GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

ADP/M/38
19 October 1992

Special Distribution

Committee on Anti-Dumping Practices

MINUTES OF THE MEETING HELD ON 9 JULY 1992

Chairman: Mr. Ashok Sajjanhar (India)

1. The Committee on Anti-Dumping Practices ("the Committee") held a special meeting on 9 July 1992 to consider two items: (1) a request by the United States for the establishment of a panel under Article 15:5 of the Agreement[1] regarding Canada's imposition of anti-dumping duties on beer from the United States; and (2) a request by Japan for conciliation under Article 15:3 of the Agreement regarding EEC anti-dumping proceedings on audio tapes in cassettes and audio tapes on reel originating in Japan.

(i) Canada - Imposition of anti-dumping duties on imports of beer from the United States - Request by the United States for the establishment of a panel under Article 15:5 of the Agreement (ADP/80)

2. The Committee had before it a request from the United States to establish a panel under Article 15:5 of the Agreement in a dispute between Canada and the United States on anti-dumping duties on imports of beer from the United States (ADP/80). The Chairman recalled that on 17 February 1992 the Committee had held a special meeting for the purpose of conciliation under Article 15:3 with respect to this dispute. At that meeting the Committee had heard the views of the parties on several aspects of the dispute, in particular the determination of dumping and of the existence of injury to a "regional" industry in Canada.

3. The representative of the United States said that no mutually agreed solution had been reached in this matter. As more than three months had passed since the Committee's conciliation effort on this matter, his delegation requested the establishment of a panel pursuant to Article 15:5 of the Agreement.

4. The representative of Canada said that, as the necessary procedural requirements had been met, Canada saw no reason to object to the establishment of a panel in this matter. The injury determination which the United States had made the subject of consultations and conciliation

[1] The term "Agreement" hereinafter means Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade.

had been made by the Canadian International Trade Tribunal (CITT) - an independent quasi-judicial body which in this case, as in all others, had followed an objective and thorough examination of the facts before it during the course of the inquiry. In accordance with the Agreement, the CITT had undertaken a rigorous analysis to ensure that the conditions set out in the Agreement were met, and its decision was clearly consistent with those conditions. He thanked the United States for the form of its request in ADP/80, which carefully described the grounds on which the request was being made. In Canada's view, it was a very positive practice to narrow the grounds on which these cases were requested. However, he asked the United States to clarify whether, as indicated in ADP/80, the only issue the United States was challenging was whether or not there had been a "concentration" of dumped imports in the sense of the second sentence of Article 4:1(ii) of the Agreement.

5. The representative of the United States confirmed that in this proceeding his delegation would limit itself to the challenge of the one issue described in ADP/80. He understood that the confusion stemmed from the use, at the beginning of paragraph 4 of the document, of the words "in particular", which were meant to describe an exclusive set. His delegation did not subscribe to Canada's assessment of the CITT review, but would leave it to the Panel to decide which assessment was accurate.

6. The Committee took note of the statements and decided to establish a Panel under Article 15:5 of the Agreement in the dispute referred to the Committee by the United States in ADP/80.

7. The Chairman proposed that the Committee authorize him to decide, in consultation with the parties to the dispute, on the terms of reference of the Panel, and to decide, after securing the agreement of the parties to the dispute, on the composition of the Panel.

The Committee so agreed.

(ii) EEC - Anti-dumping proceedings on audio tapes in cassettes and on audio tapes on reels originating in Japan - Request by Japan for conciliation under Article 15:3 of the Agreement (ADP/79)

8. The Chairman said that the Committee had before it a request by Japan for conciliation under Article 15:3 of the Agreement in a dispute between Japan and the EEC concerning anti-dumping proceedings in the EEC on audio tapes in cassettes and on audio tapes on reels (ADP/79). He understood that bilateral consultations had taken place on this matter but that these consultations had failed to lead to a mutually satisfactory solution.

9. The representative of Japan said that the EEC had imposed definitive anti-dumping duties on audio tapes in cassettes originating in Japan and Korea in May 1991 after a two-year investigation. The Japanese Government had taken immediate exception to this decision and consultations had been held under Article 15:5 of the Agreement on four separate occasions in 1991 and in 1992. Japan had made sincere efforts to find a mutually

satisfactory solution, but unfortunately these consultations had failed to yield such a result. Japan was now referring the matter to the Committee for conciliation under Article 15:3. In the course of the proceedings on audio cassettes, the EEC had failed to comply with the requirements of the Agreement regarding the three essential findings required before duties could be imposed: (1) that the audio cassettes imported from Japan were being dumped; (2) that dumped imports from Japan were the cause of any material injury suffered by the Community industry; and (3) that the Community producers of audio cassettes were actually suffering material injury.

