

# GENERAL AGREEMENT ON

# TARIFFS AND TRADE

RESTRICTED

ADP/M/27

28 February 1990

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Committee on Anti-Dumping Practices

MINUTES OF THE MEETING HELD ON  
24 AND 25 OCTOBER 1989

Chairwoman: Miss Margaret McDonald (Australia)

1. The Committee on Anti-Dumping Practices ("the Committee") held a regular meeting on 24 and 25 October 1989.
2. The Committee adopted the following agenda:
  - A. Examination of anti-dumping laws and/or regulations of Parties to the Agreement<sup>1</sup>:
    - (i) Korea (ADP/1/Add.13/Rev.1/Suppl.1);
    - (ii) Brazil (ADP/1/Add.26/Suppl.2);
    - (iii) New Zealand (ADP/1/Add.15/Rev.1 and ADP/W/195, 198, 201, 212, 213, 214, 219, 225, 236 and 237);
    - (iv) United States
      - (a) ADP/1/Add.1/Rev.4/Suppl.1
      - (b) ADP/1/Add.1/Rev.4 and ADP/W/199, 220, 221, 230, 233, 241, 242 and 243;
    - (v) EEC (ADP/1/Add.1/Rev.1 and ADP/W/190, 191, 207, 208, 215, 222, 227, 228 and 234);
    - (vi) Australia (ADP/1/Add.18/Rev.1/Suppl.2 and ADP/W/193, 197, 216, 223 and 239);
    - (vii) Mexico (ADP/1/Add.27 and Corr.1, ADP/1/Add.27/Suppl.1 and ADP/W/192, 200, 202, 206, 226, 229, 235 and 240);
    - (viii) Laws and/or regulations of other Parties.

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<sup>1</sup>The term "Agreement" hereinafter means Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade.

- B. Semi-Annual Reports by Mexico and Canada of anti-dumping actions taken within the period 1 July-31 December 1988 (ADP/41/Add.6 and 7, and ADP/M/26, paragraphs 97-100)
- C. Semi-Annual Reports of anti-dumping actions taken within the period 1 January-30 June 1989 (ADP/45 and Addenda)
- D. Reports on all preliminary or final anti-dumping duty actions (ADP/W/232 and 238)
- E. Ad-Hoc Group on the implementation of the Anti-Dumping Code
- F. Other Business
  - (i) Recent anti-dumping investigations of imports of textiles and clothing from Hong Kong;
  - (ii) Administrative Review Procedures of the United States.
- G. Annual Review and Report to the CONTRACTING PARTIES

A. Examination of anti-dumping laws and/or regulations of Parties to the Agreement

3. The Chairwoman noted that during informal consultations in June and July, a number of delegations had expressed their views on the procedures followed by the Committee for the examination of anti-dumping duty laws and/or regulations of Parties to the Agreement. One view had been that there was a need for all delegations to observe a certain discipline in the submission of written questions and answers concerning national legislation. This should not mean, however, that when the Chair suggested specific dates for the submission of questions and answers, such dates should be applied in a rigid manner. Another observation which had been made during the informal consultations was that the Committee had perhaps relied too much on an exchange of written questions and answers as the principal means to conduct its examination of national legislation and that this had affected the quality of the oral debate at the meetings of the Committee. The Chairwoman suggested that the Committee make an effort to achieve more balance between the exchange of written questions and answers and the oral debate at its meetings. Delegations should feel free to raise in writing any questions which they might have on laws and/or regulations of other Parties; in particular, with respect to more technical questions a written procedure might be indispensable. However, it should be clear that questions on national legislation could also be raised orally at the meetings of the Committee.

4. The Committee took note of the statement made by the Chairwoman.

- (i) Korea (Amendment of the Presidential Decree of the Korean Customs Act on Anti-Dumping/Countervailing Duty, document ADP/1/Add.13/Rev.1/Suppl.1).

5. The Chairwoman recalled that the Committee had discussed the anti-dumping legislation of Korea at its regular meetings in October 1986, June and October 1987 and in May 1988. At the meeting held in May 1988 the Committee had taken note of a statement by the representative of Korea regarding his Government's intention to amend the Korean anti-dumping legislation on certain points on which questions had been raised in the Committee. The Committee had recently received a notification from Korea of amendments to the Presidential Decree implementing the anti-dumping duty provisions of the Korean Customs Act (document ADP/1/Add.13/Rev.1/Suppl.1).

6. The representative of Korea stated that the recent amendments to the Presidential Decree had entered into force on 1 January 1989. These amendments were intended to ensure the conformity of the Korean anti-dumping legislation with the provisions of the Agreement and to clarify certain technical and procedural aspects of this legislation. The most important amendments were the following. Firstly, the persons who could have standing to file petitions had been limited to domestic producers of a like product and associations, the members of which produced a like product; labour unions and wholesalers could no longer qualify as petitioners. Secondly, a "sunset" clause had been introduced which limited the duration of anti-dumping duties to a period of not longer than three years. Thirdly, the provision for a mandatory review of anti-dumping measures more than once per year by the Minister of Finance had been replaced with a provision for administrative reviews to be conducted if considered necessary by the Minister. The representative of Korea explained in this connection that the provision for mandatory reviews had been considered to be no longer necessary as a result of the introduction of the "sunset" clause. Amendments had also been made to clarify the rights of interested parties to request administrative reviews of anti-dumping measures upon a showing of changed circumstances. Finally, certain amendments had been made to the provisions of the Presidential Decree regarding the procedures for the initiation and conduct of anti-dumping duty investigations. Thus, one of the amendments provided that decisions on the sufficiency of petitions had to be taken within a period of three months of the date of receipt of a petition; another amendment provided that investigations should be concluded within 6 months of the date of the opening of an investigation.

7. The representative of the EEC asked a number of questions concerning the provisions of the amended Presidential Decree concerning the definition of the natural and legal persons allowed to file anti-dumping duty petitions and the rôle of the Customs and Tariff Deliberation Committee at the initiation stage of an investigation. He also asked some questions regarding the circumstances under which provisional measures could be applied under the Presidential Decree.<sup>1</sup>

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<sup>1</sup>See document ADP/W/257

8. The representative of the United States reserved his delegation's right to raise questions on the amended Presidential Decree at a later stage.

9. The representative of Canada said that, while his delegation needed more time to study in greater detail the amendments to the Korean legislation, his authorities welcomed the introduction of a "sunset" clause in Article 4:8 of the Presidential Decree. With respect to this Article, he asked what was the meaning of the expression "...unless the applied period is fixed, ...".

10. The representative of Australia said that his delegation intended to study the amendments to the Korean anti-dumping duty legislation and revert to these amendments at a later stage.

11. The Committee took note of the statements made and agreed to revert at its next regular meeting to the Presidential Decree implementing the anti-dumping duty provisions of the Korean Customs Act.

(ii) Brazil (Customs Policy Resolution No. 00-1582, document ADP/1/Add.26/Suppl.2)

12. The Committee had before it in document ADP/1/Add.26/Suppl.2 the text of Customs Policy Resolution No. 00-1582. This Resolution, adopted by the Brazilian Customs Policy Commission on 3 March 1989, had amended certain provisions of Customs Policy Resolution No. 00-1227 which provided for the procedures for the opening and conduct of anti-dumping duty investigations. The Chairwoman recalled that Resolution No. 00-1227 had been the subject of discussions in the Committee at the meetings held in October 1987 and May 1988.

13. The representative of Brazil explained that Customs Policy Resolution No. 00-1582 contained amendments to Articles 3, 12:1, 27, 32, 35, 36 and 50 of Customs Policy Resolution No. 00-1227. The changes to Article 3 made it clear that, by way of provisional measure, the Customs Policy Commission could require a security. Articles 27, 32, 35 and 36 had been amended to reflect the amendments to Article 3. Further amendments made under Resolution No. 00-1582 concerned the notice of initiation of an investigation (Article 12:1) and the documentation to be submitted by interested parties to the Customs Policy Commission (Article 50).

14. The representative of the EEC raised some preliminary questions on the amendments introduced by Customs Policy Resolution No. 00-1582. On Article 3:1 of this Resolution, he asked at what stage of an investigation the Customs Policy Commission would take a decision on the conversion of a security into federal revenue or on its total or partial refund. In this connection, he noted that Article 3:2 provided for the establishment by the Federal Revenue Bureau of procedures for the collection and refund of securities and he asked whether such procedures had already been adopted. Regarding the provisions for the imposition of provisional measures in Article 27, the representative of the EEC asked whether the imposition of

such provisional measures would be preceded by full investigations of the existence of dumping and injury and of a causal relationship between dumping and injury. In particular, he wished to know whether preliminary investigations would include the dispatch of questionnaires to interested parties, the analysis of replies to such questionnaires, the conduct of on-the-spot verifications and an opportunity for interested parties to be heard.<sup>1</sup>

15. In response to the questions posed by the representative of the EEC, the representative of Brazil said that he would in the near future provide information on the application of Article 3:1 of Customs Policy Resolution No. 00-1582. Regarding the procedures foreseen in Article 3:2 with respect to the collection and refund of securities, he said that such procedures had not yet been implemented. Provisional measures could be applied under Article 27 only after a thorough examination of the existence of dumping, injury and a causal relationship between dumping and injury. Such an examination would take into account replies to questionnaires received from interested parties. There was a possibility for interested parties to be heard and, depending upon the circumstances of the case, on-the-spot verifications would be carried out.

16. The representative of the EEC said that his delegation would appreciate it if more detailed information could be provided by the representative of Brazil on Article 3 of the Customs Policy Resolution.

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

(iii) New Zealand (Dumping and Countervailing Duties Act 1988, document ADP/1/Add.15/Rev.1)

13. The Chairwoman recalled that the Committee had discussed the provisions of the Dumping and Countervailing Duties Act 1988 at its meeting in April 1989 (ADP/M/26, paragraphs 9-20). Prior to that meeting the Committee had received answers provided by the delegation of New Zealand in documents ADP/W/212, 213 and 214 to written questions from the delegations of Canada (ADP/W/201), the EEC (ADP/W/198), and the United States (ADP/W/195). Further written questions on the legislation of New Zealand had been received after the meeting in April from the delegations of Brazil (ADP/W/219) and the United States (ADP/W/225). The delegation of New Zealand had responded to these questions in documents ADP/W/236 and 237).

19. Referring to the explanation by New Zealand in document ADP/W/236 of the meaning of the term "goods ... intended to be imported" in Section 186A(3) of the Act, the representative of Brazil asked whether his understanding was correct that the implication of the use of this term was

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<sup>1</sup>See also document ADP/W/258.

that anti-dumping duty investigations could be opened with respect to goods which had not actually been imported into New Zealand if there were contractual arrangements which had all the essential characteristics of sales.

20. The representative of New Zealand said that the interpretation by the representative of Brazil was correct; the authorities of New Zealand considered that, if goods were subject to irrevocable contracts, anti-dumping duty investigations could be initiated with respect to such goods.

21. The representative of Canada said that his delegation appreciated the responses provided by New Zealand to the written questions raised by his delegation. Referring to the third item in document ADP/W/212, he noted that the delegation of New Zealand had explained that generally the need for a continued imposition of anti-dumping duties would be reviewed within two years. While there was no requirement in the Agreement for a "sunset" clause in national anti-dumping laws, his delegation nevertheless hoped that the authorities of New Zealand would consider the incorporation of such a clause into the anti-dumping legislation of New Zealand.

22. The Committee took note of the statements made and agreed that it had concluded its examination of the Dumping and Countervailing Duties Act 1988.

(iv) United States

A. Revised anti-dumping duty regulations of the Department of Commerce (document ADP/1/Add.3/Rev.4/Suppl.1)

23. The Committee had before it in document ADP/1/Add.1/Rev.4/Suppl.1 the revised anti-dumping duty regulations of the United States Department of Commerce which had been published in the Federal Register of the United States on 28 March 1989.

24. The representative of the United States said that the revised anti-dumping duty regulations of the Department of Commerce implemented provisions of the Trade and Tariff Act of 1984 and were essentially procedural in character. He expected that in the near future his delegation would be in a position to submit to the Committee revised regulations dealing with substantive aspects of anti-dumping duty investigations.

