

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

ADP/M/22

15 September 1988

Special Distribution

Committee on Anti-Dumping Practices

MINUTES OF THE MEETING
HELD ON 30 MAY AND 1 JUNE 1988

Chairman: Mr. R.J. Arnott (Australia)

1. The Committee held a regular meeting on 30 May and 1 June 1988.
2. The Committee adopted the following agenda:
 - A. Election of Officers
 - B. Adherence to or acceptance of the Agreement¹ by other countries:
 - (i) Mexico
 - (ii) New Zealand
 - C. Examination of anti-dumping laws and/or regulations of Parties to the Agreement (ADP/1 and addenda)
 - (i) EEC (ADP/1/Suppl.4 and ADP/W/152 and 164; ADP/1/Add.1/Suppl.5 and ADP/W/162, 166, 174 and 175)
 - (ii) Australia (ADP/1/Add.18/Rev.1/Suppl.1 and ADP/W/171)
 - (iii) Brazil (ADP/1/Add.26/Suppl.1 and ADP/W/170)
 - (iv) Japan (ADP/1/Add.8/Suppl.1 and ADP/W/147, 148, 150, 153 and 160)
 - (v) Korea (ADP/1/Add.13/Rev.1 and ADP/W/135, 137, 145, 146, 149 and 156)
 - (vi) Pakistan (ADP/1/Add.24 and ADP/W/117, 120 and 124)
 - (vii) India (ADP/1/Add.25 and Corr.1 and ADP/W/118, 120 and 121)
 - (viii) Laws and/or regulations of other Parties
 - D. Semi-annual reports by the United States and Korea of anti-dumping actions taken within the period 1 January-30 June 1987 (ADP/34/Add.6 and Add.7, respectively)

¹The term "Agreement" refers to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade.

- E. Semi-annual reports of anti-dumping actions taken within the period 1 July-31 December 1987 (ADP/35 and addenda)
 - F. Reports on all preliminary or final anti-dumping actions (ADP/W/157, 163, 167, 169 and 172)
 - G. Language problems in anti-dumping duty investigations (ADP/W/173)
 - H. Other business
 - (i) Romania - Bilateral consultations with Australia under Article 15 of the Agreement
 - (ii) Finland - Anti-dumping duty investigation of imports of ski boots from Czechoslovakia
- A. Election of Officers
4. The Committee elected Mr. R.J. Arnott (Australia) as Chairman and Ms. M. Liang (Singapore) as Vice-Chairperson.
- B. Adherence to or acceptance of the Agreement by other countries
- (i) Mexico
5. The Chairman recalled that the Agreement had been signed ad referendum by the Government of Mexico on 24 July 1987 (ADP/33/Add.1). In a communication dated 12 February 1988 the Director-General of GATT had informed the contracting parties that an instrument of ratification had been deposited by the Government of Mexico on 9 February and that, consequently, the Agreement would enter into force for Mexico on 10 March 1988. The Chairman welcomed Mexico as Party to the Agreement and member of the Committee. He recalled that at the regular meeting held in October 1987 the observer for Mexico had made a statement regarding the signature ad referendum of the Agreement by his Government (ADP/M/20, paragraph 4). At the same meeting the delegation of the United States had asked when the Committee would have the opportunity to examine the anti-dumping legislation of Mexico (ADP/M/20, paragraph 58). The Chairman informed the Committee that the secretariat had recently received a notification from the delegation of Mexico of the Mexican anti-dumping legislation and that the Committee would start its examination of this legislation at its next regular meeting. He suggested that Parties wishing to raise questions or make comments on the Mexican legislation do so in writing, through the secretariat, as far in advance of the next meeting as possible, preferably not later than mid-August.
6. The representative of Mexico said that on 21 April 1988 a decree had been published in the Official Gazette of Mexico promulgating the Agreement; as a result, the Agreement now had the status of domestic law in Mexico. Furthermore, on 24 May 1988 his delegation had submitted to the secretariat copies of the Mexican anti-dumping law (Foreign Trade Regulatory Act Implementing Article 131 of the Constitution of the United

Mexican States) and regulations (Regulations against Unfair International Trade Practices).¹ In the near future his delegation would provide a copy of amendments to the regulations,² which had been published in the Mexican Official Gazette on 19 May 1988.

7. The Committee took note of the statement made by the representative of Mexico.

(ii) New Zealand

8. The Chairman said that, in a communication dated 9 May 1988, the Director-General of GATT had informed the contracting parties that the Government of New Zealand had accepted the Agreement on 6 May 1988 and that, consequently, the Agreement would enter into force for New Zealand on 5 June 1988. He welcomed New Zealand as Party to the Agreement and member of the Committee and requested the delegation of New Zealand to indicate when the Committee would be in a position to start its examination of the anti-dumping legislation of New Zealand.

9. The representative of New Zealand recalled that on 19 June 1986 a document had been circulated in which her Government had announced its intention to accept the Agreement after an examination of, and any necessary amendments to, the existing anti-dumping legislation of New Zealand (document ADP/28). This process had now been completed and had led to the enactment of amending legislation (the Industries Safeguards Act) which had brought the domestic anti-dumping legislation of New Zealand in conformity with the requirements of the Agreement. In accordance with Article 16 of the Agreement, New Zealand would submit copies of its legislation promptly after this meeting in order to enable members of the Committee to satisfy themselves that this legislation was in full conformity with the Agreement.

10. The Committee took note of the statement made by the representative of New Zealand.

C. Examination of anti-dumping laws and regulations of Parties to the Agreement (ADP/1 and addenda)

(i) EEC

(a) Commission Notice concerning the reimbursement of anti-dumping duties (document ADP/1/Add.1/Suppl.4)

11. The Chairman said that the Committee had started to discuss this Notice at its meeting held in June 1987. After that meeting written

¹ See document ADP/1/Add.27.

² See document ADP/1/Add.27/Suppl.1

questions on this Notice had been received from the delegation of Brazil (ADP/W/152); at the meeting held in October 1987 the delegation of the EEC had replied orally to these questions (ADP/M/20, paragraphs 9-10) and had announced that it would submit these replies in written form. Additional written questions had been received after the meeting in October 1987 from the delegation of Japan (ADP/W/164). The Committee had not yet received written replies by the EEC to the questions raised by the delegations of Brazil and Japan.

12. The representative of the EEC said that his delegation had recently submitted written replies to the questions raised by Brazil and Japan and he hoped that these replies could be distributed quickly.¹

13. The representative of Japan recalled that, at the meeting of the Committee in October 1987 the then Chairman had said that the examination of anti-dumping laws and/or regulations would be facilitated by the submission of questions and answers in writing and that the deadlines for submission of written questions on laws and/or regulations to which the Committee would revert at its next meeting were 10 January 1988 and 10 March 1988, respectively (ADP/M/20, (paragraph 61). His delegation had submitted written questions on the Notice but, unfortunately, no written answers had so far been provided by the EEC. He emphasized the importance his authorities attached to the issue of the procedures and criteria for the reimbursement of anti-dumping duties and urged the EEC delegation to reply in writing as quickly as possible.

14. The Chairman concluded by saying that the Committee would revert to the Notice at its next regular meeting. He invited delegations wishing to raise further questions to do so in writing by 8 July 1988 and requested the delegation of the EEC to reply in writing to any possible additional questions by 9 September 1988.

(b) Council Regulation (EEC) No. 1761/87 of 22 June 1987 amending Regulation (EEC) No. 2176/74 on protection against dumped or subsidized imports from countries not members of the European Economic Community (ADP/1/Add.1/Suppl.5)

15. The Chairman recalled that this Regulation, adopted in June 1987, had been the subject of discussions in the Committee at its meeting held in October 1987 (ADP/M/20, paragraphs 15-28). The stated purpose of the amendment effected by this Regulation was to avoid circumvention of anti-dumping duties on a finished product through importation and subsequent assembly in the EEC of components of such a product. The delegations of Japan and Korea had submitted written questions on this amendment (documents ADP/W/162 and ADP/W/166, respectively) and, at the

¹See documents ADP/W/181 and 180, respectively.

request of the delegation of Japan, a special meeting of the Committee had taken place on this matter on 6 May 1988 under Article 14:1 of the Agreement (see document ADP/M/21). At this special meeting the delegation of the EEC had presented detailed replies to the written questions raised by the delegations of Japan and Korea (documents ADP/W/174 and ADP/W/175, respectively); in addition, the delegation of the EEC had made available copies of Regulations and Decisions adopted on 18 April 1988 upon the conclusion of the first series of investigations under Article 13:10 of Regulation No. 2176/84, as amended (see, for the text of these Regulations and Decisions, document ADP/W/174). The Chairman said that the special meeting of 6 May 1988 had constituted an opportunity for a thorough exchange of views between members of the Committee on the amendment to the EEC anti-dumping Regulation. As reflected in the minutes of the special meeting (ADP/M/21) there was a divergency of views among Parties regarding the question whether the amendment was consistent with the provisions of the General Agreement and the Agreement. He also noted that, at the special meeting, some delegations had stated that, while they could not, at this time, adopt a final position on the specific provisions of the amendment and the manner in which the amendment had been applied in particular cases, they considered that circumvention of anti-dumping duties was a serious practical problem and that measures to avoid such circumvention could be legitimate under the Anti-Dumping Code and the General Agreement. The Chairman, therefore, considered that, while the Committee should, of course, focus its discussion at this meeting on the amendment to the EEC anti-dumping Regulation, it should realize that there was a more general dimension to this question of circumvention of anti-dumping duties.

16. The representative of Japan said that, at the meeting of the Committee held in October 1987, his delegation had pointed to a number of problems raised by the amendment to the EEC anti-dumping legislation in the light of provisions of the General Agreement and the Agreement. At the special meeting held on 6 May 1988 his delegation had explained why it considered that this amendment was not in conformity with the General Agreement and the Agreement and had pointed to a number of specific problems which had arisen in the implementation of the amendment in a number of recent cases. Other members had also raised many questions on this amendment and he believed that his delegation's view that the amendment was inconsistent with the General Agreement and the Agreement had been supported by many Parties. His delegation had examined in detail the written replies submitted by the EEC at the special meeting held on 6 May 1988 but he could only conclude that these replies were extremely unsatisfactory because the EEC had failed to provide a convincing explanation on the conformity of the amendment with the provisions of the General Agreement and the Agreement.

