppliers of parts before local production could start along the right lines. Fourthly, his authorities considered unreasonable the fact that the EEC had treated cases in which the decision to invest in the EEC had been made prior to the initiation of the anti-dumping investigation of imports of the finished product in the same manner as cases in which that decision had been made after the initiation of the anti-dumping investigation. In this context he mentioned as an example the case of one company producing electronic typewriters which had obtained the approval of its investment decision from an EEC member State in June 1983, prior to the initiation of the anti-dumping investigation on imports of electronic typewriters which had been opened in March 1984. Fifthly, referring to paragraph III.4 of the EEC replies (ADP/W/174), he said that in some cases components had been treated by the EEC authorities as originating in Japan, despite the fact that certificates of origin for these components had been granted by an EEC member State. His authorities doubted whether the EEC Commission had the authority to refuse to accept certificates of origin granted by an EEC member State in accordance with the relevant EEC legislation. At least, this refusal created uncertainty for the companies in question because no specific guidelines had been made public and formally established by the EEC.

24. The representative of the EEC said that the investigation under Article 13:10 of Regulation No. 2176/84, as amended, concerning electronic typewriters had been terminated with respect to one company without the imposition of a duty on the basis of a finding that the weighted average value of Japanese parts for all models produced by this company in the EEC was less than 60 per cent of the weighted average value of all parts used. This showed that it was not necessary to rely on parts originating in Japan. Regarding the issue of the rules of origin, he said that the provisions applicable in the EEC regarding the determination of the origin of a product were laid down in Regulation (EEC) No. 802/68.

25. The representative of Japan thanked the delegations present at the meeting for the interest shown in the matter referred to the Committee by his delegation. His delegation had attempted to explain why it considered the amendment to the EEC anti-dumping legislation to be inconsistent with the provisions of the Agreement and with Article VI of the General Agreement. He urged the EEC to either repeal the amendment or bring it into conformity with the rules of the Agreement and the General Agreement. While his delegation had not had sufficient time to examine in detail the written replies provided by the EEC, his preliminary reaction was that these replies were not satisfactory. His delegation would study these replies carefully and wished to revert to this matter at the regular meeting of the Committee to be held on 30 May 1988. He expressed the hope that the EEC would provide satisfactory answers to the points raised by his delegation and that the EEC would repeal or modify the amendment to its anti-dumping Regulation. Finally, he reiterated that his delegation reserved all its rights under the Agreement and the General Agreement in this matter.

26. The Chairman concluded the meeting by saying that the Committee had taken note of the statements made on the matter referred to it by Japan under Article 14:1 of the Agreement and, in particular, the statements by some delegations that they reserved all their rights in this matter. He stated that the Committee would revert to this matter at its forthcoming meeting.