25. The representatives of Canada and Singapore reserved the rights of their delegations to revert to the revised anti-dumping duty regulations of the Department of Commerce at the next regular meeting of the Committee.

26. The Committee took note of the statements made and agreed to revert to these regulations at its next regular meeting.

- B. Amendments to the Tariff Act of 1930 resulting from the Omnibus Trade and Competitiveness Act of 1988 and the United States - Canada Free Trade Agreement Implementation Act of 1988 (document ADP/1/Add.3/Rev.4)

27. The Chairwoman recalled that at its meeting in April 1989, the Committee had begun its discussion of the amendments to the anti-dumping legislation of the United States resulting from the Omnibus Trade and Competitiveness Act of 1988 and the United States - Canada Free Trade Agreement Act of 1988 (ADP/M/26, paragraphs 27-41). Prior to that meeting the Committee had received answers from the United States in document ADP/W/230 to questions submitted by the EEC in document ADP/W/199. After the meeting in April further written questions on the legislation of the United States had been received from Sweden (ADP/W/220), Korea (ADP/W/221) and Canada (ADP/W/233) to which the United States had responded in, respectively, documents ADP/W/241, 242 and 243. Recently, written questions had also been submitted by the delegations of Hong Kong (ADP/W/244) and Singapore.<sup>1</sup>

28. The representative of the United States said that his delegation would reply to the recent questions by the delegations of Hong Kong and Singapore in advance of the Committee's meeting in April 1990. It appeared from the questions raised so far that the provisions of the Omnibus Trade and Competitiveness Act which were of most interest to other Parties were those dealing with the issue of circumvention of anti-dumping duties, downstream product monitoring, third country dumping and "fictitious markets". It was sometimes difficult to provide specific answers to hypothetical questions on provisions which necessarily had to be implemented in light of the particular facts at hand in an investigation. For example, it was difficult to state with precision how such terms as "small" in section 1321 of the Act would be interpreted in a proceeding under this section. However, all anti-dumping duty provisions of the Act would be applied in accordance with the international obligations of the United States. He further pointed out that there seemed to be a certain confusion as to the implications of the downstream product monitoring position in section 1320 of the Act and emphasized that the monitoring process provided for in this section would not constitute a basis for the automatic initiation of an anti-dumping duty investigation. There also seemed to be a misconception that the "fictitious markets" provision in section 1319 would not permit the administering authority to take into consideration other economic reasons explaining different price movements of different forms of merchandise subject to an anti-dumping duty order; as indicated in the written response by his delegation to questions by Korea and other delegations, the United States agreed that other factors unrelated to the establishment of a fictitious market could explain such different price movements. Finally, there seemed to be a concern that the provisions in

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<sup>1</sup>See document ADP/W/251

the Act with respect to the issue of circumvention of anti-dumping duties would not be applied in conformity with the obligations of the United States under the General Agreement. While he understood this concern, his delegation was of the view that anti-circumvention measures could be taken in a manner consistent with the General Agreement and it was the intention of the United States to apply the anti-circumvention provisions of the Act for no other purpose than to prevent the circumvention of anti-dumping duties.

29. The representative of Korea thanked the delegation of the United States for the written replies provided in document ADP/W/242 to the questions raised by the Korean delegation. His delegation wished to have the opportunity to study these replies and he, therefore, reserved his delegation's right to revert to the legislation of the United States at the next meeting of the Committee.

30. The representative of Australia said that his delegation was interested in sections 1321 and 1326(a) of the Omnibus Trade and Competitiveness Act of 1988 and would perhaps at a later stage submit written question on these provisions.

31. The representative of Japan recalled that at the regular meeting of the Committee in April 1989 his delegation had requested an explanation of the meaning of the term "small" in new section 781(a)(1)(C) of the Tariff Act of 1930, as amended, and of the criteria in new section 781(d)(1) for the inclusion of later-developed merchandise within the scope of an existing anti-dumping duty order (ADP/M/26, paragraph 31). Regarding the provision for advice by the USITC in new section 781(e) of the Tariff Act, he asked whether under this provision the USITC would conduct a new investigation in addition to the original injury investigation. With respect to the provisions in new section 739 of the Tariff Act on the establishment of product categories for short life cycle merchandise, he asked whether the introduction of shorter time periods for preliminary determinations in investigations involving such merchandise produced by "second offenders" and "multiple offenders" would not negatively affect the thoroughness of the investigation process. He concluded by saying that the amendments to the anti-dumping law of the United States had entered into force only recently and that there had not yet been many cases in which the amendments had been applied; his authorities would follow carefully the application of the new provisions.

32. Referring to the amendments to section 735(b)(4)(A) of the Tariff Act on retroactive application of anti-dumping duties, the representative of India asked what was the meaning of "a relatively short period of time" in section 735(b)(4)(A)(i). Regarding the amendments to section 771(7)(G) on the treatment of negligible imports, he asked which volume of imports and market share would be treated as negligible and what would be the discernible level of adverse impact under this provision.

33. The representative of Singapore said that her delegation had recently submitted written questions on the amendments to the anti-dumping

legislation of the United States.<sup>1</sup> She apologized for the late submission of these questions but expressed her strong disappointment about the fact that, despite her delegation's request, the secretariat had not made copies of these questions available in the meeting room. It was normal practice that copies of submissions by delegations were made available in the meeting room, even when submissions were made on the day of the meeting. She considered that the attitude of the secretariat in this case was not in conformity with the usual practice.

34. The representative of Singapore recalled that on previous occasions her delegation had expressed its concerns regarding proposals discussed in the Congress of the United States to amend the United States anti-dumping legislation. She recognized that the United States administration had made efforts to remove from these proposals some of the controversial and GATT inconsistent amendments but her delegation considered that several of the provisions enacted by the Omnibus Trade and Competitiveness Act raised serious questions regarding their consistency with the Agreement. She expressed her concerns about section 1317(e) of the Act, which provided that, if a third country refused to take anti-dumping measures in response to a request by the United States, the USTR was required to consult with the domestic industry on whether action under any other law of the United States was appropriate. In the written questions submitted by her delegation a clarification had been requested of the phrase "... whether action under any other law of the United States is appropriate" and of the legal basis in the Agreement or in Article VI of the General Agreement of the third country dumping provision in section 1317. With respect to this latter point, she noted that the procedures in section 1317 differed from the procedures for anti-dumping action on behalf of a third country in Article 12 of the Agreement. Her delegation had also submitted questions on section 1318 of the Act, which amended section 773(e) of the Tariff Act to provide for a special rule on the consideration of input dumping by related parties in a constructed value calculation. This provision had the potential of being used to increase dumping margins.

35. The representative of Singapore further explained that other aspects of the recent amendments to the United States anti-dumping legislation addressed in the questions submitted by her delegation were the amendment to section 773(a) of the Tariff Act with respect to "fictitious markets" and new section 780 which provided for downstream product monitoring. With respect to the downstream product monitoring provision she expressed concerns that the monitoring process under this provision could lead to the self-initiation of anti-dumping duty investigations. The questions submitted by her delegation dealt with the rationale of and criteria used to determine the necessity of monitoring, the monitoring process itself and the self-initiation of investigations as a result of monitoring under this provision. Other areas of concern to her delegation were new section 781 of the Tariff Act on prevention of circumvention of anti-dumping duties and new section 739 on the establishment of product categories for short life cycle merchandise. She considered that there was no legal basis in the Agreement or in Article VI of the General Agreement for the establishment

of such product categories and for the conduct of expedited investigations in cases involving such products. Regarding the amendment to section 771 of the Tariff Act concerning the conditions under which a lease could be considered equivalent to a sale, she pointed out that this amendment expanded the scope of the term "sale" to cover a wide variety of transactional arrangements.

36. The representative of Singapore further referred to the amended section 771(7)(ii) in which the term "price undercutting" had been replaced with the term "price underselling". Her delegation had sought a clarification of the reasons for this change. Regarding the amendments to the provisions on the determination of the existence of a threat of material injury, her delegation had sought an explanation of why the USITC was directed, in considering the effect of dumping in third-country markets, to examine only dumping in countries Parties to the Agreement. Finally, the questions by her delegation dealt with the issue of cumulative injury assessment.

37. The representative of Canada thanked the delegation for the United States for the responses provided by the United States in document ADP/W/241. His delegation needed more time to study these replies the he wished to have an opportunity to revert to this matter at a later time. He appreciated that it was difficult for the United States to provide definitive interpretations of provisions in respect of which there was not yet a well established practice of application, such as the provisions in the Omnibus Trade and Competitiveness Act of 1988 on the question of circumvention of anti-dumping duties and on downstream product monitoring. Nevertheless, the absence of explicit rules in areas such as circumvention of anti-dumping duties could create serious problems; as had been pointed out by the Canadian delegation in this Committee and elsewhere, it was important to establish multilateral rules in this area. The representative of Canada then asked two questions on the explanations given by the United States in document ADP/W/241. Regarding the provisions on prevention of circumvention of anti-dumping duties, he asked whether in investigations under these provisions an examination would be made of whether domestic producers used imported parts and components from the sources subject to anti-dumping duties. Referring to the response by the United States on the amendments to the provisions on material injury, he asked the United States to explain how an injury determination could be based on all imports of a class or kind of merchandise if a sizeable portion of such imports were shown not to be dumped. His authorities found it difficult to understand how this could be reconciled with the provisions of the Agreement.

38. The representative of the United States recalled that at the last regular meeting of the Committee and during informal consultations there had been a significant discussion of ways to improve the quality of the Committee's discussion of national legislation. His delegation, as well as several others, had pointed out in that discussion that a necessary condition for an improvement of the Committee's procedures for the

examination of national legislation was that all delegations should observe a certain discipline to submit questions and answers in a timely fashion.

39. The representative of the United States made the following comments in response to the points raised by several delegations. On the meaning of the term "small" in new section 781(a)(1)(C) of the Tariff Act, he said that whatever guidance could be given at this time on the interpretation of this term had been indicated in the replies by his delegation to the questions from other countries. This term had deliberately not been defined in the legislation in recognition of the fact that the facts at hand in each investigation differed. Through administrative experience with the implementation of this provision a working definition of this term would probably develop. On the question of expedited investigations in certain cases involving short life cycle merchandise, he stated that the Agreement contained no specific requirements regarding the time schedule of investigations. The intention of the provision for expedited investigations was to take account of the fact that with respect to short life cycle merchandise there existed a historical tendency for repetitive dumping. This provision had been considered the most GATT consistent manner to provide expeditious relief to industries confronted with this problem. He pointed out in this respect that the anti-dumping legislation of some other countries provided for the conduct of preliminary investigations in much shorter periods of time than those stipulated in this provision.

40. On the period of time considered by the United States Department of Commerce determinations on the necessity of retroactive application of anti-dumping duties, the representative of the United States said that the Department generally examined a period of six months which began three months prior to the opening of the anti-dumping duty investigation. With respect to the question raised by the Canadian delegation as to whether anti-circumvention investigations would include an examination of whether domestic producers also used imported parts and components, he said that his delegation would seek a further clarification on this point.

41. The representative of Hong Kong apologized for the late submission by her delegation of written questions on the amendments to the United States anti-dumping legislation (ADP/W/244). Many of the questions raised by her delegation related to areas which were also of concern to other delegations, but other questions had been asked from a different perspective. She asked the delegation of the United States to further explain its view that anti-circumvention measures could be taken in a manner consistent with the General Agreement.

42. The representative of Singapore, referring to the comments made by the United States on the importance of a timely submission of written questions and answers, recalled that in past discussions on procedures for examination of national legislation a number of delegations had stressed that, when the Chair suggested dates for the submission of questions and answers, there needed to be some flexibility. In this respect, she

pointed in particular to the difficulties experienced by smaller delegations in meeting such dates. She recognized that the questions by her delegation on the United States legislation had been submitted at a late stage; however, this was not a sufficient reason for the secretariat not to distribute copies of these questions in the meeting room, as was usual in such cases.

43. Mr. Kautzor-Schröder (GATT secretariat) recalled that at the beginning of the meeting the Chairwoman had made a statement on the importance of a timely submission of written questions and answers on national legislation. At the meeting in April, the Chairwoman had invited delegations to submit their questions by 7 July. The questions submitted by Singapore had, however, been received on the Friday in the week preceding the meeting. Given the length of the questionnaire and the workload in the secretariat it had not been possible to meet the request by the delegation of Singapore to make copies available in the meeting room.