17. The representative of Japan made the following three general observations on the status of the amendment to the EEC anti-dumping Regulation under the General Agreement and the Agreement. Firstly, he said that, given that there were presently no specific provisions in the General Agreement or in the Agreement on the issue of circumvention of

anti-dumping duties, any measures designed to avoid circumvention taken by a Party to the Code must be in conformity with the existing rules of the General Agreement and the Agreement. In its replies to the written questions from the delegation of Japan, the EEC had stated that the measures envisaged in the amendment were designed to prevent circumvention of anti-dumping duties after experience had shown that the opening of an anti-dumping duty investigation was often followed by an increase of imports of parts of the product subject to investigation and an expansion of assembly operations in the EEC. However, increased imports of parts and commencement or expansion of local assembly operations per se could not be condemned insofar as these phenomena did not constitute dumping. Measures to prevent circumvention of anti-dumping duties should not violate the basic rule of the Agreement that anti-dumping duties were only allowed where products were introduced into the commerce of another country at a price below its normal value and this caused injury to a domestic industry. Secondly, the representative of Japan emphasized that the alleged need to avoid circumvention of anti-dumping duty measures should not be used as a pretext for the unilateral introduction of trade restrictive measures not in conformity with the General Agreement. In this respect he said that the three criteria provided for in Article 13:10 of the amended EEC anti-dumping Regulation to determine the existence of circumvention of anti-dumping duties had no legal basis in the General Agreement or the Agreement and were designed to achieve policy objectives which were totally irrelevant to the prevention of dumping and circumvention of anti-dumping duties. In reality, the amendment required that a certain proportion of parts of EEC origin be used in assembly operations in the EEC; this was evident from the fact that in the amendment circumvention was considered to take place when the proportion of parts used in the assembly operation and imported from the country of export of the finished product subject to duties exceeded 60 per cent, and from the manner in which, in the recent of proceedings under Article 13:10 of the amended anti-dumping Regulation, undertakings from related parties were being handled. The representative of Japan further pointed out that the duties provided for under the amendment applied only to those producers in the EEC who were related or associated with the producers whose exports of the finished product to the EEC were subject to anti-dumping duties; in his view, this constituted discrimination between producers operating within the EEC. He considered that the above-mentioned practices amounted to a unilateral introduction of restrictive measures under the pretext of avoidance of circumvention of anti-dumping duties. Thirdly, he pointed to the need to avoid abuse of the provisions of Article XX(d) of the General Agreement. He noted that Article XX(d) was the only provision invoked by the EEC as the legal basis of the amendment to its anti-dumping Regulation. However, this provision did not justify measures based on rules and regulations which were inconsistent with the General Agreement. His authorities were of the view that the Committee should examine how the EEC was trying to justify the introduction of new restrictive measures by using Article XX(d) of the General Agreement as a pretext.

18. The representative of Japan said that, after examining the written replies by the EEC, his delegation considered that the following aspects of

the amendment remained questionable in terms of their status under the General Agreement and the Agreement:

(i) The amendment provided that the amount of the duty on the product assembled in the EEC was to be proportional to the amount of imported parts used in the assembly operation. In his view, this was, in effect, tantamount to levying an anti-dumping duty on the imported parts. It was clear that the imposition of such a duty on imports of parts in the absence of an anti-dumping duty investigation of those parts, was inconsistent with Article VI of the General Agreement and with the Agreement. Even if one accepted the reasoning of the EEC that the duties provided for under the amendment were levied on products assembled or produced in the EEC, this problem of infringement of the General Agreement and the Agreement, as a result of the absence of an anti-dumping duty investigation, remained; products assembled or produced in the EEC were different from imported finished products, and were not equivalent to "imports of products found to be dumped and causing injury" (Article 8:2 of the Agreement). A new anti-dumping duty investigation was, therefore, necessary in order to justify the application of anti-dumping duties on products assembled or produced in the EEC and the absence of such an investigation under the amendment rendered it incompatible with Article VI of the General Agreement and with the Agreement. In the view of his delegation, the imposition of an anti-dumping duty on a finished product assembled or produced in the EEC could not be justified by the mere fact that an anti-dumping duty investigation had already been conducted with respect to imports of that finished product. In this connection he also drew attention to the fact that the EEC had recently applied anti-dumping duties on products assembled in the EEC by a producer related to a Japanese company which, during the investigation period covered by the anti-dumping duty investigation of imports of the finished product, had not exported the product in question and which, therefore, was subject to a residual anti-dumping duty.

(ii) The representative of Japan stated that the recent amendment to the EEC anti-dumping Regulation also raised problems when considered in light of the expression "introduced into the commerce of another country", used in Article VI:1 of the General Agreement. He noted that Article 13:10 of Regulation No. 2176/84, as amended, applied to "products that are introduced into the commerce of the Community after having been assembled or produced in the Community", and stated that such products fell outside the scope of application of anti-dumping duties as provided for in Article VI:1 of the General Agreement which could be taken only with respect to products of one country introduced into the commerce of another. The EEC had not addressed this issue in its replies. He also noted that in recent proceedings under Article 13:10 of Regulation No. 2176/84, as amended, duties had been introduced on electronic typewriters and electronic weighing scales assembled or produced in the EEC despite the fact that member States of the EEC had issued certificates of origin for these products. He considered that it was unreasonable to apply anti-dumping duties on such products. If one considered the fact that no separate anti-dumping duty investigation had been provided for in the amendment and that it applied to products which were not introduced into

the commerce of another country, one could only conclude that the amendment permitted the imposition of anti-dumping duties irrespective of whether there existed dumping and injury to a domestic industry and that it violated the basic principle of Article VI of the General Agreement and the Agreement. Furthermore, on the basis of the practice of application of the amendment, one could only conclude that the duties which could be applied pursuant to the amendment had the effect of internal taxes and were likely to violate the requirement of non-discriminatory application of internal duties.

(iii) The representative of Japan further pointed to the fact that under the amendment to Regulation No. 2176/84, one of the criteria to judge the existence of circumvention of anti-dumping duties was the use, in the assembly operation, of parts imported from the country of export subject to an anti-dumping duty if the value of such imported parts exceeded 50 per cent of the total value of all parts used. This amounted, in effect, to a requirement to use a specific proportion of parts of EEC origin. His authorities had been informed by companies involved in the recently conducted investigations pursuant to the amendment that the EEC authorities had requested them to procure more than 40 per cent of the parts they used from EEC sources as a condition for the suspension of duties and the acceptance of undertakings. Furthermore, in some cases requests had been made by the EEC that the proportion of parts procured by these companies in the EEC be at a level as much above 40 per cent as possible, and some companies had been required to procure in the EEC more than 50 per cent of the parts they used. This showed that it was the intention of the EEC to use the amendment to its anti-dumping Regulation to require parties related to Japanese companies to employ a certain proportion of EEC-made components. His delegation therefore considered that the amendment was inconsistent with Article III:1, 4 and 5 of the General Agreement because it protected EEC producers of parts and it compelled the companies in question to employ a certain proportion of EEC-made parts.

(iv) The representative of Japan noted that Article 13:10 of the amended EEC anti-dumping Regulation provided that, in the examination of whether circumvention occurred, the EEC authorities were required to take into account inter alia "the research and development carried out and the technology applied within the Community". In this regard, he said that his authorities were unable to understand why these elements relating to the form of local production were taken into consideration by the EEC in the examination of possible circumvention of anti-dumping duties. It was difficult to understand why the EEC considered that there was no circumvention if these elements existed. He believed that this provision again showed that, under the pretext of avoidance of circumvention of anti-dumping duties, the amendment was designed to achieve another objective. He further stated that the amendment entailed discrimination between producers in the EEC in that it provided for the imposition of a duty only on products assembled or produced in the EEC by manufacturers who were related or associated with foreign enterprises but not on products assembled or produced in the EEC by independent domestic manufacturers even if they used the same proportion of the same imported parts to produce the same finished product.

(v) The representative of Japan explained the inconsistency of the amendment with Article XX(d) of the General Agreement as follows. Firstly, he said that Article XX provided for a number of exceptions of a very general nature which were similar to the exceptions made in bilateral agreements concluded prior to the conclusion of the General Agreement. In order to avoid abuse of these exceptions, Article XX stipulated that measures taken under this provision should not be "applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade". Article XX(d) affirmed that contracting parties were allowed to take measures based on legislation consistent with the General Agreement and did not allow contracting parties to arbitrarily implement trade restrictive measures under the pretext of "the necessity to secure compliance with laws or regulations". Nor did it authorize the introduction of such trade restrictive measures. In this connection, he noted that the amendment to the EEC anti-dumping Regulation not only provided for the application of anti-dumping duties irrespective of whether dumping actually occurred but was also designed to achieve a certain level of local content. Thus, the objectives of the amendment deviated from the objectives of normal anti-dumping regulations and the amendment could, therefore, not be justified under Article XX(d). Secondly, the representative of Japan said that Article XX(d) allowed measures "necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement". In this respect, he said that while prior to the entry into force of the amendment the EEC anti-dumping Regulation had been consistent with the General Agreement, as a result of the amendment this Regulation was no longer consistent with the General Agreement. Thirdly, he said that, if the EEC was of the view that measures to avoid circumvention of anti-dumping duties were necessary, further examination was needed to determine whether the objective of avoiding such circumvention could not be attained without recourse to Article XX. Fourthly, he reiterated that the amendment to the EEC anti-dumping Regulation included a number of discriminatory elements and constituted a disguised restriction on trade in parts; as such, the amendment was questionable in the light of the first paragraph of Article XX. For the above-mentioned reasons, his authorities were convinced that the amendment could not be justified under Article XX(d) and was inconsistent with the General Agreement. If the EEC's interpretation of Article XX were recognized as legitimate, each contracting party would have the right to freely implement specific measures inconsistent with the General Agreement under the pretext of the existence of a general trade policy or a basic law the purposes of which were consistent with the General Agreement. This interpretation, if accepted, would create a serious loophole in the GATT legal framework and was therefore unacceptable.

19. The representative of Japan concluded his intervention by requesting the EEC to withdraw immediately its decisions to apply anti-dumping duties on certain products assembled or produced in the EEC by producers related to Japanese producers and to repeal the amendment to its anti-dumping Regulation or bring this amendment into conformity with the General Agreement and the Agreement. He reserved his delegation's rights under the General Agreement and the Agreement with respect to this matter.

20. The representative of the EEC said that the EEC would not repeal the amendment to its anti-dumping Regulation or withdraw the measures which had recently been taken pursuant to the amendment. Regarding the comments made by the representative of Japan, he said that the views of his delegation on the issues raised by the representative of Japan had already been explained in detail in the written replies to the questions from the delegations of Japan and Korea.

21. The representative of Japan made a number of comments on Parts II and III of document ADP/W/174 which contained the written replies by the EEC to questions raised by Japan in document ADP/W/162.

(i) Regarding Part II of document ADP/W/174 he made the following points. Firstly, he noted that the EEC had argued that the criterion that the value of imported parts must account for at least 60 per cent of the value of all parts used was an extremely rigorous standard because, theoretically, circumvention could be considered to occur whenever the value of imported parts accounted for more than 50 per cent of the value of all parts used in the assembly or production operation. His delegation had previously pointed out that the use of the ratio of the value of imported parts as a criterion to determine whether circumvention took place was questionable under the General Agreement and the Agreement. In addition, the manner in which the EEC determined the existence of circumvention could be criticized because it was based only on the ratio of imported parts and did not include other factors such as the value added in the EEC as criteria to define the scope of circumvention. The value added in the EEC was merely an element of which account was taken and, unlike the ratio of imported parts, did not constitute one of the criteria to determine the existence of circumvention. Consequently, even in a case in which the value added in the EEC was high, it was possible for the EEC to determine that circumvention was taking place by examining only the ratio of imported parts. The ratio of imported parts might well be influenced by objective circumstances, e.g. difficulties in procuring parts locally and dependence upon imported parts during the start-up phase of the assembly operation. He delegation was of the view that there was no basis for the EEC's view that circumvention of anti-dumping duties occurred whenever the value of imported parts exceeded the value of other parts. He further stated that firms related to Japanese producers and carrying out assembly operations in the EEC, had gradually decreased the ratio of imported parts used in these operations. Secondly, the representative of Japan disagreed with the view expressed by the EEC that there were no difficulties in procuring parts in the EEC and gave detailed examples of problems in the local procurement of parts encountered by firms assembling electronic typewriters and photocopying machines in the EEC. Thirdly, he reiterated his delegation's view that it was inappropriate to determine whether circumvention of anti-dumping duties occurred only on the basis of the ratio of imported parts used in the assembly operation without taking into consideration the amount of local value added as a criterion to judge whether circumvention was taking place. In this respect, he noted that in the case of electronic typewriters the value added in the EEC accounted for 30 per cent of the cost of the finished product. Fourthly, he pointed out that