10. Regarding the first of these requirements, the representative of Japan considered that the rules the EEC had applied in calculating dumping margins in the audio cassettes investigation were incompatible with the Agreement in two important respects. Firstly, in making a comparison between the export price and the normal value for the purpose of determining the dumping margin, the EEC had failed to make proper allowance for the fact that the two prices had been calculated on different bases. Because the importers of the cassettes were subsidiaries of the Japanese exporters, the EEC had calculated the export price by deducting from the first arm's-length sales price in the EEC a sum corresponding to the indirect selling costs, and profit, of the associated importer, as well as all direct selling costs wherever incurred. On the other hand, in deriving the normal value, i.e. the domestic sales price, the only deduction made from the latter was one corresponding to direct selling costs. While this might seem a mere technicality, the reality was that it often had a very significant effect on the result, frequently creating dumping margins where none should exist, or grossly exaggerating them. For example, most advertising costs were treated by the EEC as indirect expenses. Consequently, the amounts spent in Japan were not deducted from the normal value, but those spent in the Community were deducted from the export price. Companies such as TDK or Maxell spent large amounts of money on advertising to promote their cassettes. Secondly, the EEC had failed to properly take account of negative margins of dumping. Most dumping investigations had to examine a considerable number of individual export sales, and it often happened that prices varied, so that for some sales the export price was actually above, rather than below, the normal value. In these cases, where there was so-called "negative dumping", the EEC lowered the export price to the level of the normal value, thereby "zeroing" the dumping margin for those particular sales. It then took an average of all the individual dumping margins, which average was greater than it should be because of the zeroing. For example, if there were 100 sales, and in only one out of 100 the export price was below the normal value, the EEC would find that there was dumping, even if in the other 99, export prices were much higher than the normal value. In regard both to asymmetrical comparison and to "zeroing down", the EEC was adopting a regularly applied rule, confirmed by its Court of Justice, and on both of these issues was failing to meet its commitments under the Agreement, in particular under Article 2.

11. The representative of Japan then turned to the requirement of Article 3 that the dumped imports be the cause of any material injury suffered by the EEC industry. The decision in the audio cassettes case had failed this test in several ways. Firstly, in spite of the fact that the products exported from Japan did not compete with those from Korea, in particular regarding price, the EEC had cumulated the volume of the imports from the two countries. Secondly, the volume of imports from Japan had actually declined - relative to production or consumption in the import countries - from 42 per cent in 1985 to 35 per cent in 1988. Therefore, the EEC had failed to establish a "significant increase" as required by the Agreement. Thirdly, regarding the impact of imports on prices, the EEC had found "significant" price undercutting even though most of the cassettes imported from Japan had been sold at prices well above those of competing products of domestic producers. In sum, the EEC had failed to establish, as required by Article 3:4, that the dumped imports were, through the effects of dumping, causing injury to the domestic industry.

12. The last of the three findings required by the Agreement was that the EEC industry had suffered injury. The EEC had failed to recognize that Japanese exporters were supplying only the high-price segment of the market, whereas the injury had been suffered by one low-price Community producer which was experiencing severe price competition from imports from other countries.

13. Regarding so-called "pancakes" and "jumbos" (audio tapes on reel) - the representative of Japan stated that the EEC had first initiated and then continued the dumping investigation until very recently without sufficient justification as required by Article 5 of the Agreement.

14. The representative of the EEC said that the EEC had imposed anti-dumping measures on audio cassettes from Japan in May 1991, following which bilateral consultations had been requested by Japan under Article 15:2 of the Agreement. During the consultations, which had lasted until April 1992, the EEC had answered all questions asked by Japan in great detail and in a spirit of cooperation. His delegation was surprised to hear Japan speak of "efforts to find a solution", since the consultations had involved merely a series of questions repeated by Japan, even in areas where the EEC had provided clear answers. There had been no suggestion of a possible solution. Japan had then referred the matter to the Committee for conciliation. His authorities considered that this was a blatant case of injurious dumping, which stemmed from a market totally closed to the outside world. In effect, dumping was only one part of a broader strategy of the Japanese industry, based on a closed market, which had led to the quasi-destruction of the EEC industry. The EEC's response to such blatantly unfair practices had been fully justified, moderate and not in breach of any GATT rules. The EEC also questioned the real motive of Japan in bringing this case to the GATT at this particular time. In the EEC's view, this was a clear abuse of the dispute settlement procedure.