44. The representative of the EEC seconded the views expressed regarding the need for a timely submission of written questions.

45. The Committee took note of the statements made and agreed to revert at its next regular meeting to the amendments to the anti-dumping legislation of the United States.

(v) EEC (Council Regulation (EEC) No. 2423/88 of 11 July 1988, document ADP/1/Add.1/Rev.1)

46. The Chairwoman recalled that at its regular meeting in April 1989 the Committee had continued its consideration of Council Regulation (EEC) No. 2423/88 of 11 July 1988 (ADP/M/26, paragraphs 42-63). Prior to that meeting the Committee had received responses by the EEC in documents ADP/W/207 and ADP/W/208 to questions submitted by the delegations of Japan (ADP/W/190) and the United States (ADP/W/191). Further written questions had been introduced at that meeting by the delegations of Singapore (ADP/W/215), Korea (ADP/W/222), Hong Kong (ADP/W/227) and the United States (ADP/W/228). Following the April meeting, the delegation of Australia had also raised some questions in writing. Replies from the EEC to the questions from the delegations of Singapore, Hong Kong, Korea, the United States and Australia had been circulated in documents ADP/W/245-249.

47. The representative of the EEC said that the replies given by his delegation in documents ADP/W/245-249 dealt with many issues which were also covered by the earlier responses by his delegation in documents ADP/W/207 and 208 and which had already been the subject of discussions at the meeting in April. He considered that in many instances the questions which had been raised by several delegations on Council Regulation (EEC) No. 2423/88 went beyond the specific amendments introduced in July 1988 and addressed more general aspects of the anti-dumping legislation of the EEC and other Parties. In addition, a number of the issues raised in the

questions were now being discussed in the Uruguay Round negotiations. These two points should be borne in mind by delegations when reflecting upon the future work of the Committee.

48. The representative of the EEC explained that the most important issues raised in the questions by several delegations concerned the determination of constructed values, the treatment of sales at prices below costs of production, the use of reconstructed export prices, adjustments to normal values and export prices, the determination of the existence of material injury, the nature of the evidence required for a complaint to be accepted, the procedures for hearings of interested parties and the possibility to apply additional anti-dumping duties, provided for in Article 13:11 of Council Regulation (EEC) No. 2423/88.

49. Regarding the use of constructed values, the representative of the EEC said that the Agreement and Article VI of the General Agreement provided for a choice of either the highest comparable export price or a constructed value as an alternative method to establish the normal value in cases where domestic prices could not be used. The EEC, therefore, reserved its right to use either method. Regarding the methodology for determining constructed values under Article 2:3(b) of Council Regulation (EEC) No. 2423/88, he explained that it was the practice of the EEC to establish, where practicable, company specific costs and profits when there were several producers in the exporting country of the like product. This made it possible to determine individual dumping margins for each company, or to determine that no dumping took place, and, where appropriate, to establish individual rates of anti-dumping duties. This was a necessary consequence of the principle of individual justice. He pointed out that Article 2:4 of the Agreement provided that, as a general rule, the profit rate applied in a constructed value calculation should not exceed the profit normally realized on sales in the domestic market of products of the same general category. When a specific exporter or producer made a profit on domestic sales his costs and the profit realized on these domestic sales would be used by the EEC. Where the exporter did not sell on the domestic market, or did not make a profit on his domestic sales, Article 2:3(b) of the Regulation did not exclude the possibility of using the average selling, general and administrative expenses of all exporters or producers. When the exporter or producer incurred costs and realized profits on his domestic sales, these costs and profit rates would be applied because it was more reasonable to base the constructed value calculation on the conditions which actually existed. This was one of the reasons why the provision on the determination of a profit rate in the last sentence of Article 2:4 of the Agreement was only a general rule and not an invariable requirement. The representative of the EEC pointed out that another issue which had been raised by some delegations was the provision in Article 2:3(b)(ii) of Council Regulation (EEC) No. 2423/88 for the calculation of the amount for profit on the basis of the profit realized on the profitable sales in the domestic market of the like product. He considered that a profit rate based on the profitable sales of a producer or exporter was reasonable for the purpose of establishing a constructed

value to be applied in respect of his sales. Indeed, it would not be logical to determine the profit rate other than on the basis of profitable sales as this was the only manner to arrive at a realistic profit rate.

50. On the questions raised by several delegations regarding the treatment of sales at prices below cost of production in Article 2:4 of Council Regulation (EEC) No. 2423/88, the representative of the EEC said that Article VI of the General Agreement and Article 2:4 of the Agreement provided for the use of domestic prices as a basis to determine the normal value only where domestic sales were "in the ordinary course of trade". Sales at a loss made in substantial quantities over a considerable period of time could in no way be considered as being in the ordinary course of trade. This explained why provisions on sales at a loss had been incorporated into the anti-dumping legislation of other Parties and why these provisions were not a novel feature of the EEC anti-dumping legislation. No precise percentage was applied when assessing whether quantities sold at a loss were "substantial"; each case was decided on the basis of the particular circumstances of that case. Regarding the time period examined to determine whether sales at a loss took place over a considerable period of time, the representative of the EEC said that the practice of the EEC was to investigate dumping during a reference period which was normally one year. This period was sufficiently long to decide whether sales at a loss had been made over a considerable period of time. He considered in this connection that movements in prices explained by business cycles or economic cycles did not provide a justification for dumping.

51. The representative of the EEC noted that a number of questions had been raised on the reconstruction of export prices as provided for in Article 2:8(b) of Council Regulation (EEC) No. 2423/88, and in particular on the amendment to this provision which stipulated that the costs for which allowance should be made in the reconstruction of an export price based on the resale price to the first independent buyer should include costs normally borne by an importer but paid by any party either in or outside the EEC which appeared to be associated or to have a compensatory arrangement with the importer or exporter. This provision was based on Article 2:6 of the Agreement which provided that in the case of a reconstructed export price all costs incurred between importation and resale had to be taken into account. In this connection, the provision in Article 2:8(b) of the Regulation that "these costs shall include those normally borne by an importer but paid by any party ..." referred to the costs incurred between importation and resale borne by any party related to the importer or exporter, or having a compensatory arrangement with the importer or exporter, irrespective of the location of the premises of that party.

52. Regarding the provisions on the comparison between the export price and the normal value in Council Regulation (EEC) No. 2423/88, the representative of the EEC made the following remarks. The differences in physical characteristics for which adjustments were made were those affecting the comparability of the export price and the normal value. The

provisions of Article 2:10(a) of the Regulation made it possible to establish the amount of the adjustment on the basis of market data. However, this data would often not be available and in certain circumstances the amount of the adjustment for differences in physical characteristics would have to be based on differences in costs of producing such differences. It had to be recognized, however, that there was no necessary correlation between the market value of the differences in physical characteristics and the costs of producing such differences. On occasions, the additional price which a buyer might wish to pay for a difference in physical characteristics could far exceed the costs of producing that difference. In other instances, the costs incurred might result in the provision of characteristics which made little or no difference to the price which the buyer was prepared to pay for the product.

53. With respect to the issue of the treatment of salaries of salesmen in the context of the comparison of the export price and the normal value, the representative of the EEC said that Article 2:10(c)(v) of the Regulation provided that deductions from the export price and the normal value were made only in respect of the salaries paid to "personnel wholly engaged in direct selling activities". This excluded deductions in respect of salaries of personnel who were not so engaged. He noted that another issue concerning the comparison of export prices and normal values raised by some delegations was the question of adjustments for differences in levels of trade and differences in quantities. He explained in this respect that account could be taken of such differences by applying other provisions of Council Regulation (EEC) No. 2423/88 in addition to the provisions on adjustments in Article 2:10. For example, Article 2:3(a) and 2:8(a) provided that account should be taken of discounts and rebates granted inter alia for factors such as differences in quantities or differences in levels of trade. Moreover, notwithstanding these provisions, it was the practice of the EEC to establish a comparable price under Article 2:3(a) of the Regulation for sales in the domestic market on the basis of a restricted number of sales in respect of such factors as the level of trade. However, care would then naturally have to be taken to avoid double counting by marking further adjustments under Article 2:9 and 2:10 of the Regulation. With regard to the provision in Article 2:10(e) which stipulated that claims for insignificant adjustments should be disregarded, the representative of the EEC agreed that the cumulative effect of several insignificant adjustments could be significant. The possibility to take account of such a situation was provided for by the use of the word "ordinarily" in the second sentence of this provision.

54. Referring to questions raised on the provisions in Article 4 of Council Regulation (EEC) No. 2423/88 on the determination of the existence of material injury, the representative of the EEC stated that these provisions had not been the subject of the recent amendments to the Regulation. With respect to the question of cumulative injury assessment, he explained that the EEC considered that the right to cumulate imports from several countries for the purpose of a determination of injury was

implicit in Articles 8 and 3 of the Agreement. Article 8 required that anti-dumping duties be collected on a non-discriminatory basis on imports from all sources of the product found to be dumped and causing injury, while Article 3 referred to the examination of the volume of the dumped imports and their effects on prices, irrespective of the source of such imports. Regarding the question of the causal relationship between material injury and dumped imports, he agreed that Article 3:4 of the Agreement required that it must be demonstrated that the dumped imports were causing injury through the effects of dumping and that injuries caused by other factors must not be attributed to the dumped imports. The EEC fully complied with this provision. Another question raised concerned the establishment of an injury threshold for the purpose of deciding whether a duty less than the full margin of dumping would be sufficient to remove the injury caused to a domestic industry in the EEC. In this connection the representative of the EEC recalled that the application of a threshold for this purpose was not mandatory under the Agreement and that the practice of the EEC in this respect was unique.

55. Regarding the question of the evidence required for a complaint to be accepted, the representative of the EEC said that the EEC took care to ensure that complaints contained sufficient evidence of dumping and injury and of the existence of a causal relationship between dumping and injury. A questionnaire was at the disposal of potential complainants which set out the extensive information required in the complaint. Any complaint submitted was examined in detail and consultations on the admissibility of the complaint took place with the member States within the Advisory Committee before a decision was made on the opening of an investigation. The EEC fully agreed that complaints based on inaccurate or insufficient information could be unnecessarily disruptive of trade. This was why it had been the consistent practice of the EEC to refuse to publicize the complaint in advance of a decision to open the investigation and why it had argued in favour of the incorporation of this practice into the Recommendation of the Committee on transparency of anti-dumping proceedings (document ADP/17).

56. The representative of the EEC concluded by making some general observations on the Committee's examination of the provisions of Council Regulation (EEC) No. 2423/88. He considered that the Committee had by now dealt with this Regulation in a very detailed manner. The Committee's discussion had gone far beyond the changes introduced in 1988 and issues of a general nature had been raised which were not specific to the EEC legislation. If the Committee were to pursue its discussions of these more general aspects, this should be done without specific reference to the EEC legislation. He further considered that it was necessary to distinguish between issues which could properly be discussed in this Committee and issues which could properly be dealt with in the negotiations in the Uruguay Round.

57. The representative of Australia thanked the delegation of the EEC for the answers provided by the EEC in document ADP/W/245 to questions raised by Australia. His delegation wished to have an opportunity to study these

replies and to revert to the EEC legislation at the next regular meeting of the Committee.

58. The representative of Japan said that his authorities had studied the replies provided by the EEC in document ADP/W/207 to the questions by Japan in document ADP/W/190. His authorities considered that the replies by the EEC were unclear and unsatisfactory. He then raised a number of additional questions relating in particular to the provisions for the imposition of an additional anti-dumping duty under Article 13:11 of Council Regulation (EEC) No. 2423/88 and the provisions regarding the comparison of the export price and the normal value in Article 2:9(a) and 2:10 of the Regulation.<sup>1</sup>

59. The representative of Hong Kong said that her delegation needed more time to study the replies submitted by the EEC in document ADP/W/247. After a preliminary examination of these replies, it seemed to her that the EEC had not responded to all questions raised by her delegation and she mentioned as one example questions concerning Article 13:11 of Council Regulation (EEC) No. 2423/88 (ADP/W/227, p.5). Referring to the answer by the EEC on the establishment of an injury threshold, she explained that her delegation had sought an explanation of how the EEC determined what constituted a reasonable profit to be included in target prices used to determine the rate of duty necessary to remove injury (ADP/W/227, p.6). The EEC had not specifically addressed this issue in its replies. Regarding the comment of the EEC that it was not reasonable to determine the profit rate in a constructed value calculation on any other basis than profitable sales of the like product, she stated that it would be more reasonable to take account of the totality of the sales made by an exporter when determining the profit rate.