account should be taken of the fact that a start-up period was necessary before local production of parts for use in assembly operations could take place. Fifthly, he said that if a decision to invest in assembly operations was taken before the initiation of an anti-dumping duty investigation of imports of a finished product, it was clear that the investor did not intend to circumvent anti-dumping duties and it was, therefore, inappropriate for the EEC to treat such investors in the same manner as those who had decided to invest in local assembly operations after the initiation of an anti-dumping duty investigation. In this respect he referred to the recently concluded investigations by the EEC of alleged circumvention of anti-dumping duties by producers of electronic typewriters and electronic scales and said that some of the manufacturers subject to these investigations had already obtained the approval of their investment projects from EEC member States prior to the initiation of the anti-dumping duty investigations of imports of these products. Sixthly, he disagreed with the contention of the EEC that imported parts supplied by independent producers in the exporting country could not be distinguished from imported parts supplied by the exporter whose exports of the finished product were subject to an anti-dumping duty. Given that under the amendment to the EEC anti-dumping Regulation the existence of a relation or association with the exporters subject to anti-dumping duties was one of the criteria to determine the existence of circumvention, it was inconsistent not to make a distinction, in the calculation of the value of the imported parts, between imported parts supplied by an independent producer in the exporting country and imported parts supplied by the exporter whose exports of the finished product were subject to anti-dumping duties. The representative of Japan noted in this connection that the EEC had argued that in a normal anti-dumping duty investigation it did not matter whether sourcing of parts from independent companies or sub-contracting took place. He considered that this argument was inapplicable in the context of anti-circumvention investigations. Regarding the expression "related or associated", he wished to know how the EEC would treat imported parts supplied by related or associated parties in countries other than the country whose exports of the finished product were subject to an anti-dumping duty. Finally, he said that it was unclear how the provisions in the EEC anti-dumping Regulation for the review of anti-dumping measures and the refund of anti-dumping duties would apply to duties imposed pursuant to the amendment to the Regulation.

(ii) The representative of Japan further made some remarks on Part III of the written replies by the EEC (ADP/W/174). In relation to the terms "related" and "associated", which, according to the EEC's reply in paragraph III:1 of ADO/W/174 had the same meaning in Article 13:10 of the amended EEC anti-dumping Regulation as in the Agreement, he mentioned two investigations under Article 13:10 which showed that these terms were applied in an arbitrary manner by the EEC authorities. Regarding the evidence necessary to support a request for the opening of an investigation under Article 13:10 of the amended EEC anti-dumping Regulation, he said that, although in one of its replies the EEC had stated that the complaint must contain sufficient evidence of the existence of circumvention of an anti-dumping duty (paragraph III:2 of document ADP/W/174), in practice investigations had been opened under Article 13:10 on the basis of

petitions which had not contained sufficient evidence of the existence of circumvention of anti-dumping duties. On the reply by the EEC in paragraph III:3 of document ADP/W/174, relating to the procedural aspects of investigations under Article 13:10, he said that the amendment contained only a general provision which stated that the provisions of Regulation No. 2176/84 concerning investigation, procedure and undertakings, applied equally to Article 13:10 of this Regulation. In the absence of more precise provisions on the procedural aspects of investigations under Article 13:10, it was unclear how, for example, the review and refund provisions would apply to duties imposed pursuant to Article 13:10. In this connection he also noted that, in spite of the Recommendation Concerning the Time Limits Given to Respondents to Anti-Dumping Questionnaires (document ADP/19), in recent investigations under Article 13:10 respondents had been given only 15 days (in the investigations concerning electronic typewriters, electronic scales and hydraulic excavators) or 20 days (in the investigation concerning photocopying machines) to reply to questionnaires. He further stated that it was unclear what type of undertakings were possible under the amendment to the EEC anti-dumping Regulation and what were the procedures for the acceptance of such undertakings. With regard to the treatment of components or subassemblies produced or assembled in the EEC, the representative of Japan said that in some of the cases investigated under Article 13:10 of the amended EEC anti-dumping Regulation, components had not been counted as being of EEC origin despite the fact that EEC member States had granted certificates of origin for these components. He considered that it was doubtful whether, under internal EEC law, the EEC Commission had the authority to deny a certificate of origin issued by a member State in accordance with Regulation (EEC) No. 802/68. In its replies to one of the questions by the Japanese delegation the EEC had stated that "a decision on the treatment of a component or sub-assembly produced or assembled in the Community will depend on the nature of the component or sub-assembly and its origin under Regulation (EEC) No. 802/68 (paragraph III:4 of document ADP/W/174). However, what was meant by "the nature of the component or sub-assembly" was not clear. Moreover, companies subject to investigation were not informed in advance of specific guidelines on the treatment of components or sub-assemblies produced in the EEC and the possibility that the EEC Commission in its determination of the status of such components would not consider itself bound by certificates of origin granted by EEC member States created further uncertainty. With respect to the statement made by the EEC in paragraph III:6 of document ADP/W/174 that duties imposed under Article 13:10 of the amended EEC Regulation could legitimately be imposed with effect from the date of entry into force of the anti-dumping duty on the imported finished product, he criticized this approach because it treated imported finished products as being identical to finished products produced or assembled in the EEC. In response to the view expressed by the EEC in the same paragraph that this kind of application of the duties provided for under Article 13:10 could not be criticized as being retroactive because the duties were designed to avoid circumvention of existing duties and because the parties involved must be aware of the possibility that measures could be adopted to avoid such circumvention, he reiterated that the amendment to the EEC anti-dumping Regulation could not be considered as intended only to

avoid circumvention and that it served other purposes, e.g. local purchasing requirements. Given that the amendment had entered into force on 17 June 1987, he also considered that one could not expect producers involved in the recent investigations under the amendment to be aware of the possibility that measures to avoid circumvention of anti-dumping duties could be taken. In this respect he also pointed to the fact that in the recent investigations under Article 13:10 of the amended EEC anti-dumping Regulation concerning electronic typewriters, electronic scales and hydraulic excavators the investigation period was January-July 1987 while in the pending investigation concerning photocopying machines the investigation period was April 1987-January 1988. Thus, in both cases the investigation periods began on dates prior to the entry into force of the amendment and determinations on the existence of circumvention were made on the basis of data on the ratio of imported parts for periods prior to the entry into force of the amendment. Furthermore, since the amount of duty was computed on the basis of the value of parts imported from Japan during the investigation period it did not reflect subsequent increases in the ratios of locally procured parts.

22. The representative of Korea said that his delegation shared most of the concerns expressed by the representative of Japan regarding the amendment to the EEC anti-dumping Regulation. His delegation had formulated some questions on this amendment (ADP/W/166) to which the EEC recently had replied (ADP/W/175). However, his delegation was not yet convinced that the amendment was consistent with Articles VI and XX of the General Agreement and with the Agreement and he believed that the Committee should examine in detail the question whether the amendment was legitimate. If Parties to the Agreement were of the view that there was an imbalance of rights and obligations under the Code, this should be addressed in the Uruguay Round of Multilateral Trade Negotiations. In this connection, he noted that in the context of the Uruguay Round the EEC had made proposals to amend the Agreement. While his delegation was willing to discuss these proposals in the Uruguay Round, in the meantime the existing multilateral rules should be strictly observed. He concluded by reserving his delegation's rights to make further comments on the amendment to the EEC anti-dumping Regulation.

23. The representative of Hong Kong said it was important that the Committee, in its discussion of the amendment, address issues of principle rather than details of specific cases in which the amendment had been applied. One basic question was whether the measures provided for in this amendment had to be considered as anti-dumping measures within the meaning of Article VI of the General Agreement or as measures which found their legal basis in Article XX of the General Agreement. In the absence of a clear answer to this question it was impossible to determine what were the rules in the light of which the Committee had to examine the amendment. If the measures provided for under the amendment were to be regarded as anti-dumping measures as provided for in Article VI of the General Agreement and the Agreement, it would be clear what were the applicable rules. In this connection he recalled that on previous occasions his delegation had pointed out that the basic requirements of the Agreement for the introduction of anti-dumping measures were that there must be

determinations of the existence of dumping, material injury and a causal link between the dumped imports and the injury, and that in such determinations comparisons must be made between like products. If, however, the amendment to the EEC anti-dumping Regulation had to be examined in light of Article XX(d) of the General Agreement, different questions would need to be addressed. He expressed his surprise at the statement by the EEC that no new issues had been raised by the representative of Japan and said that there still were many questions which remained unanswered. In this connection, he reiterated some questions which his delegation had asked at previous meetings of the Committee on this matter. Firstly, he noted that the new Article 13:10 of Regulation No. 2176/84 defined as a basic criterion to determine the existence of circumvention the existence of a relation or association between the party carrying out assembly or production operations in the EEC and any of the manufacturers whose exports of the like product were subject to a definitive anti-dumping duty and he recalled that on previous occasions he had requested a further clarification of the precise meaning of this criterion; in particular, he had raised the question whether this criterion could be interpreted to cover assembly operations in third countries if carried out by a party related or associated with exporters whose exports to the EEC were subject to a definitive anti-dumping duty. He considered that the EEC's reply in paragraph III:1 of document ADP/W/174 on the meaning of the words "related" and "associated" was insufficient; the EEC had limited itself to stating that these words had the same meaning in Article 13:10 of Regulation No. 2176/84, as amended, as in the Agreement. However, the Agreement did not provide a precise definition of these terms and he, therefore, requested the delegation of the EEC to provide a further explanation on this point and, in particular, on the question whether assembly operations in third countries could fall within the scope of application of the amendment. Secondly, he reverted to a question which he had formulated on an earlier occasion on the nature of undertakings provided for under Article 13:10 of Regulation No. 2176/84, as amended, and asked whether such undertakings were traditional price undertakings or undertakings relating to the local purchase of parts.

24. The representative of Singapore said that at the special meeting held on 6 May 1988 her delegation had already expressed its concerns regarding the amendment to Regulation No. 2176/84. After examining the replies by the EEC to the questions asked by the delegations of Japan and Korea, her delegation remained convinced that this amendment was inconsistent with the relevant provisions of the General Agreement and the Agreement. She reiterated the view expressed by her delegation on previous occasions that any solution to the problem of circumvention of anti-dumping duties on a finished product through the importation and subsequent assembly of components of such a product should be based on strict observance of two basic requirements of the Agreement and 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 injury to a domestic industry resulting therefrom. Secondly, these determinations had to be based on comparisons between like products. She was of the view that these two principal requirements had not been observed by the EEC in the enactment of the new Article 13:10 of Regulation No. 2176/84. Her

delegation could not agree with the view that this amendment was justifiable under Article XX(d) of the General Agreement. The amendment had introduced completely new concepts which had no basis in the existing provisions of the Anti-Dumping Code. Her delegation had its doubts whether the measures provided for in the amendment were really anti-dumping measures which, under the provisions of the Agreement, could be applied to products imported into a country from another country. She concluded by emphasizing that her delegation's concerns regarding the amendment were caused by its broader implications for the operation of the multilaterally agreed rules of Article VI of the General Agreement and the Agreement. In this connection she pointed to the danger of unilateral interpretations of existing rules.