15. The representative of the EEC noted that audio cassettes were standardized products, invented in the 1960s by a European firm, cheap to produce and sold in enormous quantities worldwide; imports in Japan were almost non-existent in 1991 - they represented 0.5 per cent. Prices for this product in Japan were far higher than in the rest of the world. Contrary to a clear trend towards a price decrease worldwide, prices in Japan had continued to increase with a peak in 1990 and only a small reduction in 1991. Japan had the second largest market in the world - 400 million units sold in 1991 - which was dominated by four Japanese companies - TDK, Maxell, Sony and Fuji - which controlled 95.5 per cent of this market and an average of roughly 70 per cent of the world market. In contrast with Japan, the EEC market, which was the largest market in the world for this product, was an open one. The same four Japanese brands had taken advantage of this openness and through dumping had acquired more than 70 per cent of the market. Dumping had been responsible for very aggressive price competition in the EEC, and the sharply decreasing trend in prices since 1985 had not abated in spite of the anti-dumping measures imposed. While there had been numerous EEC producers supplying more than half the consumption in the EEC between 1975 and 1983, their market share had been reduced to 15 per cent and subsequently their number had decreased dramatically. At the beginning of the EEC anti-dumping investigation, there had been only two significant Community producers left, and one of them had decided to withdraw from this market, while the other was in a difficult and worsening situation.

16. Turning to the findings made by the EEC in this investigation, the representative of the EEC observed that the dumping margins which had been found were between 44 per cent and 64 per cent and had not been contested by the exporters. In particular, one of the producers had not contested the allegations in the complaint that its dumping margin exceeded 100 per cent. Material injury to the EEC industry had been clearly established through price depression, a reduction of sales despite increasing consumption, a sharp fall of market share by half since 1985, deterioration in financial results, loss of economies of scale, and cuts in investment and jobs. There was no way that Japanese exporters could have obtained and maintained such massive market presence had they sold in the EEC without such high dumping, i.e. at the same prices as in Japan. In light of such a high margin of dumping and the serious undercutting of prices, it could not be contested that there was a strong link between these elements and injury to the domestic industry in the EEC. It was also very significant that part of the sales of imported products had been made at prices below cost and, as such, were of a predatory nature. The magnitude of the dumping margins found was a reflection of the very high level of prices charged by the Japanese producers in their domestic market. There was, however, no reason why the price for this product should be particularly high in Japan, other than the fact that competition from non-Japanese firms was not allowed, and this was reflected by the fact that imports in Japan were non-existent, whether from the EEC or from Korea.

17. The representative of the EEC considered that the only conclusion to be drawn was that the closure of the Japanese market to foreign penetration allowed prices to be artificially maintained at very high levels. The Japanese firms concerned, which enjoyed a "joint monopoly" on their domestic market, thus realized very large profits which were then used to subsidize their exports to the EEC and investment in production facilities abroad. Such profits were abnormal, in particular when compared with the losses of the EEC industry which had to face strong foreign competition. Furthermore, it appeared that the prices charged by the companies subject to anti-dumping duties had continued to fall in spite of the imposition of these measures, which indicated just how strong the financial position of these companies was. While the closure of the Japanese market could have been due to many reasons, such as the peculiarities of the distribution system as well as barriers to investment and other structural impediments, the most important factor lay in the unsatisfactory conditions of competition in that market. Indeed, the existence of a joint monopoly of the four Japanese firms which controlled 95.5 per cent of sales on the Japanese market and 70 per cent of world sales gave strong indications of anti-competitive behaviour when seen against the background of facts such as the absence of imports and the high level of domestic prices. The negative impact of the closure of the market in Japan went far beyond the protection afforded to the Japanese industry in its domestic market and the dumping it allowed in the EEC, since it also directly affected competitive conditions in third markets. In the EEC's view, this case was a good example of the effect of a closed market and of how an industry could take advantage of this situation to dominate the world market and to destroy its competitors.