60. The representative of Singapore made detailed comments on the replies given by the EEC in items I-IV to questions raised by her delegation relating to the treatment of discounts and rebates in the determination of the normal value, the determination of the amount for selling, general and administrative expenses and profit in the calculation of constructed values and the criteria for determining when sales below cost of production were not in the ordinary course of trade. She reiterated the concerns of her delegation on these issues and expressed dissatisfaction with the replies given by the EEC.<sup>2</sup> She also reserved her delegation's right to make further comments on other points addressed in the replies by the EEC. With respect to the remark of the representative of the EEC that it was necessary to distinguish between issues to be addressed in this Committee and issues to be addressed in the context of the negotiations in the Uruguay Round, she wondered whether this implied that the EEC considered

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<sup>1</sup>See document ADP/W/252.

<sup>2</sup>The comments made by the representative of Singapore appear in document ADP/W/255.

that the Committee could not deal with questions which were under discussion in the Uruguay Round. She emphasized in this respect that the Committee had the responsibility under the Agreement to examine anti-dumping laws of Parties to the Agreement even if questions related to such laws were being discussed elsewhere as well.

61. The representative of India said that his delegation wished to study in greater detail the replies provided by the EEC. Referring to a response by the EEC in document ADP/W/247 on the question of cumulative injury assessment, he said that his delegation disagreed with the view that this practice was permissible under the Agreement.

62. In response to the comments and questions by the representative of Japan, the representative of the EEC made the following remarks. His delegation had already explained in relation to Article 13:11 of Council Regulation (EEC) No. 2423/88 that it considered that, if an exporter bore the anti-dumping duty, the dumping margin was increased. He further pointed out in this context that the Agreement allowed Parties to levy anti-dumping duties corresponding to the full margin of dumping; consequently, the provision in Article 13:11 for the possibility of the imposition of additional anti-dumping duties was not inconsistent with the Agreement. With respect to the question by the representative of Japan on the consistency of this provision with Article 8:3 of the Agreement, he recalled that the EEC had on several occasions explained the relationship between the provisions in Article 13:11 and the provisions on administrative review in Article 14 of Council Regulation (EEC) No. 2423/88; if an exporter could provide evidence that the normal value of the product in question had declined, this would justify the opening of a review proceeding under Article 14 which could result in a revision of the anti-dumping duty. Furthermore, the refund procedure in Article 16 of the Regulation was also applicable in this context.

63. With respect to the issue of the treatment of anti-dumping duties as costs incurred between importation and resale in refund procedures, the representative of the EEC said that this matter was presently before the European Court of Justice and that it was, therefore, not appropriate for him to comment on this issue. He noted that the example given by Japan<sup>1</sup> was completely hypothetical and that the EEC had never encountered a situation of the type described by Japan.

64. Regarding the comments by the delegation of Japan on the methodology in Article 2:9(a) and 2:10 of Council Regulation (EEC) No. 2423/88 for the comparison of export prices and normal values, the representative of the EEC considered that these comments concerned the general question of the alleged asymmetry of the EEC's rules on price comparisons. He denied that the rules in the Regulation on the comparison of the export price and the normal value led to the creation of artificial dumping margins. One had to distinguish between the rules applicable to the establishment of the

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<sup>1</sup>See document ADP/W/252.

export price and the normal value and the rules applicable to the comparison between the export price and the normal value. Once the export price and the normal value had been established, the rules in the EEC anti-dumping legislation provided for identical adjustments to the export price and to the normal value. Regarding the requirement in Article 2:6 of a comparison of prices at the same level of trade, he pointed out that the legislation and practice of the EEC were in full conformity with this requirement. On the question of the treatment of direct and indirect selling expenses, he explained that in cases where export prices needed to be reconstructed on the basis of the price at which exported products were resold to the first independent buyer, the purpose of the reconstruction was to arrive at an export price comparable to prices of exports made through independent importers. The rules in the EEC legislation on the reconstruction of export prices were intended to achieve this result. The methodology proposed by Japan would have the result that related importers would receive more favourable treatment than independent importers.

65. In response to the question of Hong Kong on the determination of profit rates for the purpose of establishing target prices, the representative of the EEC said that the imposition of an anti-dumping duty in an amount sufficient to remove the injury to a domestic industry required a certain quantification of the injury. In this context the EEC often computed a target price. Such a target price should include a profit element because domestic producers could be considered to suffer injury if they had to sell at prices which did not enable them to realize a profit. It was not possible to state in general how such a profit element was calculated because such calculations were made in light of the particular circumstances of each case. In any case, the EEC legislation did not lay down minimum rates in this respect. On the question of the calculation of the amount for profit in a constructed value determination he reiterated the view of his delegation that nothing could be more reasonable than to base this amount on the profit realized by an exporter on profitable sales of the like product in his domestic market.

66. Regarding the comments made by the representative of Singapore on the term "directly linked" in Article 2:3(a) of Council Regulation (EEC) No. 2423/88, the representative of the EEC said that, as had been explained in response to a question by the United States, this term was intended to ensure that only those discounts which were directly linked to the sales made during the period of investigation would be taken into account on the establishment of the normal value. Regarding the conditions under which deferred discounts could be taken into consideration under the Regulation in the establishment of the normal value, he explained that account could be taken of such discounts if they were directly linked to the sales under consideration and if evidence was produced to show either that the discounts were based on a consistent practice in prior periods or on an undertaking to comply with the conditions required to qualify for such discounts. If such evidence was supplied, deferred discounts would be deducted automatically from the normal value. He further explained that multi-product discounts could be taken into consideration if such discounts were directly related to the sales under consideration. On the difference

in wording of Article 2:3(a) and Article 2:8(a) on discounts and rebates, he said that this was a reflection of the principle that a party claiming an adjustment must provide that its claim was justified. Experience had shown that, whereas exporters claimed discounts and rebates affecting the normal value with alacrity, they were extremely reluctant to make similar claims in respect of the export price. Moreover, there was no danger that discounts and rebates could be claimed on exports in order to distort the dumping calculation. In these circumstances, it was the task of the Commission to establish whether the discounts and rebates had been granted on exports and this task was likely to be more difficult than dealing with claims affecting the normal value. If, however, in exceptional circumstances an interested party such as a domestic producer in the EEC were to claim that discounts and rebates were being granted on the exported products and if this information was used in the investigation, he would have to provide evidence to justify his claim.

67. Regarding the comments by the representative of Singapore on the order of preference of the methods laid down in Article 2:3(b)(ii) of Council Regulation (EEC) No. 2423/88 for the calculation of the amount for selling, general and administrative expenses and profits, the representative of the EEC said that he failed to see how this hierarchical order could lead to an artificial dumping margin. The preferred method was to use the expenses and profits of the individual exporter concerned. It was only when this method could not be used that data would be used relating to expenses and profits of other producers or exporters. It was necessary to provide for alternative methods because otherwise it would be relatively easy for exporters to avoid dumping determinations. With respect to the choice between constructed value and export prices to third countries as alternative methods to establish the normal value, he reiterated that the Agreement did not indicate any preference of one of these methods. Experience showed that if there was dumping in one market there was usually also dumping in other markets. This explained why the EEC was reluctant to use export prices to third countries, although it wished to leave open the possibility to use this method in appropriate cases. On the issue of the treatment of sales at prices below cost of production, the representative of the EEC said that this was again a general question which was not specific to the anti-dumping legislation of the EEC.

68. The representative of Japan considered that the replies by the representative of the EEC were unsatisfactory and unclear, in particular with respect to Article 13:11 of Council Regulation (EEC) No. 2423/88. With respect to this provision his delegation considered that the key problem was the absence of any investigation to determine whether dumping margins had increased. His delegation would submit further questions in writing and he expressed the hope that the EEC would provide clear and adequate responses to those questions.

69. The representative of the United States thanked the delegation of the EEC for the replies given in document ADP/W/249 to the questions by his delegation in Article 13:11 of Council Regulation (EEC) No. 2423/88. His delegation realized that it was difficult to provide precise answers when a

provision had not yet been implemented. At this time his delegation had no further questions on this provision but when it would be applied in practice his delegation would appreciate to receive information on its implementation.

70. The Committee took note of the statements made and agreed to revert to Council Regulation (EEC) No. 2423/88 at its next regular meeting.

(vi) Australia (Anti-Dumping Authority Act 1988, Customs Legislation Anti-Dumping Amendments) Act 1988, Customs Tariff (Anti-Dumping) Amendment Act 1988, document ADP/1/Add.18/Rev.1/Suppl.2)

71. The Chairwoman recalled that at the regular meeting of the Committee in April 1989 the Committee had continued its discussion of amendments to the Australian anti-dumping legislation introduced in 1988 (ADP/M/26, paragraphs 64-70). Prior to the meeting in April the Committee had received answers from Australia (document ADP/W/216) to questions raised by the United States and the EEC in, respectively, documents ADP/W/193 and ADP/W/197. Further written questions on the Australian legislation had been received after that meeting from Korea (ADP/W/223) and the EEC (ADP/W/239). The Chairwoman also recalled that at the meeting in April the representative of Singapore had raised a number of questions on the legislation of Australia. She noted that the Committee had recently received<sup>1</sup> written responses from Australia to the questions raised by Korea.

72. The representative of Australia apologized for the late submission of the answers by his delegation to the questions asked by Korea. With respect to the amendments to the Australian legislation made in 1988, he explained that one of the most important changes concerned the establishment of an Anti-Dumping Authority to contribute to the transparency of anti-dumping proceedings. The amendments also provided for more detailed rules on the conduct of anti-dumping investigations by the Australian Customs Service and the Anti-Dumping Authority. It was likely that, because of a constitutional problem, further changes to the Australian legislation would be made in the near future.

73. In response to the questions by the EEC in document ADP/W/239, the representative of Australia said that the Anti-Dumping Authority had conducted an enquiry into the following aspects of the Australian anti-dumping legislation: the meaning of the term "material" injury, the "extended period of time" in cases of sales in the domestic market at a loss and the circumstances under which a profit margin should be included in a constructed value. In respect of the criterion of material injury the Australian Government had reaffirmed that anti-dumping actions would only be taken when dumping had caused or threatened material injury to a domestic industry in Australia. In assessing the existence of material injury, the term "material" was to be interpreted in terms of its opposite

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<sup>1</sup>See document ADP/W/250.

i.e. material injury was injury which was not immaterial, insubstantial or insignificant. Injury must therefore be greater than that which could be expected to occur in normal circumstances before it could be considered to be "material". The Government had also noted that material injury would only rarely be taken as proven when the Australian industry had not suffered a substantial reduction of profits or had not lost a substantial market share to the dumped imports. However, this should not restrict the range of factors which could be considered in injury investigations. Directions would be issued by the Government to the Anti-Dumping Authority and the Customs Service to put this decision into effect. In respect of the question of the "extended period of time" over which sales at a loss would be judged not to be in the ordinary course of trade, the representative of Australia explained that the Australian Government had decided to accept the recommendation by the Anti-Dumping Authority that in relation to products sold at a loss in the domestic market of the exporter the period to be examined should usually be not less than twelve months. This further clarified the Government's intentions that the "extended period of time" should be the largest appropriate period when all relevant circumstances, including seasonal variations, were taken into account. Ministerial directions would be issued to put this decision into effect.

74. Regarding the circumstances in which profit margins were to be included in constructed normal values, the representative of Australia pointed out that his Government had determined that a profit margin might be included in all but one cases. However, this profit margin could be zero. The exceptional case in which no profit margin could be included in a constructed value arose when sales in the country of export had been found to be made over an extended period of time at prices below the costs of production. The Government had decided to put this decision into effect through legislative changes; until the necessary legislative amendments had been made this decision would be implemented through a regulation.