25. The representative of the EEC made the following remarks in response to the points raised at this meeting by the delegations of Japan, Korea, Hong Kong and Singapore:

- (i) With respect to the question raised by the delegation of Hong Kong on the legal basis of the amendment, he said that his delegation was of the view that the amendment was fully compatible with the General Agreement and that it had its legal basis in Article XX(d). He considered that Article VI of the General agreement could also constitute a legal basis for the application of measures to avoid circumvention of anti-dumping duties through importation and assembly of parts. Under Article VI the relevant question would be whether the imported parts were like the product on which an anti-dumping duty had been imposed. In his view one could very well defend the position that, if parts of a finished product were imported in a number of discrete subassemblies, such subassemblies, viewed as a whole, could be considered to be like the finished product. He noted that other Parties had used this approach when confronted with the problem of the treatment of importation and subsequent assembly of parts of finished products subject to anti-dumping duties. However, while his delegation believed that Article VI constituted an adequate legal basis for the application of measures to avoid circumvention of anti-dumping duties, it considered that Article XX(d) constituted an even better basis for the application of such measures. This provision was clear in that it permitted any contracting party to adopt "measures to secure compliance with laws or regulations which are not inconsistent with the provisions ..." of the General Agreement. Consequently, if anti-dumping duties were evaded, contracting parties were entitled under Article XX(d) to take the necessary measures to avoid such evasion. Since there was no precise definition in Article XX(d) of circumvention, the EEC authorities had been faced with the necessity to provide a definition of circumvention for the purpose of the new Article 13:10 of Regulation No. 2176/84. The definition laid down in this new provision was fair, narrow and based on objective criteria.

(ii) The representative of the EEC then recalled the four criteria laid down in Article 13:10 of Regulation No. 2176/84 to determine the existence of circumvention:

- a definitive anti-dumping duty must have been imposed on a finished product;
- the assembly operation must have been started or substantially increased after the opening of the anti-dumping duty investigation which had led to the imposition of the duty on the finished product;
- there must be a relation 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;
- there must be a preponderance of parts originating in the country of export of the finished product subject to a definitive anti-dumping duty.

He noted that the delegations which had spoken had in particular made comments on the fourth of these criteria. In this regard, he denied that, as had been contended by the representative of Japan, this fourth criterion was the exclusive criterion considered by the EEC when determining whether circumvention of anti-dumping occurred. While this criterion was extremely important, other elements such as the direct labour employed in the EEC, the research and development carried out and the technology applied within the EEC, were also taken into consideration.

(iii) Regarding the alleged difficulty of obtaining in the EEC parts and materials for use in assembly operations, the representative of the EEC said that the investigations carried out so far under Article 13:10 of Regulation No. 2176/84, as amended, had shown that certain subsidiaries of Japanese firms which were carrying out assembly operations in the EEC had been able to purchase in the EEC a major proportion of the components used in these operations. Other firms, however, were simply not willing to purchase parts in the EEC.

(iv) In reply to the argument that in certain cases the decision to invest in assembly operations in the EEC had been made prior to the opening of the anti-dumping duty investigation of imports of the finished product, he said that it was very difficult to determine exactly when an investment decision had been taken. In order to avoid subjective judgements as to when a decision to invest had been taken, Article 13:10 of Regulation No. 2176/84, as amended, was based on two objective criteria which involved an examination of whether the assembly or production operation had started or had been increased substantially after the opening of the anti-dumping investigation. In the recently concluded investigation under Article 13:10 concerning electronic typewriters the EEC Commission had found that four of the five investigated companies had started their assembly operations in the EEC after the opening of the anti-dumping duty

investigation of imports of electronic typewriters from Japan. In his view it was evident that it was the opening of these investigations which had caused these firms to start assembling their products in the EEC.

- (v) Regarding the questions raised on the terms "related" and "associated" as used in Article 13:10 of Regulation No. 2176/84, as amended, he said that these terms had the same meaning as in the Agreement and that in the interpretation of these terms the EEC would observe the guidelines laid down in the Report of the Group of Experts which had been established by the Committee on Anti-Dumping Practices.
- (vi) Referring to one of the questions asked by the representative of Japan, he confirmed that decisions taken under Article 13:10 of Regulation No. 2176/84, as amended, would be subject to administrative review. In this connection, he said that experience showed that the imposition of anti-circumvention duties very rapidly led the companies concerned to purchase their parts from other sources than producers in their home country. In one of the cases in which the EEC had imposed a duty pursuant to Article 13:10 the duty had already been repealed because of a change in the sourcing practice of the company in question; for the same reason, investigations under Article 13:10 were reopened for two other companies which had been subject to anti-circumvention duties.
- (vii) With respect to the alleged insufficiency of the petitions which had led to investigations under Article 13:10, he said that the EEC had considered that the petitions contained sufficient evidence to justify the opening of investigations. He added that it was extremely difficult for a European producer to know with precision what proportion of parts used by a competitor had been imported from a particular country. In any event, the results of the investigations under Article 13:10 showed that the European producers in question had been right in filing their petitions because in most of the cases circumvention of anti-dumping duties had been found to exist.
- (viii) On the question of the time limit for replies to questionnaires in investigations under Article 13:10 of Regulation No. 2176/84, as amended, he said that the Recommendation to which the representative of Japan had made reference applied only to normal anti-dumping duty investigations. In investigations under Article 13:10 it was much simpler for respondents to provide the necessary data than in a normal anti-dumping duty investigation and it was therefore reasonable to give respondents a shorter period of time to return the questionnaires. In the investigations carried out so far, no respondent had complained about the time-limits set for the replies to the questionnaires.

- (ix) Regarding the procedural aspects of investigations under Article 13:10 of Regulation No. 2176/84, as amended, he said that, apart from the time limits for replies to questionnaires, the same provisions applied to this type of investigations as to normal anti-dumping duty investigations. Thus, parties could make written submissions, request hearings and inspect the file. All decisions taken under Article 13:10 had been duly motivated and published in the Official Journal of the European Communities.
- (x) In reply to the remarks of the representative of Japan on the problem of certificates of origin, he said that it was true that in one case a subsidiary of a Japanese company which was carrying out assembly operations in an EEC member State had presented for a particular sub-assembly a certificate of origin and alleged that this sub-assembly originated in the EEC. However, no administration was bound by such certificates of origin, which were usually granted by chambers of commerce. The EEC authorities had carefully examined the origin of all parts of this sub-assembly and had found that it was not of EEC origin.
- (xi) On the question of a possible retroactive application of the duties provided for under Article 13:10, he said that the duties which had so far been introduced under this provision had been applied only prospectively, with effect from the date of publication of the Regulations by which they had been introduced.
- (xii) Regarding the nature of undertakings which could be accepted in proceedings under Article 13:10 of the amended EEC anti-dumping Regulation, he said that it followed from the differences in scope and purpose between this type of investigation and normal anti-dumping duty investigations that undertakings accepted in the context of proceedings under Article 13:10 were different from undertakings in normal anti-dumping duty investigations. In a proceeding under Article 13:10 price undertakings were not relevant; the essential element in determining whether a proposed undertaking was acceptable was whether the undertaking would eliminate the circumvention of an anti-dumping duty. He noted that in one case the EEC had already accepted such an undertaking.

26. The representative of the United States said that his delegation fully supported the view of the EEC that the General Agreement allowed contracting parties to take measures to avoid circumvention of anti-dumping duties. The right to take such measures followed from Article VI and Article XX(d) of the General Agreement. Under Article VI contracting parties had the right to take anti-dumping measures and under Article XX(d) there existed the right to take measures to address circumvention or evasion of anti-dumping duties. While he recognized that under Article VI and in the Agreement requirements existed that determinations of dumping

and injury be made in respect of like products, he did not agree that there was a need to carry out a new investigation for each single component included in an assembled finished product. In the view of his delegation, the important criteria in a situation where the imposition of an anti-dumping duty on a finished product was followed by assembly operations in the importing country were (a) whether the imported parts and components, considered as a whole, were equivalent to a like product, and (b) whether the finished product resulting from the assembly operation was in fact a like product. If these criteria were met, duties could legitimately be applied to such imported parts and components. The United States had experienced problems caused by attempts to circumvent anti-dumping duties similar to the problems with which the EEC had been confronted. On the criteria stipulated in Article 13:10 of Regulation No. 2176/84, as amended, he said that his delegation agreed that the amount of imported parts, the amount of labour, the value added and the timing of the investment decision were important elements in the examination of whether an assembly operation was a legitimate investment or an attempt to circumvent anti-dumping duties. He found the point made by Japan on the alleged problem of obtaining the necessary parts in the EEC, difficult to understand. If parts were not available and one nevertheless chose to assemble the product from imported parts, one ought to be willing to pay the anti-dumping duty. If, however, the investment was legitimate and the assembly operation took place on the basis of parts procured locally, the product resulting from such assembly operation should be treated as originating in the country where the assembly operation took place. In the view of his delegation the discussions in the Committee should focus on questions of principle, while details of specific cases in which the EEC had taken measures to avoid circumvention should be discussed on a bilateral basis by the Parties involved.

27. The representative of Hong Kong said that in the discussion of this matter new concepts had been used and issues raised which were completely new. One example was the view expressed by the EEC and the United States that in certain situations, finished products and unassembled components of such products, if considered as a whole, could be regarded as like products. His delegation considered that, if one accepted this interpretation, this would upset the balance between the interests of exporting countries and the interests of importing countries. Another new issue not covered by the Agreement and which could entail a similar risk was the question of the sourcing of components. He believed that new rules were necessary on these issues and that such new rules could probably only be developed in the context of the Multilateral Trade Negotiations. In any event, it was the responsibility of those who had suggested these issues to demonstrate how under new rules the interests of exporting countries could be safeguarded. He agreed with the representative of the United States that the discussion in the Committee should focus on issues of principle rather than on details of individual cases.

28. The representative of Japan said that at this meeting and at the special meeting held on 6 May 1988, his delegation had pointed to a number of problems raised by the amendment to the EEC anti-dumping Regulation in terms of the General Agreement and the Agreement. The explanation

provided by the EEC was by no means satisfactory. The amendment provided for the imposition of anti-dumping duties on products assembled or produced in the EEC irrespective of whether such products were dumped or causing injury; furthermore, it operated as a local content requirement. Japan could not accept measures which undermined the principles of the General Agreement and the Agreement, the purposes of which were different from the original purpose, i.e. the avoidance of circumvention of anti-dumping duties. The EEC had already applied the amendment and imposed duties on electronic typewriters and electronic scales produced or assembled in the EEC by four firms related to Japanese companies, while an investigation concerning photocopying machines was pending. Thus, the amendment had actually distorted local production and trade in parts. He urged the EEC to withdraw its decision to apply duties on electronic typewriters and electronic scales and to repeal Article 13:10 of Regulation 2176/84, as amended, or bring this amendment into conformity with the General Agreement and the Agreement. His delegation hoped that this problem could be resolved promptly and reserved all its rights under the General Agreement and the Agreement, including its right to invoke dispute settlement procedures with respect to this matter.

29. The Committee took note of the statements made. The Chairman concluded the discussion of Article 13:10 of EEC Regulation No. 2176/84, as amended, by saying that it was clear that there continued to be divergences of views between Parties on this matter and that the Committee would revert to it at its next regular meeting. He invited delegations wishing to raise further questions on the amendment to do so in writing, through the secretariat, by 8 July 1988 and requested the delegation of the EEC to reply to such possible additional questions by 9 September 1988.

(ii) Australia (Australian Customs Notice No. 87/169, document ADP/1/Add.18/Rev.1/Suppl.1)

30. The Chairman recalled that Australian Customs Notice No. 87/169, which described new procedures for the processing of anti-dumping and countervailing duty petitions accepted on or after 1 September 1987, had been before the Committee at its meeting held in October 1987. At that meeting the delegation of the EEC had reserved its right to revert to this Notice at the next regular meeting of the Committee (ADP/M/20, paragraph 30). A written question on the Notice had recently been received from the delegation of Sweden (ADP/W/171).