18. The representative of the EEC considered that the response of the EEC, worked out after a long and careful investigation in which the legitimate interests of all parties had been taken into account, had been moderate compared with the magnitude of the price discrimination found. The finding in the investigation had been clear - on the one hand, massive dumping, and on the other hand, large import penetration by Japan and continued erosion of the economic position of the EEC industry. The measures taken by the EEC, i.e. anti-dumping duties between 15 and 35 per cent ad valorem, as compared with dumping margins between 44 per cent and 64 per cent, were a very moderate response to blatantly unfair practices, all the moreso given the further deterioration of prices in the EEC since the imposition of anti-dumping measures. Indeed, had all the subsequent price increases been passed on to consumers in the EEC, they would still be paying far less than the price for this product in Japan. The EEC found it extraordinary, in view of the considerable damage caused to the EEC industry over a number of years by the unfair practices of Japanese companies, that Japan should refer this matter to the GATT. There would appear to be nothing specific in this case, or in its commercial consequences, that would justify, in itself, recourse to the dispute settlement procedures of the Agreement. This was confirmed by the fact that the consultations had extended over a period of one year, not as a result of any delaying tactic on the part of the EEC, but due to a certain lack of haste on the part of Japan. Thus, in the EEC's view, Japan's objective went far beyond what was directly at stake in this particular case.

19. In this connection, he noted that Japan had focused its attacks on two aspects of the methodology used by the EEC in determining dumping - the "symmetry" problem and the question of "averaging". Both of these issues had been discussed at great length in the Uruguay Round negotiations, and the draft Final Act represented a balanced compromise. For Japan, this draft implied a substantial improvement, while not providing everything Japan had demanded; the same applied to the EEC. Japan had brought these issues to GATT at this particularly sensitive time in the Uruguay Round process - and neither the exporters concerned nor the Japanese authorities had contested the way dumping had been established during the investigation or that the methodologies contested had been applied for more than 15 years without being brought by Japan to dispute settlement - in order to try to change the balance of the draft Final Act and thus reopen the whole negotiation on dumping. This constituted a clear abuse of the dispute settlement procedure, as the latter was not meant to replace the negotiating process. In addition, this particular case was ill-conceived, as a panel decision either way would have no practical value. For example, if Japan lost, would it renounce the concessions obtained in the Uruguay Round negotiations? - that is, renounce the new rules set by the draft Final Act with respect to these issues because they contradicted the decision of the panel? The answer was clearly no. If Japan wanted to reopen the Uruguay Round negotiations, it should say so openly and be prepared to pay the necessary price.

20. The representative of the EEC then turned to the specific questions raised by Japan with respect to the determination of dumping. Firstly, the EEC did not consider it legitimate to resort to dispute settlement procedures on issues which had never been raised by the Japanese exporters concerned in the course of the anti-dumping proceeding. The Japanese authorities had had the right to intervene in the anti-dumping proceeding and to make representations to the EEC on these issues, but had not done so. Secondly, regarding the symmetry issue, he said that there was no symmetry requirement under the Agreement. The Agreement did not require that when export prices had to be constructed, domestic prices should also be constructed, or even that the same adjustments should be made to the export price and normal value. The Agreement required that where the export price was deemed unreliable, it could be constructed, and the comparison should be made at the same level of trade, with due allowance made for differences in conditions and terms of sales, etc. The EEC had made its calculations in this case in full compliance with these principles, and this had not been contested by the exporters concerned. Thirdly, as to the averaging of the dumping margins, the EEC's practice was in full conformity with the Agreement, which allowed action to be taken against all dumped transactions. Since in this case export prices varied considerably by customer, place and time, they had been compared on a transaction-by-transaction basis with the benchmark normal value. This methodology was the only one capable of dealing with certain manoeuvres in which dumping was disguised by charging different prices, some above the normal value and some below it. In any event, any GATT-consistent, balanced methodology would show that there was considerable dumping in this case.

21. As to the injury determination, the representative of the EEC said that the issues raised by Japan were mostly factual, and demonstrated in several respects a misunderstanding of the EEC's decision. The decision to cumulate imports from Japan and Korea for the purpose of the injury determination was in breach of no GATT obligation, since it was in conformity with the principles set out in Article 8 of the Agreement with regard to non-discrimination. In addition, this practice was consistent with that of the major users of anti-dumping measures. Regarding the volume of imports, contrary to Japan's argument, Article 3:2 of the Agreement provided only that the investigating authorities shall consider a number of factors, stating quite clearly that no one or several of these factors could necessarily give decisive guidance, and this to take account of the great variety of situations that could arise. In any case, the facts contradicted Japan's position: between 1985 and 1988 imports from Japan had increased by 12 million units, which was comparable to the loss of sales of the EEC industry. In terms of market share, dumped imports from Japan represented 35 per cent of EEC consumption in 1988, i.e. almost twice the market share of the EEC industry.