75. The representative of Australia said that his delegation had not prepared answers to the questions raised orally by the representative of Singapore at the meeting in April as it had expected that those questions would be submitted in writing.

76. The representative of Singapore said her delegation would probably submit written questions on the Australian anti-dumping legislation.

77. The representative of Brazil reserved his delegation's right to submit questions in writing on the Australian legislation.

78. The representative of Korea thanked the delegation of Australia for the replies provided in document ADP/W/250 to questions by the Korean legislation. His delegation wished to have the opportunity to study these replies and revert to the Australian legislation at the next meeting of the Committee.

79. The representative of the EEC asked the delegation of Australia to provide in writing the responses to the questions raised by his delegation in document ADP/W/239.

80. The representative of Australia said that these responses would be submitted in writing to the Committee.

81. The Committee took note of the statements made and agreed to revert to the legislation of Australia at the next regular meeting.

(viii) Mexico (Foreign Trade Regulatory Act Implementing Article 131 of the Constitution of the United Mexican States, document ADP/1/Add.27 and Corr.1, pp.2-13; Regulations Against Unfair International Trade Practices, document ADP/1/Add.27 and Corr.1, pp.14-26, and Decree Amending and Supplementing the Regulations Against Unfair International Trade Practices, document ADP/1/Add.27/Suppl.1)

82. The Chairwoman recalled that at the regular meeting held in April 1989, the Committee had continued its examination of the Mexican anti-dumping law and regulations (ADP/M/26, paragraphs 71-82). At that meeting the Committee had had before it in document ADP/W/206 replies given by the delegation of Mexico to written questions submitted by the United States (ADP/W/192), the EEC (ADP/W/200) and Canada (ADP/W/202). Further written questions on the Mexican legislation had been received after the meeting in April from Brazil (ADP/W/226), the United States (ADP/W/229) and Australia (ADP/W/235). Questions had also been asked orally at the meeting in April by the delegation of Hong Kong (ADP/M/26, paragraph 76). Document ADP/W/240 contained replies from Mexico to the written questions submitted by Brazil, the United States and Australia.

83. The representative of Mexico said that there was perhaps a misunderstanding as to the scope of the Committee's discussion of the Mexican anti-dumping legislation. He pointed out that in Mexico there were three legal instruments governing the application of anti-dumping measures: the relevant provisions of the Foreign Trade Regulatory Act, the Regulations Against Unfair International Trade Practices and the Agreement as promulgated as domestic law. With respect to the status of the Agreement under domestic Mexican law, he pointed out that in Mexico, as in other Latin-American countries, international agreements had the force of domestic law and conferred rights upon private parties which could be invoked before domestic courts. This was a crucial element to be taken into consideration by the Committee in its discussion of the Mexican anti-dumping legislation. The existence of these three legal instruments had implications for the scope of the Committee's examination of the Mexican legislation. The provisions of the Foreign Trade Regulatory Act should not be the basis of the examination by the Committee; the provisions of this Act were beyond the competence of the Committee in terms of countries and measures covered. For the Committee the relevant domestic legal instrument was the Agreement as promulgated. The Regulatory Act was relevant insofar as it laid down the authority of the

Mexican Government to apply compensatory quotas and to conclude international agreements on anti-dumping matters with other countries in particular through Article 14. This had been the legal basis of Mexico's participation in the Agreement. If the Committee examined the Regulatory Act and concluded that amendments were appropriate, this would result in a situation where Mexico would have to grant the same treatment to countries not Parties to the Agreement as to the Parties to the Agreement. Such a result would not be appropriate. While his delegation had, in the interest of transparency, replied to some of the questions on the Regulatory Act, he believed that the Committee should concentrate its work on the Agreement as promulgated. The representative of Mexico further considered that, since the relevant domestic legal instrument in Mexico was the Agreement as promulgated, there could be no inconsistency between Mexico's international obligations under the Agreement and its domestic law. He also pointed out that in some of the questions by other delegations issues had been raised which in the view of his delegation were not within the purview of this Committee.

84. The representative of Mexico, referring to comments made earlier at the meeting on the scope and purpose of the Committee's examination of national legislation, said that there should be certain limits to the process of the submission of written questions and replies. It was necessary to avoid repetition. Moreover, any specific problems which Parties might have could better be dealt with on the basis of the facts of particular cases than on the basis of abstract and hypothetical questions.

85. The representative of Brazil said that it was unclear from the reply by Mexico in document ADP/W/240 to one of the questions raised by Brazil whether the percentage of domestic production mentioned in Article 10 of the Regulatory Act included the production by producers who were related to exporters, or who imported the product in question. He also considered that Mexico had not replied clearly to the question by his delegation of how the Mexican authorities proposed to interpret the term "products intended to be imported" in Article 10 of the Act. In particular, it was not clear from the Mexican reply whether the Mexican authorities considered that the existence of a contractual arrangement was sufficient to open an investigation. The representative of Brazil requested a further clarification of the provisions of Article 11 of the Act on the application of provisional measures. In document ADP/W/206 Mexico had indicated that, by way of emergency measure, the imposition of provisional measures was possible within five working days of the date on which receipt of a petition had been acknowledged but that normally an investigation lasting several months was carried out to determine whether a petition was sufficient. It was unclear from the reply given by Mexico at what stage of the process the official initiation of an investigation occurred and how the period of five working days related to the date of the official opening of the investigation.

86. The representative of the United States thanked the Mexican representative for his explanation of the manner in which Mexico implemented under its domestic law its obligations under the Agreement.

His delegation had now a clearer understanding of the Mexican system. With respect to the comment of the representative of Mexico that the Committee should concentrate its work on the examination of the Agreement as promulgated under Mexican law, he considered that it was appropriate for the Committee to examine the relevant provisions of the Regulatory Act, insofar as these provisions were presumably intended to elaborate on the way in which Mexico intended to apply the Agreement. In this regard he stated that his delegation was still concerned about Article 11 of the Regulatory Act. In document ADP/W/229 his delegation had asked additional questions in order to obtain a better understanding of how this Article would be applied. While his delegation had noted that Mexico had explained that this provision would be applied only in exceptional cases, he requested the Mexican delegation to respond in a more direct and precise manner to these questions. In any case, the United States would carefully monitor this aspect of the Mexican legislation and he reserved his delegation's right to raise further questions on the Mexican legislation in the context of specific cases as they might arise.

87. The representative of Hong Kong recalled that at the regular meeting in April her delegation had raised questions on Articles 8 and 11 of the Regulatory Act. While Mexico had dealt with these two Articles in document ADP/W/206, her delegation was still concerned about these aspects of the Mexican legislation. With respect to Article 8:III, she said it was still unclear to her delegation how this provision could be considered to be consistent with Article VI:5 of the General Agreement. Regarding Article 11 of the Act which provided for the possibility to impose provisional duties within five working days of the date of acknowledgement of the receipt of a petition, she wondered whether the Mexican authorities could carry out a preliminary investigation of dumping and injury within this period.

88. The representative of Australia thanked the Mexican delegation for the replies provided in document ADP/W/240. His delegation was still concerned about the Mexican legislation and wished to have the opportunity to revert to this legislation at a later stage.

89. The representative of Canada said that his authorities would closely follow the implementation of the Mexican anti-dumping legislation and he reserved his delegation's right to submit further questions at a later stage when more experience would have been gained with the application of the Mexican legislation.

90. The representative of Singapore said that her delegation had some concerns on certain aspects of the Mexican anti-dumping legislation and she reserved her delegation's right to revert to this legislation at the next meeting of the Committee.

91. The representative of the EEC said that his delegation had had bilateral consultations with the Mexican delegation regarding the Mexican anti-dumping legislation. He recalled that his delegation had on a previous occasion raised questions concerning the procedures followed by

Mexico in one particular case; in the meantime the Mexican authorities had informed the EEC that certain aspects of this case were caused by a lack of experience and that in future cases Mexico would fully comply with the rules of the Agreement. By way of general comment, he said that the Agreement contained high standards as regards the protection of rights of interested parties in anti-dumping investigations and that it was important to protect these standards.

92. In response to the question by the representative of Brazil on Article 10 of the Regulatory Act, the representative of Mexico explained that the percentage provided for in this Article was a necessary minimum, designed to avoid the use of anti-dumping procedures by producers accounting for only a small share of domestic production. The fact that this percentage was mentioned in the Act did not imply that investigations would automatically be initiated whenever this percentage was reached. Moreover, this Article was concerned with the definition of the natural and legal persons who were entitled to file anti-dumping duty petitions and not with the definition of the term "domestic industry" for the purpose of the determination of the existence of material injury. Regarding the question by the representative of Brazil on the meaning of the term products "intended to be imported" in Article 10 of the Act, he said that he would seek further clarification on this point.

93. Regarding the procedure in Article 11 of the Regulatory Act for the imposition of provisional measures, the representative of Mexico made a distinction between the date of the filing of a petition, the date on which the Mexican authorities informed the petitioner that his petition met the requirements of the legislation and the date on which the investigation was opened officially. On average, the period between the submission of a petition and the opening of an investigation lasted three months. Under the provisions of the Regulatory Act the opening of an investigation could be accompanied by the immediate application of provisional measures but this was not mandatory. He pointed out that so far twenty-seven anti-dumping duty investigations had been carried out in Mexico. Seventeen of these investigations had been opened during the period 1 January-30 June 1988. Eight cases had been opened during the period 1 July-31 December 1988 and two further investigations had been opened in the period 1 January-30 June 1989. It was important to note that the Agreement had entered into force for Mexico on 10 March 1988; consequently, not all the above-mentioned investigations had been subject to the requirements of the Agreement. In fact, in seventeen of the twenty-seven cases the proceedings had been initiated before Mexico's acceptance of the Agreement. Regarding the ten remaining cases, he explained that two of these cases involved countries which were not Parties to the Agreement, five cases had been opened without imposition of provisional measures and in three cases proceedings had been opened with a simultaneous imposition of provisional measures. In one of these three cases the provisional measure had been revoked but the investigation was still continuing. In another of these cases the investigation had been concluded with a finding that no injury was caused to a domestic industry. Thus, only in one case was the provisional measure still in force. In

1987, provisional measures had been imposed upon the opening of the investigation in more than eighty per cent of all investigations initiated; in 1988 this had occurred in fifty per cent of the investigations initiated and in 1989 no investigation had been opened with simultaneous application of provisional measures. His authorities considered that in those exceptional cases in which provisional measures had been applied at the time of the opening of the investigation, the legal basis for such action could be found in Article 6:9 of the Agreement. He pointed out in this respect that the legislation of some other Parties contained similar provisions for the application of such exceptional measures. He also clarified that even if the Mexican legislation on anti-dumping was relatively new in its application Mexico had always followed its international obligations.

94. Regarding Article 8:III of the Foreign Trade Regulatory Act, the representative of Mexico referred to the answers given by his delegation in documents ADP/W/206 and 240. He reminded the Committee that according to paragraph 62 of the Protocol of Accession of Mexico to the General Agreement Mexico was committed to apply its Regulatory Act in conformity with its obligations under the General Agreement. Therefore, Mexico was bound to apply Article 8:III of its Regulatory Act in a manner consistent with Article VI:5 of the General Agreement. He pointed out that Article VI of the Mexican anti-dumping Regulations provided for the necessary adjustments in this respect.

95. The Committee took note of the statements made and agreed to revert to the anti-dumping legislation of Mexico at its next regular meeting.

(viii) Laws and/or regulations of other Parties

96. The representative of Canada said that Turkey had recently adopted an anti-dumping law. He hoped that Turkey would accept the Agreement in the near future. He noted that there were other countries which had recently adopted anti-dumping laws and considered it important that these countries be encouraged to accept the Agreement.

97. The Committee took note of the statement made by the representative of Canada and agreed to keep on its agenda for the next regular meeting the item 'laws and/or regulations of other Parties'.

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98. The Committee had a general discussion on the scope and objectives of the examination of national legislation. The comments made by several delegations are summarized hereunder.

99. The representative of the EEC recalled that the EEC anti-dumping legislation had been the subject of discussion at a number of meetings of the Committee. At the meeting in April 1989 this legislation had been examined in a very extensive manner and after that meeting the EEC had provided written answers to the questions raised by several delegations.