31. The representative of Australia said that at its last regular meeting, his delegation had informed the Committee of his Government's intention to submit to the Australian Parliament proposals for legislative amendments to effect certain procedural changes which had been decided by the Government following the publication of the Report by Professor Gruen in March 1986. These proposals were now under consideration in the Australian Parliament and he would provide the secretariat with copies of these proposals for consultation by interested delegations. Regarding the question raised by

Sweden, he said that his delegation had submitted a written reply to this question.¹

32. The representative of Sweden thanked the delegation of Australia for its written reply and said that he had no further comments to make on the Notice.

33. The representative of the EEC requested a clarification of the operation of the time-limits specified in Customs Notice 87/169 for the consideration of whether a complaint was adequately documented and constituted a prima facie case warranting the initiation of an investigation. In particular, he wished to know what would be the status of a petition if the relevant authorities had not taken a decision, within the period of 30 days specified in the Notice, on whether or not the petition was adequately documented.

34. The representative of Australia said that the Notice provided for a period of 30 days during which the Customs Service would examine whether the petition was sufficiently documented and a second period of 40 days during which the Customs Service would examine whether the petition constituted a prima facie case warranting the opening of an investigation. Under the procedures outlined in the Notice, the Customs Service was required to take a decision within these periods; this requirement was also included in the legislative amendments currently under consideration in the Australian Parliament.

35. The Committee took note of the statements made. The Chairman proposed that, in view of the fact that the new Australian anti-dumping legislation would be enacted shortly, the Committee conclude its discussion of the Notice and start its examination of this new legislation at the next regular meeting. It was so agreed.

(iii) Brazil (Customs Policy Commission Resolution No. 00-1227, document ADP/1/Add.26/Suppl.1 and Corr.1)

36. The Chairman recalled that this Resolution, which contained the Brazilian anti-dumping regulations, had been discussed by the Committee at its meeting in October 1987 (ADP/M/20, paragraphs 34-37). At that meeting the delegations of Finland and Canada had made a number of comments and raised some questions on these regulations. Subsequent to that meeting written questions had been submitted by the delegation of Canada (ADP/W/170).

37. The representative of Brazil replied to the questions formulated by the delegation of Canada in document ADP/W/170; these replies appear in document ADP/W/178. In response to a question asked by the delegation of

¹See document ADP/W/177.

Finland (ADP/M/20, paragraph 34), he said that if under Article 3 of the Resolution securities were required by way of provisional measures, such securities could take the form of cash deposits or bonds.

38. The representative of Canada thanked the delegation of Brazil for the replies it had provided to the questions submitted by the Canadian delegation. In view of the late receipt of these replies, he wished to have the opportunity to revert to the Brazilian anti-dumping regulations at the next regular meeting of the Committee.

39. The Committee took note of the statements made and agreed to revert to Customs Policy Commission Resolution No. 00-1227 at its next regular meeting.

- (iv) Japan (Guidelines for the conduct of anti-dumping and countervailing duty investigations, document ADP/1/Add.8/Suppl.1)

40. The Chairman said that at the meeting held in October 1987 several delegations had indicated that they wished to have more time to study document ADP/W/160 which contained replies by Japan to written questions on the Guidelines submitted by the delegations of Canada (ADP/W/147), the EEC (ADP/W/148), the United States (ADP/W/150) and Brazil (ADP/W/153).

41. The representative of the EEC thanked the delegation of Japan for its written replies to the questions by the EEC. His delegation remained concerned about the broad language used in paragraph 1(2) of the Guidelines and doubted whether this paragraph was in conformity with Article 5:1 of the Agreement. The use of the word "usually" seemed to indicate that, in addition to the parties listed in this paragraph, there could be other domestic parties who would have the right to file anti-dumping duty petitions. Furthermore, his delegation was concerned about the fact that this paragraph allowed labour unions to file anti-dumping duty petitions. The reply given by the delegation of Japan on this point (ADP/W/160, page 5) had not alleviated these concerns. On the contrary: if, as stated in the reply of the Japanese delegation, labour unions in Japan were in general organized on a company-specific basis, it followed that these unions represented employees active in various industries because the companies belonged to a variety of industries. It was, therefore, difficult to see how a labour union, organized on a company-specific basis, could file a petition on behalf of a particular industry.

42. The representative of Brazil said his delegation was satisfied with the answers provided by the delegation of Japan to the written questions by his delegation.

43. The representative of Japan referred to paragraph 12 of the Guidelines which provided the following regarding the nature of the Guidelines:

"Systems concerning countervailing duty and anti-dumping duty shall be operated in accordance with the General Agreement on Tariffs and Trade, the SCM Code, the AD Code and relevant domestic laws and regulations. The purpose of these Guidelines is to supplement the present provisions and to contribute to the smooth operation of the systems. Furthermore, in applying the above Agreement and Codes, their internationally established interpretations shall be taken into account."

Consequently, the Guidelines could not override the Japanese domestic anti-dumping law or the provisions of the Agreement. In response to the remarks on paragraph 1(2) of the Guidelines by the representative of the EEC, he said that this paragraph also required that petitions be filed by or on behalf of an industry in Japan. Thus, in case a petition was filed by a labour union, the petition still had to be filed on behalf of an industry in Japan.

44. The representative of the EEC said that, although his delegation remained concerned about certain aspects of the Guidelines, it would not insist that this matter be kept on the agenda of the Committee.

45. The representative of Australia asked whether the conclusion of the examination of the Japanese Guidelines would mean that it would no longer be possible to revert to the Guidelines at a future meeting.

46. The Chairman said that at each regular meeting of the Committee Parties had the possibility to make comments or raise questions on the anti-dumping laws and/or regulations of any Party under the item "laws and/or regulations of other Parties".

47. The Committee took note of the statements made and the Chairman said that the Committee had concluded its examination of the Japanese Guidelines for the conduct of anti-dumping and countervailing duty investigations.

(v) Korea (Article 10 of the Customs Act and Article 4:2-7 and 4:17 of the Presidential Decree of the Customs Act, document ADP/1/Add.13/Rev.1)

48. The Chairman recalled that the anti-dumping legislation of Korea had been the subject of discussions in the Committee at its meetings held in October 1986 and in June and October 1987. Written questions on this legislation had been received from the delegations of the EEC (ADP/W/135), Australia (ADP/W/137) and the United States (ADP/W/149). Replies by the delegation of Korea to these questions had been circulated in documents ADP/W/145, 146 and 156 respectively. At the meeting of the Committee in October 1987 the delegation of the EEC had made further comments on the provisions in the Korean anti-dumping legislation for the initiation ex officio of anti-dumping duty investigations (ADP/M/20, paragraph 43); at the same meeting the representative of the United States had raised an additional question concerning the manner in which the Presidential Decree defined the domestic parties who were entitled to file petitions for the opening of anti-dumping duty investigations (ADP/M/20, paragraph 44).

49. Referring to the comments made at the meeting in October 1987 by the delegation of the EEC regarding the criteria for the self-initiation of anti-dumping duty investigations, the representative of Korea explained that Article 10:3 of the Korean Customs Act allowed the Minister of Finance to open an investigation on his own initiative if there was sufficient evidence of dumping and material injury resulting therefrom and if the Minister considered the initiation of an investigation necessary. He believed that there was no discrepancy between this provision of the Customs Act and Article 5:1 of the Agreement. Article 10:3 of the Customs Act had not been used so far by the Korean authorities and if in the future they would invoke this provision, they would apply it in a manner consistent with Article 5:1 of the Agreement. Regarding the issue of the categories of domestic parties entitled to file anti-dumping duty petitions, he said that under the existing law labour unions and wholesalers could file an anti-dumping duty petition if they acted on behalf of the industry affected. His Government was currently examining whether it was appropriate to amend the provisions in the Korean anti-dumping law on the petition requirements and any changes which might result from this examination would be duly notified to the Committee. He noted that the Committee had been discussing the Korean anti-dumping legislation since October 1986 and that several delegations had raised some points of concern on this legislation. The Korean Government was determined to observe the requirements of the Agreement when taking anti-dumping actions; in this respect he referred to a provision of the Korean Customs Act which stipulated that priority had to be given to international obligations which were binding upon Korea. However, in view of the concerns expressed on the Korean legislation his Government intended to amend this legislation in the course of the year and he proposed that the Committee conclude its examination of the existing legislation and revert to the Korean legislation when the amendments had been adopted.

50. The representative of the EEC said his delegation remained concerned about the wording of Article 10:3 of the Korean Customs Act because this provision did not indicate, as required by Article 5:1 of the Agreement, that self-initiation of an investigation should take place only in special circumstances. Furthermore, his delegation continued to have doubts concerning the provision in the Korean legislation which allowed wholesalers and labour unions to file anti-dumping duty petitions. Nevertheless, his delegation did not object to the conclusion of the Committee's discussion of the Korean anti-dumping legislation.

51. The Committee took note of the statements made and the Chairman said that the Committee had concluded its examination of the anti-dumping legislation of Korea.

(vi) Pakistan (Ordinance No. III of 1983, document ADP/1/Add.24)

52. The Chairman recalled that the Committee had begun to consider this Ordinance at its meeting held in April 1986 (ADP/M/17, paragraphs 6-11). After that meeting, written questions on the Ordinance had been received from the United States (ADP/W/117), Australia (ADP/W/120) and the EEC (ADP/W/124). At the meeting in October 1986 the representative of

Pakistan had replied to some of these written questions and indicated that he would provide replies to the remaining questions at a future meeting of the Committee (ADP/M/18, paragraphs 12-24). At its two regular meetings held in 1987 the Committee had postponed further discussion of the Pakistan anti-dumping legislation for practical reasons (e.g. ADP/M/20, paragraph 48).

53. The representative of Pakistan said that his delegation had replied to most of the written questions on the Ordinance at the meeting held in October 1986. Since then his Government had decided to revive the Tariff Commission with a view to providing a co-ordinated response to the problems of domestic industries in Pakistan. The rules and procedures of the Commission would be fully transparent and duly published. He further said that, while the Ordinance had been in force since 1983, no anti-dumping actions had been taken so far. In the absence of a practice of implementation of the Ordinance, he considered that it would be difficult for his Government to revise the Ordinance and he, therefore, proposed that the Committee conclude its discussion of the Pakistan anti-dumping legislation and revert to this matter if and when implementing regulations had been adopted pursuant to Section 11 of the Ordinance.

54. The representative of the EEC pointed to the fact that the Pakistani anti-dumping legislation had been under consideration in the Committee since April 1986 and requested that the delegation of Pakistan provide written replies to all the questions which had been raised on this Ordinance.

55. The representative of the United States said his delegation had been somewhat reassured by the statement by the representative of Pakistan that existing and new anti-dumping legislation would be applied in a transparent manner. He noted that his Government had heard suggestions that the Pakistani Government was contemplating the introduction of legislation allowing for the imposition of embargoes on imports of dumped imports. His delegation would follow this matter closely.

56. The representative of Pakistan said that most of the issues on which questions had been raised which had not yet been answered by his delegation would be dealt with when implementing regulations were adopted pursuant to Section 11 of the Ordinance.

57. The representative of the EEC reiterated his request for written replies by the delegation of Pakistan to the questions which had been raised in the Ordinance.