At this meeting there had again been an extensive debate on the EEC legislation. He considered that the Committee's examination of the EEC legislation had by now gone far beyond a discussion of the recent changes in this legislation. Moreover, the discussion tended to become repetitive and to duplicate the work done in the Uruguay Round negotiations. In spite of all this, there had at this meeting already been one delegation which had announced that it would submit additional questions on Article 13:11 of Council Regulation (EEC) No. 2423/88. This was a provision which had been discussed on previous occasions and on which the EEC had provided written answers. Moreover, the EEC had not yet applied this provision and all replies on this provision were necessarily of a hypothetical nature. The procedures of the Committee allowed any Party to raise questions on the legislation of another Party if specific problems arose in the application of such legislation but this had not been the case here. Therefore, the EEC could add nothing to what it had already stated on this provision. While his delegation was prepared to further discuss the EEC legislation at the next meeting of the Committee, it could not undertake to provide additional replies in writing. In such further discussions of the EEC legislation the Committee should limit itself to issues which were not discussed elsewhere. The representative of the EEC proposed that the examination of the EEC legislation be concluded at the next regular meeting of the Committee.

100. The representative of Singapore emphasized that the examination of national legislation was a very important aspect of the Committee's responsibility regarding the implementation and operation of the Agreement. A fundamental objective of the Committee's examination of national legislation was the multilateral surveillance of the implementation of the Agreement to ensure that Parties observed their obligations under the Agreement. This central function of the Committee should not be diluted. In this context each Party to the Agreement had the right to raise any issue relating to any aspects of the anti-dumping legislation of other Parties which that Party considered important. Thus, the Committee was not limited to the examination of amendments to national laws and regulations but could also examine provisions of existing legislation which Parties considered important from the perspective of the operation of the Agreement. She disagreed with the suggestion that the Committee could not discuss issues which were being discussed in the Uruguay Round. While it was possible that some of the points raised in the context of the Committee's examination of national legislation were also discussed in the Uruguay Round, it was important to take account of the different nature and objective of the discussions in the Committee and of the discussions in the Uruguay Round.

101. Regarding the suggestion by the representative of the EEC that the Committee should in the near future conclude its examination of Council Regulation (EEC) No. 2423/88, the representative of Singapore said that to the extent that Parties still had questions on a law or regulation or were not satisfied with explanations provided, that law or regulation should remain on the agenda of the Committee. Her delegation still had many concerns and questions on the EEC legislation and the Committee's examination of this legislation could therefore not be considered to have been exhausted. As regards the remark by the representative of the EEC that

his delegation could not make a commitment to provide further written replies, she said that, especially with respect to more technical issues, the discussions in the Committee might be facilitated if explanations were provided in written form. In response to the remark made earlier at the meeting by the representative of the EEC that some questions raised on the EEC legislation raised issues of a general nature, she said that there were issues on which there were no common interpretations of the provisions of the Agreement and which had created problems in the implementation of the Agreement. Such issues could usefully be discussed in the Committee. One example which she mentioned in this respect was the question of the treatment of sales below costs of production.

102. The representative of Brazil expressed his concerns regarding the suggestion made by the representative of the EEC. There should be no restrictions on the possibilities to examine national legislation in the Committee. He considered that the fact that a particular provision had not been put into practice was no reason not to discuss the provision in the Committee. He recalled in this respect that earlier at the meeting the representative of the EEC had asked questions on the amendments to the Brazilian anti-dumping legislation which had not yet been applied in practice. The examination of national legislation and the discussion of semi-annual reports were two separate procedures which should take place in parallel.

103. The representative of the EEC said that apparently his remarks made earlier at the meeting had created the impression that the EEC was proposing that the Committee engage in a general discussion of certain issues. He explained that his delegation had objected to the tendency to raise general questions in the context of the legislation of one particular Party and had taken the view that, if the Committee wanted to discuss such general issues, it should do so in a broader context. However, the EEC had not proposed that the Committee hold such a general discussion. He reiterated that his delegation was prepared to respond orally to questions at the next meeting but that one should avoid repetition. If some Parties remained dissatisfied with the replies given by the EEC, it was difficult to see how a continuation of the discussion of the EEC legislation could allay the concerns of those Parties.

104. The representative of Hong Kong considered that the work being done in the Uruguay Round did not affect the responsibility of the Committee to examine national legislation. The objective of this examination was fundamentally different from the objective of the negotiations in the Uruguay Round.

105. The representative of Japan considered that even if a provision of anti-dumping laws had not yet been applied in practice, the mere existence of that provision could affect the pricing behaviour of exporters. In this context he reiterated his request to the EEC for clear answers to the questions raised by his delegation on Article 13:11 of Council Regulation (EEC) No. 2423/88.

106. The representative of India agreed with the remarks made by other delegations that the examination of national legislation in the Committee was important and needed to be distinguished from the discussions in the Uruguay Round. As long as delegations had questions on the legislation of a Party, that legislation should remain on the agenda of the Committee.

107. The representative of Korea said that the Committee had not exhausted its consideration of the EEC legislation. His delegation was of the view that the Committee could properly discuss questions of a general nature where such questions were relevant to the laws and regulations of Parties to the Agreement.

108. The Committee took note of the statements made. The Chairwoman recalled that earlier at the meeting the Committee had already decided to revert at its next meeting to some of the laws and regulations which it had been discussing at this meeting. She said that it was open to members of the Committee to raise questions orally or in writing and to delegations to which such questions were addressed to endeavour to provide answers, orally or in writing, as appropriate. She also pointed to the need to avoid repetition in the Committee's examination of national legislation. She proposed that delegations which wished to submit written questions on the laws and regulations to which the Committee had agreed to revert at its next meeting do so by 15 January 1990 and that delegations to which such questions were addressed would reply in writing by 15 March 1990.

B. Semi-Annual Reports by Mexico and Canada of Anti-Dumping Actions taken within the period 1 July-31 December 1988 (ADP/41/Add.6 and 7)

109. The Chairwoman recalled that at its meeting in April 1989 the Committee had agreed to revert to the semi-annual report by Mexico for the period 1 July-31 December 1988 (ADP/41/Add.6) in light of questions raised by the representative of Brazil on an investigation involving imports of steel bars from Brazil (ADP/M/26, paragraph 97).

110. The representative of Brazil asked the representative of Mexico to explain what had been the date of the receipt of the petition in the investigation concerning hoop and strip of cold-rolled steel (ADP/41/Add.6, page 8) and on what date the Mexican authorities had informed the petitioner that his petition was sufficient. He also liked to know whether during the period between these two dates interested parties had had the opportunity to make comments on the petition. Finally, he asked whether the provisional duties imposed in September 1988 had in the meantime been replaced with definitive duties.

111. The representative of Mexico said that in the case referred to by the representative of Brazil the date on which the petitioner had been informed that his petition was sufficient to open an investigation was 29 August 1988; the investigation had been opened officially on 15 September 1988. Upon the opening of this investigation a provisional duty had been imposed because of the exceptional circumstances of the case.

112. The Committee took note of the statements made by the representatives of Brazil and Mexico.

113. The Chairwoman recalled that the Committee had also agreed at its meeting in April 1989 to revert to the semi-annual report by Canada covering the period 1 July-31 December 1988 (ADP/41/Add.7) in light of a comment made by the representative of Brazil (ADP/M/26, paragraph 101).

114. The representative of Brazil said that in the investigation of polyphase induction motors referred to by his delegation at the previous meeting of the Committee a negative determination of injury had been made. His delegation, therefore, had no further comments on this case.

115. The Committee took note of the statement made by the representative of Brazil.

C. Semi-Annual Reports of anti-dumping actions taken within the period 1 January-30 June 1989 (ADP/45 and addenda)

116. The Chairwoman said that a request for the submission of semi-annual reports covering the first six months of 1989 had been circulated in document ADP/45. The following Parties had informed the secretariat that during this period they had not taken any anti-dumping actions: Austria, Czechoslovakia, Egypt, Hong Kong, Hungary, India, Japan, Korea, Poland, Romania, Singapore and Yugoslavia. Parties which had notified anti-dumping actions taken during this period were Australia, Brazil, Canada, the EEC, Finland, New Zealand, Sweden and the United States. No reports for this period had been received from Mexico, Norway, Switzerland and Pakistan. The Chairwoman said that given that the reports by Australia and the EEC had been received only very recently, the Committee would revert to these two reports at the next regular meeting.

117. The representative of Norway said that his authorities had taken no anti-dumping actions during the period 1 January-30 June 1989.

118. The Committee examined the semi-annual reports by the Parties who had notified the anti-dumping measures taken during this period in the order in which these reports had been circulated.

New Zealand (ADP/45/Add.2)

119. No comments were made on this report.

Canada (ADP/45/Add.3)

120. The representative of the United States asked whether the percentages appearing in column 8 on page 9 of the report with respect to investigations involving two products from the United States represented the margins of dumping found in those investigations.

121. The representative of Canada confirmed that these percentages represented the margins of dumping established.

Sweden (ADP/45/Add.4)

122. No comments were made on this report.

Finland (ADP/45/Add.5)

123. No comments were made on this report.

Brazil (ADP/45/Add.6)

124. The representative of Czechoslovakia said that the investigation mentioned in the semi-annual report of Brazil (transmission chains of iron and steel for cycles) had involved imports from a number of countries. However, the report only provided information on the outcome of the investigation of imports from Czechoslovakia and India and it was unclear whether the investigation of imports from other countries was still pending.

125. The representative of Brazil said that the investigation reported in document ADP/45/Add.6 had been concluded. This investigation had involved imports from the People's Republic of China, Czechoslovakia, India and the Soviet Union. His authorities considered that it was not necessary to provide data in the semi-annual reports regarding proceedings involving imports from countries which were not Parties to the Agreement.

126. The representative of Czechoslovakia considered that it was normal practice for the Parties to the Agreement to notify the Committee of all anti-dumping actions taken against any countries. He reserved his delegation's right to revert to this matter at the next regular meeting of the Committee, if necessary.

127. The Committee took note of the statements made by the representatives of Brazil and Czechoslovakia.

United States (ADP/45/Add.7)

128. The representative of Sweden made the following observations on the investigation carried out by the United States of imports of anti-friction bearings from Sweden. Definitive anti-dumping duties had been imposed upon the conclusion of this investigation on 3 May 1989. These duties applied to three different types of anti-friction bearings. Among the companies affected by these duties were the Swedish company AB SKF and several of its wholly-owned subsidiaries in Sweden and in four other countries. The duties applied to imports of ball bearings exported by this Swedish company were substantially higher than the duties applied to imports from the company's competitors. The Government of Sweden was presently reviewing the determinations made in this proceeding by the relevant authorities of the United States insofar as these determinations affected imports from Sweden. While this review had not yet been concluded, his authorities at this stage had a number of questions regarding the consistency of these determinations with the relevant

provisions of the Agreement, in particular with respect to the determination by the United States Department of Commerce that the petitioner in this proceeding had the standing to act as petitioner and with respect to two aspects of the manner in which the Department of Commerce had calculated the margin of dumping. His authorities welcomed comments from the United States and other interested Parties on these issues.

129. Regarding the question of the standing of the petitioner, the representative of Sweden noted that it followed from Articles 5:1 and 4:1 of the Agreement that a request for the initiation of an anti-dumping investigation must be supported by producers whose production constituted "a major proportion of the total domestic production" of the relevant product. This requirement provided protection to exporters against the opening of arbitrary investigations. According to the information available to his delegation, the United States Department of Commerce had opened the investigation in the anti-friction bearings case without having established affirmatively that the petition was supported by domestic producers accounting for a major proportion of the total domestic production. It appeared that the procedure followed by the United States was to rely on the assertion by a petitioner that it had standing to file a petition until the opposite was shown to be the case. In the opinion of his delegation this put upon respondents the burden of proof to demonstrate that a petitioner did not have standing. He recalled that Sweden had already expressed serious concerns regarding this procedure on other occasions. He requested the delegation of the United States to explain at what stage of the proceeding the Department of Commerce had determined that the petitioner in the anti-friction bearings case had standing to file a petition and what was the market share accounted for by the domestic producers who had supported the petition.

130. The representative of Sweden further made a number of comments on the use by the Department of Commerce of export prices to a third country as a basis to determine the normal value in the anti-friction bearings case. Under Article 2:4 of the Agreement this method could be used if "there are no sales of the like product in the ordinary course of trade in the domestic market, or when, because of the particular market situation, such sales do not permit a proper comparison". In the anti-friction bearings case the Department of Commerce had used export prices to a third country as a basis to determine the normal value of sales by SKF in Sweden even though the U.S. and Swedish markets were comparable in terms of sales quantities and value. This method had been chosen on the basis of a calculation in which ball bearings and components thereof had been given the same weight. Thus, each ball, of which there were at least eight in a ball bearing, had been considered the equivalent of a finished ball bearing. The result of this technique had been that the sales made on the Swedish market had not passed the "home market viability" test. It was his authorities' understanding that in the case of two other companies the Department of Commerce had treated the components of the ball bearings differently. On the basis of the volume of sales on the Swedish domestic market it was likely that if in the case of SKF the components had been

treated in the same manner as in the case of these two companies, the Swedish home market would have been found to be viable. Moreover, if the Department of Commerce had considered value data, the home market would have been found to be viable even if the components were considered equivalent to the finished ball bearings. The representative of Sweden requested the United States to explain why the Department of Commerce had used different methods when determining the "home market viability" for different companies and how the methods used by the Department in this case were consistent with Article 2 of the Agreement.

131. The representative of Sweden also raised some questions on the use by the Department of Commerce of the best information available in the determination of the normal value of sales by SKF on the basis of prices of exports to a third country. In the course of the investigation the Department had rejected price information provided by the SKF company in the third country in question and had decided to use as best information available data submitted by the petitioner. Of particular concern to his delegation was that the Department of Commerce had chosen punitive dumping margins as best information available which had led to the imposition of unreasonably high dumping margins. According to the information available to the Swedish authorities, the relevant SKF companies had complied with each request for information by the Department, including seven requests for the submission of supplementing data. All submissions had been filed with the Department within the time limits prescribed even though these time limits had often been very tight. Moreover, the Department had enjoyed full access to the company records of SKF during on-site verifications. His authorities considered, therefore, that it was questionable whether the use by the Department of the best information available to determine the margin of dumping was in conformity with the provisions of Article 6:8 of the Agreement. The representative of Sweden asked the delegation of the United States to explain why the Department of Commerce had not used the information provided by SKF.

132. The representative of Sweden concluded by saying that the anti-friction bearings investigation in the United States was without precedent in the history of anti-dumping practices. The questionnaire sent to respondents by the Department of Commerce had exceeded 200 single-spaced pages of questions and instructions. In the course of the investigation major changes had been made to these instructions. To illustrate the burden on respondents, he noted that the SKF companies had provided the Department of Commerce with about 18 million pages of documentation. The developments in this case were a cause of serious concern and it was difficult not to qualify certain aspects of the procedure of the Department of Commerce as harassment. It was of the utmost importance that all anti-dumping investigations were carried out in accordance with the provisions of the Agreement in order to prevent anti-dumping practices from constituting unjustifiable impediments to international trade. The representative of Sweden reserved the rights of Sweden under the Agreement and under the General Agreement with respect to this case.

133. The representative of the United States said that the investigations involving imports of anti-friction bearings had indeed been very complex and had imposed a burden on all parties involved. His delegation considered, however, that all decisions taken in these investigations by the relevant authorities of the United States had been based on sound reasoning and were consistent with the obligations of the United States.

134. On the concerns expressed by the representative of Sweden on the standing of the petitioner, the representative of the United States said that neither Article 4:1 nor Article 5:1 spoke explicitly to there having to be a demonstration or verification of open, affirmative support from firms accounting for a major proportion of domestic production in order to initiate an investigation. As Sweden had suggested, it was very much aware of the practice of the United States in this regard, a practice which in no way was inconsistent with the obligations of the United States under the Agreement. Numerous parties in the various investigations concerning anti-friction bearings from Sweden and other countries had challenged the petitioner Torrington's standing on the grounds that the petition had not been filed by an interested party or on behalf of the domestic industry in the United States producing the like product. However, with the exception of an additional category for "other anti-friction devices", the United States International Trade Commission's categorization of the subject merchandise into six like products had been identical to the five classes or kinds of the merchandise the Department of Commerce had found as being subject to investigation. Because the petition had demonstrated that it produced all five classes or kinds of the merchandise the Department had determined that it was an interested party with standing to file the petition.

135. The representative of the United States said that Sweden's understanding was correct that it was the practice of the Department of Commerce to rely upon the petitioner's representation that it had filed on behalf of the domestic industry until it was shown that a majority of the domestic industry affirmatively opposed the petition. As the United States had noted on previous occasions, to require a petitioner to establish affirmatively that it had the support of a majority of the industry on whose behalf it had filed the petition would in many cases be so onerous as to preclude access to effective relief from injurious dumping. Where domestic industry members opposing a petition provided a clear indication that there were grounds to doubt the standing of a petitioner, the Department of Commerce would evaluate the opposition to determine whether the opposing parties did, in fact, represent a major proportion of the domestic industry. In this connection, the representative of the United States pointed out that on 14 October 1988 the Department of Commerce had issued a questionnaire to the parties challenging the standing of the petitioner, Torrington. These parties had been requested to supply information on the nature and extent of their involvement in the domestic industries. The responses had demonstrated that six bearing producers opposed the standing of the petitioner with respect to each class or kind of merchandise. These parties had provided their total volume and value of production during the period of

investigation for each of the five classes or kinds of merchandise. The Department had cumulated this data for each class or kind by both quantity and value and had divided these figures by the respective quantity and value of total production in the United States. The total production in the United States of ball, spherical and cylindrical bearings had been based on data sourced from the Anti-friction Bearing Manufacturers' Association while production totals for needle and plain bearings had been calculated using the 1987 Current Industrial Report of the United States Bureau of the Census. As some of the opponents had based their percentages of market shares on the value of their production in the United States, while others had based percentages of market shares on the volume of their production in the United States, the Department had performed its analysis on the basis of both criteria. This had demonstrated that the parties in opposition did not represent a majority of the domestic industry in terms of both volume and value of US production. Even if this had not been the case, the firms in opposition were also wholly-owned subsidiaries of the foreign respondent firms and could have been justifiably excluded from the analysis on the basis of this relationship. In addition, the Department had received expressions of support for the petition from at least five other members of the domestic industry, including such significant producers as the Federal Mogul Corporation.

136. In response to the two questions raised by the representative of Sweden, the representative of the United States said that based upon the normal practice of the United States, the Department had determined that the petition had standing to file a petition at the initiation stage of the investigation and had evaluated this standing at a later stage in light of allegations made by parties contesting the petitioner's standing. He further pointed out that the Department of Commerce had not gathered information on the share of the domestic production accounted for by the petitioner as this was not an aspect of the Department's evaluation of the standing of a petitioner; the Department had, however, gathered data on the shares of domestic production represented by those parties who had expressed doubts as to the standing of the petitioner.

137. Regarding the points raised by the representative of Sweden concerning the use of price data on exports to a third country, the representative of the United States explained that in order to determine whether there were sufficient sales in the home market to serve as the basis for calculating the normal value, the practice and preference of the United States was to compare the volume of home market sales to the volume of sales made to third countries (the so-called "viability test") within each category of such or similar merchandise, which were categories established for purposes of price-to-price comparisons. However, given the enormous number of products sold and the numerous physical permutations among types of bearings, the Department had determined that the only feasible method in this case was to calculate home market viability on the basis of each class or kind of merchandise (e.g. all ball bearings and parts and components of ball bearings, taken as a whole). Approximately six months after the investigations had been initiated parties had for the first time raised the

issue that the results of this viability test might be skewed by the inclusion of parts in the calculation. The Department had therefore requested additional information from respondents on whether parts were included in their viability calculations and on the number of parts in a bearing. Based on its analysis, the Department had determined that it would not be possible to equate a specific number of parts to whole bearings due to the variety of factual situations which had prevailed. For example, most of the respondents had not sold all parts of bearings. Therefore, it would have been inappropriate to assume that a certain number of parts, taken together, were equivalent to a bearing. Given this, as well as the fact that the stated scope of the investigations included both parts and complete bearings, the Department had determined that it was appropriate to include parts in the viability calculations.

138. The representative of the United States further pointed out that in order to address possible problems of skewed results, the Department of Commerce had identified those companies and classes or kinds of merchandise where the home market had been found not to be viable as a result of the inclusion of parts and had performed the viability test one more time, excluding parts. In the case of spherical roller bearings of SKF Sweden, the Department had found that the ratio of home market to third country sales was less than 5 per cent regardless of whether parts were included. Thus, third country sales had been determined to provide the appropriate basis to calculate the normal value. With respect to the ball bearings produced by SKF Sweden, the elimination of parts from the viability test had led to a substantial increase in the ratio of home market to third country sales, indicating that the inclusion of parts might have skewed the results. The Department had therefore examined whether it would obtain a greater number of identical matches to products sold in the United States, for purposes of price-to-price comparison, if it used home market or third country sales. Since, for other reasons related to the complexity of the investigations and the number and variety of bearing types sold, the Department had already decided to limit the comparisons to the extent possible to identical merchandise, it had determined that the use of SKF Sweden's sales of ball bearings to the third country market served as a more appropriate basis for establishing normal value as there was a higher percentage of identical product matches found in that market. In the context of the simplified matching methodology selected for use in these investigations, the use of third country sales data had enabled the Department to obtain the largest number of comparisons in the interest of increasing the accuracy of the results. For these reasons, the United States did not consider that its practice in this case was inconsistent with the Agreement. the representative of the United States also pointed out in this context that the inclusion of parts had been an issue only with respect to the establishment of the viability of a market for comparison purposes. In no instance had parts of bearings been compared to complete bearings for purposes of the price-to-price comparisons.

139. With respect to the use of the best information available in the anti-friction bearings case, the representative of the United States said that the anti-dumping legislation of the United States, in reflection of the Agreement, required that the best information available be used whenever a party or any other person refused or was unable to produce information requested in a timely manner or in the form required, or otherwise significantly impeded an investigation. In deciding what the use as the best information available, the regulations of the Department of Commerce provided that the Department could take into account whether a party refused to provide requested information. Thus, the Department was to determine on a case-by-case basis what was the best information available. For purposes of these anti-friction bearing investigations the Department had applied two tiers of best information available, depending on whether the companies attempted or refused to co-operate in the investigation. When a company co-operated with the Department's requests for information but failed to provide the information requested in a timely manner or in the form required, the Department had determined that it was appropriate to assign the affected company the higher margin for the relevant class or kind of merchandise between two alternatives: (1) the highest calculated margin for any respondent within that country who had supplied adequate and verified responses for the relevant class or kind of merchandise, or (2) the estimated margin found for the affected company in the preliminary determination based on information provided by that company. However, in the event the affected company was the only producer or exporter of the relevant class or kind of merchandise, the Department had determined that it was appropriate to assign the higher margin between (1) the estimated margin of dumping found for the affected company in the preliminary determination, or (2) the margin of dumping alleged in the petition. This methodology had been applied in the case of SKF Sweden.

140. The representative of the United States explained that the Department of Commerce had found it necessary to resort to use the best information available in the case of SKF Sweden for the following reasons. Prior to the scheduled date of verification, the Department had received revised and new worksheets and sample calculations for numerous changes and adjustments related to SKF sales in the Federal Republic of Germany, including third country sales for SKF Sweden. For some of the changes and adjustments received, the Department had determined that the necessary revisions to SKF's information were so substantial that such revisions essentially constituted new information. While it was the practice of the Department to accept minor revisions to questionnaire responses after the preliminary determination and during verification it was the Department's well established policy not to accept new information filed after the preliminary determination. Consequently, the Department had informed SKF during verification that it would not accept new submissions correcting the errors and deficiencies identified. It had nevertheless completed the sales and cost of production verifications, as the new information provided did not appear to undermine the credibility of the entire data base. However, during the course of verification, the Department had found numerous discrepancies, errors in methodology and mathematical errors. For example, it had been provided with revised amounts for the quantity and

value of sales at verification and SKF company officials had been unable to explain why these revisions were necessary or how the revised numbers related to the information provided in the original responses. Company officials had been unable to explain inconsistencies and discrepancies found during verification which had undermined the credibility of their sales data bases for all relevant markets. Similar revisions had been provided for virtually every adjustment to those sales and again SKF had not been able to explain the errors in the calculation of the original responses which had necessitated the revisions. Essentially, the Department of Commerce had been provided with entirely new responses at verification. Moreover, after verification, SKF had continued to submit new information which had differed substantially from the information provided at verification.