58. The Committee took note of the statements made and the Chairman concluded by saying that the Committee would revert to the anti-dumping legislation of Pakistan at its next regular meeting. He invited delegations wishing to raise further questions on this legislation to do so in writing by 8 July 1988 and requested the delegation of Pakistan to provide written replies to all outstanding questions and possible additional questions by 9 September 1988.

- (vii) India (The Customs Tariff (Second Amendment) Act of 1982 and the related Customs Tariff Rules of 1985, document ADP/1/Add.25 and Corr.1)

59. The Chairman recalled that the anti-dumping legislation of India had been discussed by the Committee at its meetings held in April and October 1986 (ADP/M/17, paragraphs 12-17, and ADP/M/18, paragraphs 25-37, respectively) and in June and October 1987 (ADP/M/19, paragraphs 42-46, and ADP/M/20, paragraphs 49-53, respectively). Written questions on the Indian anti-dumping legislation had been submitted by the United States (ADP/W/118), Australia (ADP/W/120) and the EEC (ADP/W/121). At the meeting held in October 1986 the representative of India had replied to some of these written questions (ADP/M/18, paragraphs 26-32). At the meetings held in June and October 1987 the delegations of the EEC and the United States had indicated that there were some aspects of the Indian anti-dumping legislation on which they would like to see some further clarification (ADP/M/19, paragraphs 44-45 and ADP/M/20, paragraph 51, respectively).

60. The representative of India said that the anti-dumping legislation of his country had been on the agenda of the Committee's regular meetings since April 1986. In the Committee's discussion of this legislation his delegation had repeatedly assured the members of the Committee that the application of anti-dumping measures by his Government would take place in full conformity with the Agreement. In reply to a question raised by the EEC delegation at the meeting in October 1987 regarding the factual basis of preliminary determinations under Section 13 of the Customs Tariff Rules (ADP/M/20, paragraph 51), he said that Section 13, which had not yet been applied, was intended to enable the investigating authorities to take prompt action in cases where positive evidence was available of the existence of dumping, injury and a causal link between such dumping and injury. The provisional measures provided for in this Section were intended to forestall further damage which would be difficult to repair. His authorities envisaged to apply this Section where the affected industry was in the unorganized sector or was too small to be able to provide all necessary information. If, upon the completion of the investigation, a final determination would be made that there was insufficient evidence of the existence of dumping, injury and a causal link between such dumping and injury, any provisional duty imposed pursuant to Article 13 would be refunded forthwith in accordance with Section 22 of the Customs Tariff Rules. In the preliminary phase of the investigation the designated authority would be assisted by an interministerial advisory committee composed of representatives of the Ministry of Commerce, the Ministry of Industry, the Department of Revenue, the Directorate-General of Technical Development and the administrative ministry in charge of the item subject to investigation. Information provided by these representatives, information furnished by interested parties such as exporters, importers and the domestic industry as well as authenticated published material would be taken into account. Thus, a sufficient factual basis would be provided to make a preliminary determination and there was, therefore, no inconsistency between Section 13 and the rules of the Agreement. He concluded by saying that, in accordance with Article 10 of the Agreement, Section 13 provided for the application of provisional measures only if necessary.

61. The representative of the EEC thanked the representative of India for the further explanation which he had given; he requested the representative of India to clarify whether the information gathering which preceded the preliminary determination took place in the context of a formal investigation process.

62. The representative of India said it was difficult to say how Section 13 of the Customs Tariff Rules would operate in practice since it had not yet been applied. The intention behind this provision was to ensure that the preliminary determinations be made on the basis of sufficient evidence of the relevant factors; this evidence included information provided by interested parties. He considered that the provisions of Section 13 were sufficiently formal and said that preliminary investigations would be carried out in such a manner as to enable all interested parties to provide information and make their views known.

63. The representative of the EEC said that his delegation was satisfied with the additional explanations provided by the representative of India.

64. The representative of the United States said his delegation had some concerns regarding the organization of the information gathering process under Section 13 of the Indian Customs Tariff Rules and expressed the hope that in any anti-dumping duty investigation the Indian authorities would comply with the relevant procedural requirements of the Agreement and allow interested parties to provide information and have access to information used by the investigating authorities so as to enable the interested parties to effectively defend their interests.

65. The Committee took note of the statements made and the Chairman said that the Committee had concluded its examination of the Indian anti-dumping legislation.

(viii) Laws and/or regulations of other Parties

66. No statements were made under this item of the agenda. The Chairman said that the Committee would keep this item on its agenda in order to allow Parties to revert to aspects of laws and/or regulations of other Parties at a later stage. He also reminded the members of the Committee that, with respect to laws and/or regulations to which the Committee had agreed to revert at its next regular meeting, the deadlines for submission of written questions and replies were, respectively, 8 July and 9 September 1988.

D. Semi-annual reports by the United States and Korea of anti-dumping actions taken within the period 1 January-30 June 1987 (ADP/34/Add.6 and 7, respectively)

67. The Chairman said that at its regular meeting held in October 1987 the Committee had agreed to revert to these two reports in view of the fact that they had been received very late (ADP/M/20, paragraph 73).

68. No comments were made on the report by the United States (ADP/34/Add.6).

69. The representative of Korea said that in the one investigation mentioned in ADP/34/Add.7, a negative injury determination had been made in February 1988 and the investigation had, consequently, been terminated without imposition of any measures.

70. The Committee took note of the statement made by the representative of Korea.

E. Semi-annual reports of anti-dumping actions taken within the period 1 July-31 December 1988

71. The Chairman drew the attention of the members of the Committee to document ADP/35/Add.1 which listed Parties who had informed the secretariat that during the period 1 July-31 December 1987 they had not taken any anti-dumping actions: Austria, Brazil, Finland, Hong Kong, Hungary, India, Japan, Norway, Pakistan, Romania, Singapore and Switzerland. More recently the delegations of Korea, Poland and Sweden had also informed the secretariat that their countries had taken no anti-dumping actions during this period. Anti-dumping actions had been notified by Australia, Canada, the EEC and the United States. No reports had been received from Czechoslovakia and Egypt and the Chairman urged these Parties to submit their reports as soon as possible.¹

72. The Committee examined the semi-annual reports in the order in which they had been circulated:

EEC (ADP/35/Add.2)

73. The representative of Romania made a number of comments on an anti-dumping investigation initiated by the EEC in October 1987 concerning imports of urea from Romania (ADP/35/Add.2, page 4). In the view of his delegation, this investigation formed part of a series of unprecedented actions of a protectionist nature. In October 1986 the EEC had opened an anti-dumping duty investigation of imports of urea from a number of countries not including Romania. In December 1986 the United Kingdom had suspended the liberalization of importation of urea from several countries, including Romania. He requested the delegation of the EEC to explain the legal basis of the unilateral application of quantitative import restrictions during an anti-dumping duty investigation and why imports from Romania, a country not involved in the pending investigation of imports of urea, were also subject to these restrictions. He further noted that in April 1987, the EEC had notified to the CONTRACTING PARTIES its intention to consult with Poland, Romania and Hungary under the safeguard clauses contained in the Protocols of Accession to the General Agreement of these

¹See document ADP/35/Add.1/Rev.1

countries with respect to problems experienced in certain EEC member States as a result of increased imports of urea from these three countries.¹ However, no consultations on this matter had actually taken place between the EEC and Romania and in April 1987 France had unilaterally taken protective measures with respect to imports of urea from Romania. In November 1987 the EEC had accepted undertakings of a quantitative nature in the context of the anti-dumping duty investigation of imports of urea initiated in October 1986. Furthermore, in October 1987 the EEC had extended the anti-dumping duty investigation to include imports of urea from six additional countries, including Romania. In April 1988 France had again imposed unilateral protective measures with respect to imports of urea from Romania. The representative of Romania considered that the use of quantitative export restraints in an anti-dumping duty investigation was inconsistent with the relevant provisions of the Agreement. In this connection, he pointed out that Article 7 of the Agreement did not permit undertakings of a quantitative nature. He also noted that the exporters from whom these quantitative undertakings had been accepted by the EEC accounted for more than 50 per cent of the imports of urea into the EEC, which had made it more difficult for the additional exporters subject to the extended investigation to offer undertakings relating to their export price, as envisaged in the Agreement. Furthermore, the application of unilateral import restrictions by some EEC member States on imports of a product subject to an anti-dumping duty investigation was inconsistent with the Agreement and with the General Agreement. His delegation would submit written questions on this case and he requested the EEC to reply to these questions well in advance of the next regular meeting so as to allow the Committee to revert to this matter at its meeting in October 1988.

74. The representative of the EEC said his delegation would reply in writing to the questions announced by the representative of Romania. By way of preliminary reaction, he made the following comments on the statement made by the representative of Romania. The anti-dumping duty investigation of imports of urea had been carried out in two stages. The first stage, involving imports from eight countries, had been terminated in November 1987. As a result of a further complaint, exports of six other countries had become subject to an investigation initiated in October 1987. He believed that the initiation of a new investigation involving imports of the same product from other countries was in full conformity with the Agreement, given that there had been sufficient evidence to justify the initiation of this second investigation. Regarding the measures by some EEC member States referred to by the representative of Romania, he said that it was not appropriate for this Committee to discuss measures of a safeguard nature taken by some of the EEC member States. On the undertakings accepted in connection with the anti-dumping duty investigation terminated in November 1987, he said that it was the view of the EEC that the Agreement in Article 7 permitted price undertakings and undertakings to cease exports; if a cessation of exports was permitted, it was only logical to conclude that a quantitative limitation of exports,

¹See Documents L/6154, 6155 and 6156.

which constituted a less restrictive measure than the cessation of exports, was in conformity with the intention of the drafters of Article 7 of the Agreement. Furthermore, the undertakings accepted in this case had been proposed by the exporters concerned.

75. The representative of Czechoslovakia said he shared the views expressed by the representative of Romania concerning the acceptance by the EEC of quantitative undertakings in the context of the anti-dumping duty investigation of imports of urea. His delegation considered that there was no legal basis for quantitative undertakings in the Agreement; Article 7 only permitted undertakings with respect to prices. He further pointed to the fact that in this investigation the EEC had made an affirmative finding of injury in relation to the allegedly dumped imports of urea from Czechoslovakia despite the fact that those imports accounted for only 0.88 per cent of domestic consumption in the EEC; it was difficult to understand how any domestic industry could suffer injury within the meaning of Article 3 of the Agreement as a result of such a small amount of imports.

76. The representative of Hong Kong said he was surprised by the manner in which the representative of the EEC had argued that quantitative undertakings were permitted under the Agreement and he requested the EEC representative to further elaborate on this point.

77. The representative of Japan said his delegation shared the concerns expressed by the representatives of Romania and Czechoslovakia; he urged Parties to the Agreement not to use anti-dumping measures as substitutes for safeguard measures.

78. The representative of Hungary said that in 1987 the EEC had applied a selective safeguard measure on imports of urea from Hungary on the basis of the Protocol of Accession of Hungary to the General Agreement. In accordance with the provisions of this Protocol, consultations had taken place on this matter between the EEC and Hungary in May and June 1987. Although in these consultations Hungary had expressed its view that the conditions for the application of the safeguard measure were not met, it had recognized that the domestic industry in the EEC was facing certain problems, not caused by imports of urea from Hungary, and had agreed to continue the process of bilateral consultations. However, instead of continuing the consultation process, the EEC had decided to start an anti-dumping duty investigation of imports of urea from Hungary in October 1987. His delegation regretted that the EEC had opened this investigation and reserved his delegation's rights on this matter.