141. The representative of the United States said that, faced with responses containing numerous fundamental flaws, the Department could not properly have based its determinations on the information provided by SKF. Nor would it have been appropriate for the Department to have attempted to identify and perform numerous and substantial recalculations which would have been necessary for the development of accurate sales data. It was the obligation of respondent exporters to provide an accurate and complete response prior to verification so that investigating authorities had the opportunity to fully analyze the information and, of equal importance, so that other parties to the investigation could review and comment on the information. A respondent could not reasonably expect the investigating authority to correct its response during the course of verification. Verification was intended to establish the accuracy of a response rather than to reconstruct the information to fit the requirements of the investigation or to perform the recalculations necessary to develop accurate information. Therefore, in light of the substantial number of discrepancies and errors contained in the questionnaire responses, the magnitude of the problems encountered at verification and the submission of new unverified information subsequent to verification, the Department had had no choice but to use the best information available for the final determination. The information used had not been intended to be punitive per se but had merely reflected the fact that there were no other known exporters of ball and spherical roller bearings in Sweden, thus requiring that the relevant information contained in the petition be used. Moreover, the Department had used the information provided by SKF Sweden for its sales of cylindrical roller bearings as it had found that the information provided with respect to these bearings was substantially complete and accurate.

142. The representative of Sweden said that his delegation needed more time to study the remarks of the representative of the United States. He noted that the question of the verification of the standing of a petitioner was presently before a Panel established by the Committee. It was interesting that the representative of the United States had admitted that the United States authorities did not carry out an investigation to determine the standing of a petitioner. Regarding the comments made by the representative of the United States on the use of the best information

available, he reiterated that SKF Sweden had made every effort to comply with all requests for information by the Department of Commerce and had provided the Department with full access to its company records.

143. The representative of the EEC said that the anti-friction bearings cases had also involved a number of companies in the EEC. The EEC had opened bilateral consultations with the United States on these investigations. It was his understanding that in the near future the Department of Commerce would start an administrative review of the anti-dumping duties imposed in which all companies involved would have the opportunity to submit information. He trusted that the Department would duly consider this information in accordance with the requirements of the Agreement.

144. The representative of Romania said that the investigations of imports of anti-friction bearings had also involved imports from Romania. His delegation would seek bilateral consultations with the United States and, if necessary, revert to this matter in the Committee.

145. The representative of Singapore expressed her concerns regarding the explanation given by the United States of the practice of the United States concerning the determination of the standing of a petitioner. She was concerned about the reversal of the burden of proof whereby other interested parties would have to oppose the standing of a petitioner. She questioned whether this practice was consistent with the Agreement and in this respect she referred to the definition of the term "domestic industry" in Article 4 of the Agreement. It followed from this definition that a request for the opening of an investigation had to be supported by producers accounting for a significant proportion of the domestic production of the like product. She further considered that it followed from the requirement in Article 5:1 that a petition include sufficient evidence of dumping and consequent injury to a domestic industry that a petitioner must provide evidence of support for the petition by the domestic industry.

146. The representative of the United States said he had taken note of the comments made by the representatives of Sweden, the EEC, Romania and Singapore. He pointed out that page 2 of document ADP/45/Add.7 contained an error with respect to the investigation of calcined bauxite proppants imported from Australia. In April 1989 the USITC had made a negative injury determination and this investigation had, consequently, been terminated without imposition of definitive anti-dumping duties.

147. The representative of Romania requested the United States to explain what was meant by footnote 9 on pages 6 and 19 of document ADP/45/Add.7 relating to proceedings involving imports of urea from the German Democratic Republic and Romania. His delegation might want to raise questions at the next regular meeting on the manner in which the normal value had been calculated in these cases.

148. The representative of the United States explained that footnote 9 should read as follows: "No shipments during the review period. Previous rates used".

149. The Committee took note of the statements made and agreed to revert at its next regular meeting to the matter raised by the representative of Sweden concerning the investigation of imports of anti-friction bearings from Sweden and to the proceeding involving imports of urea referred to by the representative of Romania.

D. Reports on all preliminary or final anti-dumping actions (ADP/W/232 and 238)

150. The Chairwoman said that the Committee had received notices of anti-dumping actions from the delegations of Australia, Brazil, Canada, Finland, Mexico, New Zealand, Sweden and the United States.

151. No comments were made on these notices.

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

- (a) Draft recommendation on the use of price undertakings in anti-dumping proceedings involving imports from developing countries

152. The Chairwoman recalled that at its meeting in April 1989 the Committee had had before it in document ADP/W/138/Rev.5 a draft recommendation on the use of price undertakings in investigations involving imports from developing countries on which a consensus had been reached in the Ad-Hoc Group. The Committee had decided to consider the possible adoption of this draft recommendation at its next regular meeting (ADP/M/26, paragraph 108). The Chairwoman proposed that the Committee adopt this draft recommendation.

153. The representative of the United States said that his authorities had not yet completed their review of the draft recommendation and proposed that this item be kept on the agenda of the next meeting of the Committee.

154. The representative of Yugoslavia said that her delegation was in favour of the adoption of the draft recommendation which contained an important elaboration of Article 13 of the Agreement. However, the first paragraph of the draft recommendation could lead to uncertainty for exporters in that it did not provide for an obligation of investigating authorities to explain in all cases the reasons for refusals to accept offers of undertakings and to provide an opportunity to exporters to comment. She considered that the Committee should strengthen the language used in the last part of this paragraph.

155. The representative of Canada clarified the basis upon which his delegation was prepared to accept the draft recommendation. His authorities were not opposed to the general thrust of the draft

recommendation and did not propose any changes. Price undertakings could provide an effective mechanism for dealing with injurious dumping in a more expeditious and less costly manner than through a full fledged proceeding. The Canadian anti-dumping legislation enacted in 1984 provided for the possibility to accept price undertakings. However, under the Canadian legislation undertakings must be adopted prior to the preliminary determination of dumping. The experience with the provisions on undertakings in the Canadian legislation had been satisfying and there was a growing interest on the part of exporters to offer undertakings. Where exporters expressed a serious interest in offering undertakings, the Canadian authorities explored the possibilities of accepting undertakings. In cases where exporters needed more time to consider the possibilities of offering undertakings, the Canadian legislation made it possible to extend the time period for the preliminary investigation by an additional 45 days. Experience showed that this additional period provided sufficient latitude for the conclusion of an undertaking where there was a clear indication on the part of interested parties that this was the appropriate approach. The representative of Canada recalled that in the discussions in the Ad-Hoc Group on this draft recommendation there had been suggestions to provide that investigating authorities should allow for the possibility of the conclusion of price undertakings up to the application of definitive duties. This had caused Canada to question earlier versions of the draft recommendation. At the meeting of the Ad-Hoc Group in April 1989 new wording had been agreed upon on this and other aspects. The Canadian delegation had on that occasion made it clear that it could agree to the submission of the draft recommendation to the Committee on the understanding that it did not require that the acceptance of price undertakings should be possible throughout the entire period of investigation. In the view of the Canadian delegation the revised paragraph 2 of the draft recommendation clearly contained a permissive interpretation by the use of the words "to the extent possible" and allowed for the consideration of special features of national laws. On this basis, and with the clear understanding of the members of the Committee that the draft recommendation did not create an obligation to accept price undertakings after a preliminary determination, Canada could agree to the adoption of the draft recommendation.

156. The Committee took note of the statements made and agreed to revert to the draft recommendation at its next regular meeting.

(b) Report by the Chairwoman on the meeting of the Ad-Hoc Group on 23 October 1989

157. The Chairwoman said that at its meeting on 23 October 1989 the Ad-Hoc Group had continued its discussion of working papers on procedures for the revision and termination of price undertakings. Some suggestions had been made on these papers which would be the subject of informal consultations before the next meeting of the Group. The Ad-Hoc Group had also discussed a proposal regarding possible future work and had agreed that this matter would be examined in the context of further informal consultations.

158. The Committee took note of the statement made by the Chairwoman.

F. Other business

(i) Recent anti-dumping investigations of imports of textiles and clothing from Hong Kong

159. The representative of Hong Kong drew the Committee's attention to the fact that recently anti-dumping investigations had been opened regarding imports of textiles and clothing from Hong Kong. Her Government was concerned about the use of anti-dumping procedures in respect of products already subject to restrictions in the context of the Multi-Fibre Agreement. As a result of these restrictions there were already limitations on the ability of exporters to increase their exports of the products in question. The Government of Hong Kong did not grant any subsidies or other forms of financial assistance to its producers and the economy of Hong Kong was dictated by the principles of free competition. Companies in Hong Kong therefore had neither the motive nor the means to export textiles and clothing. Thus, the rationale for dumping was absent and this called into question the reasonableness of subjecting these products to the additional uncertainty generated by the initiation of anti-dumping investigations and by the possible application of anti-dumping measures. The Multi-Fibre Agreement was designed to ensure the orderly and equitable development of international trade in textiles. It was clear from the Protocol of Extension of the Multi-Fibre Agreement that this Agreement constituted the principal means of addressing problems in the area of international trade in textiles and that other measures could only be resorted to when the measures provided for under the Multi-Fibre Agreement were exhausted. Under these circumstances, the opening of anti-dumping investigations caused uncertainty to traders who had no incentive to sell at unfair prices. The objective of the Agreement was to provide relief against unfair trade practices and it was important to ensure that anti-dumping measures did not themselves become impediments to international trade.

160. The Committee took note of the statement made by the representative of Hong Kong.

(ii) Administrative review procedures of the United States

161. The representative of Canada drew the attention of the Committee to problems which had resulted from delays in the completion of administrative reviews by the United States Department of Commerce. Such delays were increasingly frequent and caused serious problems to Canadian exporters, especially to small and medium-sized exporters. Under the legislation of the United States, affirmative final determinations of dumping and injury led to the publication of anti-dumping duty orders on the basis of which importers were required to make cash deposits in amounts corresponding to the margins of dumping found in the final determination. The regulations of the United States Department of Commerce required that on the anniversary date of an anti-dumping duty order an administrative review be

initiated upon request of an exporter, importer or a domestic producer to determine the actual margin of dumping if any, and the amount of anti-dumping duties to be collected. The margin of dumping established during such administrative reviews would be the basis for the collection of cash deposits in the following period. If the deposits collected during the period covered by the administrative review were greater than the actual margins of dumping, the over-payments would be refunded with interest. Conversely, if the deposits were lower than the actual margins of dumping found during the administrative review, the underpayments would be collected with interest. The Canadian authorities had received a number of justifiable complaints from Canadian exporters that the Department of Commerce was not completing administrative reviews in a timely fashion. In one case, involving oil country tubular goods, a company had recently requested a review of shipments made during the third year following the entry into force of the anti-dumping duty order while the administrative reviews covering the first and second year had not yet been completed. In another case, involving brass sheet and strip, two reviews had been requested with no result. Understandably, the companies concerned were becoming frustrated about the review process of the Department of Commerce and concerned about the burden of the deposits on their financial position. The Canadian Government had on a number of occasions brought this matter to the attention of the authorities of the United States but, unfortunately, this had so far not produced any results. The representative of Canada concluded his statement by requesting that this matter be inscribed on the agenda of the next regular meeting of the Committee.

162. The representative of the United States said that his delegation had recently had bilateral consultations on this matter with the Canadian delegation. His authorities were sensitive to the concerns of Canada in this regard and attached great importance to the acceleration of the review process. His delegation was prepared to further discuss this matter at the next regular meeting of the Committee.

163. The Committee took note of the statements made and agreed to revert to this matter at the next regular meeting.

#### G. Annual Review and Report of the CONTRACTING PARTIES

164. The Committee adopted its Report (1989) to the CONTRACTING PARTIES (L/6609).

#### Date of the next regular meeting of the Committee

165. The Chairwoman proposed that the next regular meeting of the Committee take place in the week of 23 April 1990. It was so agreed.