79. The representative of Australia said that, in view of the interest expressed by a number of delegations, this matter should remain on the agenda of the Committee. In relation to the various statements made, he said that the fact that the Agreement was silent on a particular practice did not necessarily mean that this practice was prohibited. He further

referred to Article 7:4 of the Agreement, which provided that exporters were not obliged to offer undertakings, and asked how the EEC would interpret this provision in the case of quantitative undertakings.

80. The representative of the EEC said that Article 7:1 of the Agreement constituted the legal basis of his delegation's view that quantitative undertakings were permitted in anti-dumping duty investigations and reiterated that a quantitative limitation of exports was a less stringent measure than the complete cessation of exports permitted in Article 7:1. In response to the comments made by the representative of Czechoslovakia, he said that the EEC authorities had been informed by the Czechoslovakian exporter involved in the investigation of imports of urea that his offer of a quantitative undertaking had been made with the full agreement of the Czechoslovakian authorities. In reply to the question by the representative of Australia, he said that offers of undertakings were voluntary. On the issue of the market share of the imports from Czechoslovakia he said that, while it was true that this share was small, his authorities had concluded that an assessment of the effect of the dumped imports on the basis of an aggregation of all dumped imports from all countries concerned was appropriate given the comparability of the imported products and the extent to which each of the imported products competed in the EEC with the like product of the domestic industry in the EEC.

81. The Committee took note of the statements made and agreed to revert to this matter at its next regular meeting. The Chairman invited the delegation of Romania to submit its questions in writing by 8 July 1988 and requested the delegation of the EEC to reply in writing by 9 September 1988.

Canada (ADP/35/Add.3)

82. The representative of Romania made a number of comments on a review proceeding initiated by the Canadian authorities on 31 December 1987 with respect to an anti-dumping duty in effect on imports of carbon and alloy steel plate from Romania (ADP/35/Add.3, page 9). Although this duty had been in force since 1983, the review proceeding related only to the determination of the normal value and did not include an examination of the injury aspect. Regarding the issue of the determination of the normal value, he said that the Canadian authorities had considered that it would not be appropriate to use Romanian home market prices. In such a situation the Agreement and the General Agreement required that the alternative method used to calculate the normal value be reasonable and appropriate. The problems in this particular case had resulted from the fact that the Canadian authorities had not been consistent in their choice of the third country of which the home market sales prices served as the basis for the determination of the normal value. Initially, the Canadian authorities had selected the Federal Republic of Germany as the analogue country; the normal value calculated on the basis of the home market sales of the like product in the Federal Republic of Germany had made it possible for the Romanian exporter to continue to export a modest quantity to Canada. After one year, however, the Canadian authorities had

unilaterally decided to choose Belgium as the analogue country and this had made it impossible for the Romania exporter to continue to export to Canada. The Romanian authorities had communicated to the Canadian authorities their view that in this case the use of home market prices in a market-economy country had proven not to be a reasonable and appropriate basis to calculate the normal value. His authorities had suggested that the domestic price of the like product in Canada be used as the basis to calculate the normal value, as provided for in Article 20 of the Canadian Special Import Measures Act. The appropriateness of this proposed method had been recognized in the Report¹ of the Working Party on the Accession of Romania to the General Agreement. This proposal had been rejected by the Canadian authorities. He requested a clarification from the Canadian delegation of the precise methodology applied by the Canadian authorities in the current review.

83. The representative of Canada explained that in the case referred to by the Romanian representative his authorities had selected Belgium as the appropriate analogue country because they considered that the home market prices of the product in question in the Federal Republic of Germany were too high. He noted that Canada continued to import carbon and alloy tool steel plate from Belgium, which implied that the normal value calculated for the Romanian exports on the basis of market prices in Belgium was not so high as to prevent imports into Canada of this product from Romania. When the Canadian authorities used a third country for the purpose of determining a normal value, they were always prepared to discuss the choice of the appropriate third country and the fact that in this case they had chosen Belgium instead of the Federal Republic of Germany was an illustration of their flexibility in this respect. Regarding the methodology used in the determination of normal values based on market prices in a third country, he said that confidentiality requirements imposed a limit on the extent to which the precise data used in such a calculation could be disclosed to interested parties. In the determination of normal values on the basis of home market sales prices in a third country the necessary adjustments were made to ensure proper comparisons. After the determination of the normal value the exporter would be informed of the precise legal provisions of the Special Import Measures Act under which the normal value had been established. Furthermore, the Canadian anti-dumping duty legislation provided that the counsel for the exporters could have access to the confidential information used in the determination of the normal value. Regarding the point made by the Romanian representative on the fact that the review proceeding did not involve an injury determination, he said that the Canadian legislation allowed any interested party to request the Canadian Import Tribunal to review a finding with a view to having it amended or rescinded. Such a request could be made at any time and the Tribunal would conduct the review if warranted. He concluded by saying that his delegation was prepared to discuss this matter further on a bilateral level with the Romanian delegation.

¹BISD 18S/94.

84. The representative of Finland agreed with the representative of Canada that in cases where normal values were established on the basis of home market prices in a third country account had to be taken of the necessity to preserve the confidential character of information provided by individual enterprises in such a third country. In cases in which Finnish authorities determined normal values by using information relating to prices in a third country, their practice was to provide the exporters concerned with data on the general level of prices obtaining in the market of the third country for the product in question but they did not disclose information on home market prices of individual enterprises.

85. The representative of Canada said that his authorities followed a similar practice; while they did not provide the exporters with data on prices of specific enterprises in the third country, they would communicate to the exporters the normal values determined on the basis of those data.

86. The representative of Czechoslovakia said he shared the views expressed on this matter by the representative of Romania and recalled that his delegation had made similar comments on this case at the regular meeting of the Committee held in June 1987 (ADP/M/19, paragraph 55). His delegation's views on this case had not changed since then and he noted that during the last three years Czechoslovakia had not exported any carbon and alloy tool steel plates to Canada.

87. The Committee took note of the statements made.

United States (ADP/35/Add.4)

88. The representative of Sweden made a number of remarks on an anti-dumping duty investigation of imports into the United States of stainless steel hollow products from Sweden (ADP/35/Add.4, page 16). The Swedish authorities were of the view that both the determination made by the United States International Trade Commission (USITC) and the determination made by the United States Department of Commerce in this investigation were questionable. Before addressing the principal controversial issues raised by this case, he said that his delegation was surprised by the fact that the USITC and the Department of Commerce had made different determinations as to what constituted the "like product". Whereas the Department of Commerce had found that seamless stainless steel hollow products were like welded stainless steel hollow products, the USITC determined that seamless and welded stainless steel hollow products were two separate like products. In addition to this issue, he raised four other issues of principle which were of concern to his delegation. Firstly, he said that one of the problems in this investigation concerned the question of whether the petitioner had filed the petition on behalf of the relevant domestic industry. In its final affirmative dumping determination the Department of Commerce had explained its approach to this issue as follows:

"Neither the Act nor the Commerce Regulations requires a petitioner to establish affirmatively that it has the support of a majority of a particular industry. The Department relies on petitioner's

representation that it has, in fact, filed on behalf of the domestic industry until it is affirmatively shown that this is not the case. Where domestic industry members opposing an investigation provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will review whether the opposing parties do, in fact, represent a major proportion of the domestic industry. In this case,¹ we have not received any opposition from the domestic industry."¹

In the view of the Swedish authorities the investigating authorities were required by Article 5 of the Agreement to satisfy themselves that an anti-dumping duty petition had the support of a major proportion of the domestic industry concerned before they could initiate an anti-dumping duty investigation. This view was shared by other Parties, as illustrated by the replies given by the representative of Australia to questions from the delegation of Sweden (supra, paragraph 31 and document ADP/W/177). The approach of the Department of Commerce to this issue had the effect of requiring parties opposing the initiation of an investigation to provide evidence showing that a petition was not supported by a majority of the domestic producers and was therefore not in conformity with Article 5 of the Agreement. Secondly, the representative of Sweden questioned the affirmative injury determination made in this case by the USITC. Regarding one of the factors examined by the USITC, the volume of the dumped imports, he noted that Article 3:2 of the Agreement required the investigating authorities to consider whether there had been a significant increase in dumped imports. However, during the period covered by the USITC investigation the volume of imports into the United States from Sweden of the products under consideration had declined both in absolute and in relative terms. It was difficult to understand how this declining import volume could have led to an affirmative injury determination by the USITC. In relation to this injury determination he also pointed out that there had been a discrepancy between the period covered by the investigation of the USITC (1984-end June 1987) and the period covered by the investigation by the Department of Commerce (May 1986-October 1987). This raised a question of principle, namely whether it was reasonable to use two different investigation periods, given the substantial exchange rate fluctuations which had taken place over the last years. He further referred to Article 3:3 of the Agreement which required that in an injury investigation the examination of the impact of the imports on the industry concerned include an evaluation of all relevant economic factors. In this case the USITC had excluded from its definition of the relevant domestic industry so called redrawers whose production and deliveries had increased during the period 1984-1986. As a result, the decline in the market share of the domestic industry in the United States had been overestimated. Thirdly, the representative of Sweden said that important information had been treated as confidential by the United States authorities and no summary of this confidential information had been provided to the

¹52 Fed. Reg. 37812 (9 October 1987).

exporters. In this respect, he mentioned in particular the fact that information on the profitability of the domestic industry had been treated as confidential by the USITC and that the only information provided to exporters was that, in general, the level of profits was low. Fourthly, he asked if and how the United States authorities had taken into account the substantial exchange rate fluctuations which had occurred during the investigation period in the calculation of the dumping margins. In this respect he said that the provisions of Article 2:6 of the Agreement should be taken into consideration.

89. The representative of the United States said that in view of the broad range of issues raised by the delegation of Sweden with respect to this particular case, it might be useful if the Swedish delegation could provide its questions and observations in writing. Regarding the issue of the standing of the petitioner, he said that in this case his authorities had initiated the investigation on the basis of a complaint filed by one producer. As had been explained in the passage of the Federal Register notice quoted by the representative of Sweden, the United States authorities in most cases took the representation of the petitioner at its face value until at some later point information became available which affirmatively showed that the petition had not the support of a majority of the domestic producers. His authorities believed that, given the degree of transparency of the investigation process, silence on the part of other domestic producers could be interpreted as consent to the initiation of an investigation. He noted that in this particular case the United Steel Workers Union had, at a later stage, joined as a co-petitioner which confirmed that the petition had been filed on behalf of the domestic industry.

90. Regarding the comments made by the representative of Sweden on the determinations made by the USITC and the Department of Commerce as to what constituted the "like product", the representative of the United States said that Article 2:2 of the Agreement distinguished between "the product under consideration" and the "like product"; the former meant the imported product subject to investigation while the latter was the domestic product to be compared with the imported product. Under United States anti-dumping duty law the Department of Commerce determined the class or kind of imported merchandise subject to investigation, i.e. "the product under consideration", while the USITC determined the domestic product which was identical or most similar to the imported product in characteristics and uses. The "like product" as defined by the USITC could be broader than the class or kind of imported product defined by the Department of Commerce; it was also possible that the class or kind of imported product encompassed a number of separate "like products". She noted that if the "like product" was defined by the USITC in a broader manner than the class or kind of imported product defined by the Department of Commerce, affirmative determinations of dumping and injury would lead to the imposition of anti-dumping duties only on the class or kind of imported products as defined by the Department of Commerce. In response to the remarks by the representative of Sweden on the declining market share of the Swedish imports, she said that the USITC had found that there had been significant volumes of imports from Sweden and high import penetration

throughout the period of investigation in conjunction with a pattern of underselling of these imports and revenues lost by the domestic industry. While it was true that Article 3:2 referred to the necessity to consider whether there was an increase of the volume of dumped imports, it also required an examination of the effects of the dumped imports in terms of price undercutting or price depression. Moreover, this provision explicitly stated that no one or several of the factors mentioned could necessarily give decisive guidance. Therefore a decline of the volume of dumped imports could in itself not be decisive. Regarding the question of the exclusion by the USITC of certain domestic producers from its definition of what constituted the domestic industry, she said that the USITC had found that there were two domestic industries, one producing stainless pipes and tube, and another producing welded pipes and tubes. The USITC had not excluded firms which had withdrawn from the complaint and from these two domestic industries, as had been alleged by the representative of Sweden. However, the USITC had excluded from the domestic industry one related party which was wholly owned by a Swedish company. Finally, with respect to the question of access to confidential information, she said that the type of information required to make a thorough analysis of the condition of the domestic industry and the impact of imports upon the domestic industry involved highly sensitive marketing and financial information which most companies were normally very reluctant to release. Experience showed that the accuracy of the data obtained by the USITC to conduct its investigation depended upon the guarantees which it could provide with respect to the protection of confidential information. However, there were rules providing for a right of access to such confidential information in summary form where such summary information did not enable the identification of data for individual companies. In most cases it was possible to provide such summaries of confidential information but there could be cases in which, as a result of the small number of companies concerned, even the presentation of confidential data in summary form could make it possible to identify data relating to specific companies. In such cases the USITC would not release confidential information in summary form.

91. The representative of Finland said that Article 5:1 of the Agreement clearly provided that the initiation of an anti-dumping duty investigation required that there be a written request to open an investigation by or on behalf of the industry affected; the term "industry" was defined in Article 4 as the domestic producers as a whole of the like product or those domestic producers whose collective output constituted a major proportion of the total domestic production of the like products. These provisions of the Agreement were intended to ensure that anti-dumping investigations would be initiated only if supported by a domestic industry as a whole. He thought that general principles of administrative procedure should be applied also in anti-dumping investigations. One such principle, which was strictly applied at least in Finland, was that anyone appearing before courts of law of public authorities on behalf of another person, whether physical or legal, had to demonstrate that he was properly authorized to act as representative. No authority could take the authorization of an alleged representative for granted. He was surprised to learn about the United States practice and thought that it might undermine the purpose of the above provisions of the Agreement.

92. The representative of Sweden thanked the delegation of the United States for its replies to his questions and comments. With regard to the issue of the standing of the petitioner, he noted that in the negotiations during the Kennedy Round the delegation of the United States had defended the view that any domestic party who considered itself injured as a result of dumped imports should be allowed to file an anti-dumping duty petition; however, this view had eventually been rejected.¹ He also quoted from another anti-dumping duty determination in which the Department of Commerce had stated that to require a petitioner to establish affirmatively that he had the support of a majority of the domestic producers would in many cases be so onerous as to preclude access to import relief under the anti-dumping and countervailing duty laws. His delegation reserved its rights under the Agreement and the General Agreement with respect to this case.

93. The Committee took note of the statements made and agreed to revert to the report by the United States at its next regular meeting. The Chairman invited Parties wishing to raise any questions on any of the cases listed in the report to do so in writing by 8 July 1988.

Australia (ADP/35/Add.5)

94. The representative of Australia said that the report submitted by his delegation contained some small typographical errors which would be corrected in the report for the next half-year period. He also informed the Committee that the report should have included an anti-dumping duty investigation with respect to imports of stainless steel products from Spain initiated on 21 July 1987.

95. The representative of Finland made a number of comments on an anti-dumping duty case involving power transformers from Finland. Imports of these products into Australia had been subject to definitive anti-dumping duties since 30 September 1981 and the most recent administrative review of these duties had been initiated on 24 December 1986. The Finnish exporter had started to export power transformers to Australia in 1979; since then it had exported a total of thirteen power transformers to Australia. An anti-dumping duty investigation had been initiated by the Australian authorities in 1979 after the first delivery. Representatives of the Australian Customs Service (ACS) had paid several visits to the premises of the exporter in Finland in order to examine calculations of the costs of the transformers exported to Australia. The investigation had been based on the constructed value method and by applying this method the ACS had recognized the fact that no sales of the like product in the ordinary course of trade were taking place in Finland. However, as from 1986-1987 the ACS had started to make comparisons with like products destined for consumption in Finland. The exporter had not made any major changes to its production process. His authorities would be interested in hearing an explanation of

¹The representative of Sweden mentioned document TN.64/NTB/W/10 as his source.

the reasons why the ACS had determined that there now were sales of the like product in the ordinary course of trade in Finland, whereas previously they had considered that no such sales were taking place. In the comparison between power transformers sold in Finland and those exported to Australia the ACS had made adjustments for technical differences by applying the Westinghouse Price Rules which dated from 1968. These rules had been applied in a very dogmatic manner which did not take into account modern economic realities. The ACS had not taken into consideration the arguments of the exporter, even where the exporter had been able to demonstrate that application of the Westinghouse Price Rules would lead to erroneous results. As an example he mentioned the fact that power transformers contained a large quantity of a special type of oil. Power transformers sold in Finland were delivered with oil while transformers exported to Australia were exported without oil. The real price of the type of oil used was about US \$4 per gallon but in the Westinghouse Price Rules it was valued at only US \$0.22 per gallon. By making adjustments for differences in technical characteristics on the basis of the Westinghouse Price Rules the ACS had made an insufficient adjustment for the fact that transformers in Finland were sold with the oil and had arrived at a normal value which was too high. The representative of Finland also raised an objection against the manner in which the Australian authorities had made an injury determination. The ACS had examined the condition of the Australian producers of power transformers and the impact on these producers of the allegedly dumped imports. However, the Australian producers were also producing other types of transformers and in the assessment of whether the domestic producers were suffering injury the whole range of transformers produced by these producers should have been taken into account. He noted that this question had been examined by a Panel in a dispute between Finland and New Zealand concerning anti-dumping proceedings by New Zealand on imports of electrical transformers from Finland¹ and that this Panel, in paragraph 4:6 of its Report, had taken a clear position against the segmentation of a domestic industry in the assessment of injury. He urged the Australian authorities to take into consideration the conclusion of the Panel on this issue. He concluded by requesting the Australian delegation to provide replies to his comments on a bilateral basis in time for the next regular meeting of the Committee.

96. The representative of Australia said that his comments on this case were of a preliminary nature. He informed the Committee that the importation of one of the transformers from Finland was currently the subject of an appeal to the Australian Administrative Appeals Tribunal. Regarding the several substantive issues raised by Finland, he said that the original anti-dumping duty investigation had been initiated in 1979, and that the decision to introduce anti-dumping duties had taken effect in December 1981. Thirteen power transformers had been exported from Finland to Australia and in each case the individual import had been examined to determine whether that import took place at a dumped price and to determine the amount of the anti-dumping duty to be collected. In the

¹BISD 32S/55

investigations of whether the individual transformers were being dumped the Australian authorities had examined the constructed value of these transformers given the fact that, due to important differences between exported power transformers and power transformers sold in Finland, no comparisons could be made with prices of the power transformers sold in Finland. While the Australian domestic industry had contended that these transformers were being offered at dumped prices at the tender stage, the investigations carried out by the Australian authorities on the basis of the constructed value methodology had indicated that the transformers, when actually exported to Australia, were not being dumped. In 1987 the Australian authorities conducted a review of their methodology applied in this case and selected the Westinghouse Price Rules to make comparisons between transformers sold in Finland and transformers sold for export to Australia. The application of these Rules required the construction of theoretical prices for the transformers sold domestically and for the transformers sold for export. The increase in the price of oil had been taken into account in the determination of these prices. The Westinghouse Price Rules were a particular manner of carrying out price comparisons and the Australian authorities were open to any suggestions of more adequate methods. Regarding the reference to the Report of the Panel in the dispute between Finland and New Zealand, he said that the Australian authorities were taking this into account as one element in their examination of the injury issue in the current review of this case. He concluded by saying that, if the questions raised by the Finnish representative were submitted in writing, his delegation would provide a more detailed explanation of this case in its written replies to these questions.

97. The representative of Finland said that the notion of a theoretical price did not appear in the Agreement which provided that the basis for the determination of a normal value was the comparable price, in the ordinary course of trade, of the like product when destined for consumption in the exporting country.

98. The representative of Australia said that in view of the particular characteristics of the transformers in question, it was impossible to find a "like product" in the domestic market of Finland. The use of Westinghouse Price Rules was intended to resolve this problem by enabling the Australian authorities to make the appropriate adjustments for the differences in technical characteristics between the transformers sold in Finland and the transformers sold for export to Australia.

99. The Committee took note of the statements made and agreed to revert to this matter at its next regular meeting. The Chairman invited the delegation of Finland to submit its questions and comments in writing.

F. Reports on all preliminary or final anti-dumping measures (ADP/W/157, 163, 167, 169 and 172)

100. The Chairman noted that notifications of preliminary or final anti-dumping measures had been received from the delegations of Australia, Canada and the United States. No comments were made on these notifications.

101. The representative of the EEC said that his delegation would take the necessary steps to provide the Committee with notifications of preliminary or final anti-dumping measures by the EEC.

102. The Committee took note of the statement made by the representative of the EEC.

G. Language problems in anti-dumping duty investigations (ADP/W/173)

103. The representative of Finland introduced his delegation's communication on language and translation problems in anti-dumping duty investigations (ADP/W/173).

104. The Committee agreed to refer the matter raised by Finland in document ADP/W/173 for further discussion to the Ad-Hoc Group on the Implementation of the Anti-Dumping Code.

H. Other business

(i) Romania - Bilateral consultations with Australia under Article 15 of the Agreement

105. The representative of Romania recalled that at the last regular meeting he had informed the Committee of a request by his delegation for bilateral consultations with Australia under Article 15 of the Agreement (ADP/M/20, paragraph 81). Bilateral consultations between Romania and Australia on problems concerning a price undertaking with respect to imports of canned ham from Romania had led to positive results and the two delegations had agreed to resume their consultations if necessary. He reserved his delegation's right to revert to this matter at the next regular meeting of the Committee.

106. The representative of Australia said his authorities were giving active consideration to the question whether the undertaking which had been the subject of the bilateral consultations between his country and Romania should remain in force; he expressed the hope that at the next regular meeting of the Committee he would be in a position to inform the Committee of the formal decision taken by his authorities on this matter.

107. The Committee took note of the statements made, and in particular of the statement made by the representative of Romania that he reserved his delegation's right to revert to this matter at the next regular meeting of the Committee.

(ii) Finland - Anti-dumping duty investigation of imports of ski boots from Czechoslovakia

108. The representative of Czechoslovakia recalled that at the last regular meeting of the Committee he had made some remarks on an anti-dumping duty investigation initiated by Finland in May 1987 of imports of ski boots from Czechoslovakia (ADP/M/20, paragraph 70). He expressed the hope that this

investigation would be conducted by the Finnish authorities in full conformity with the relevant provisions of the Agreement.

109. The representative of Finland said that in the investigation referred to by the representative of Czechoslovakia problems had arisen as a result of the difficulty of obtaining the necessary data from producers in the third countries which had been selected as reference countries. These problems were the reason why the investigation had not yet been terminated.

110. The Committee took note of the statements made.

Date of the next regular meeting of the Committee

111. The Chairman said that, in accordance with the decision taken by the Committee at its meeting held in April 1981 (ADP/M/5), the next regular meeting of the Committee would take place in the week of 24 October 1988.