22. Regarding price undercutting, the representative of the EEC said that it was difficult to see the need to discuss the methodology for establishing price undercutting since, as the EEC had repeatedly stated during the bilateral consultations with Japan, it had not been a decisive factor in the injury determination, which had relied rather on price depression and suppression. The allegations of Japan in this latter respect were unfounded. The EEC had established and explained in detail in its decisions - paragraphs 72 and 76 of the provisional Regulation (Council Regulation (EEC) No. 3262/90), paragraph 26 of the definitive Regulation (Council Regulation (EEC) No. 1251/91 of 13 May 1991) - why the effect of the dumped imports had been to depress or prevent price increases which otherwise would have occurred. Moreover, further explanations had been given during the bilateral consultation on the details of the calculations leading to this finding. Contrary to Japan's allegations, the EEC had examined (in particular, paragraphs 37, 38 and 39 of the definitive Regulation) the effect of factors other than dumped imports, in particular the competition from EEC subsidiaries of the Japanese exporters. It had been concluded on the basis of this examination that the effect of the dumped imports, taken in isolation, had caused the material injury. Japan's argument regarding the definition of the EEC industry was based on an obvious misinterpretation of the Agreement which, in Article 4:1, made clear that the investigating authorities could not, when determining injury, discriminate between the domestic producers under investigation. As to regional injury, the EEC had never envisaged the application of the provisions of the Agreement on regional injury in this case. It was clear in the EEC decisions that injury was spread throughout the territory of the EEC.

23. The representative of the EEC concluded by saying that the EEC believed Japan's claim to be unjustified and abusive. The EEC had behaved in a responsible manner and fully in accordance with the Agreement in this

case. The EEC market was an open one, with no barriers to investment or trade. Japan had taken advantage of this situation to conquer a major part of this market through dumped imports. In these circumstances, the EEC had every right under the GATT to take action to restore fair conditions of competition. Thus, the EEC asked the Committee to draw Japan's attention to the unreasonable nature of its claim and to urge it to desist from any action in GATT on this matter. In addition, in a spirit of conciliation, the EEC was prepared to suggest what could be the basis for a mutually agreed solution. The most natural way to eliminate the need for anti-dumping measures was to eliminate dumping and the underlying reasons for such behaviour. In this case, it was clear that dumping had resulted from a situation of market isolation which itself would appear to be the result of inadequate conditions of competition in the Japanese market. Accordingly, the EEC suggested that Japan alter fundamentally the competitive conditions for this product in its domestic market, where there were no imports in spite of the legitimate expectations raised by Japan's removal of its customs duty on this product. The EEC would further expect Japan, in the light of an examination of these competitive conditions, to take the necessary corrective actions and to ensure fair and normal competition. Should Japan nevertheless decide to pursue this matter under the Agreement, it would have to take responsibility for throwing the first stone at the text on anti-dumping in the draft Final act of the Uruguay Round.

24. The representative of Korea said that his Government had a keen interest in this case, since anti-dumping duties had been imposed on the same product originating in Korea. His delegation wanted to be informed of any progress made in the conciliation between Japan and the EEC and reserved the right to make a further statement under this item.

25. The representative of Hong Kong said that the arguments made by Japan and the EEC clearly showed that this case raised a number of issues of substantial interest not only to these two delegations, but to other Parties. An early settlement of this case in an equitable manner would bring back the necessary certainty regarding the proper application and effective operation of GATT anti-dumping provisions. Hong Kong therefore supported Japan's request for conciliation and sincerely hoped that both parties would make use of this opportunity to reach a mutually satisfactory solution at an early time.

26. The representative of Japan said that some of the comments made by the EEC involved issues which were relevant to the Agreement, and others involved issues that were not. The latter issues could be dealt with in another forum than the Committee, where the focus should be on issues relevant to the Agreement. While it was true that the issues in the case at hand had been discussed in the Uruguay Round negotiations, dispute settlement and negotiations were not the same exercise. Japan did not want to reopen the text on anti-dumping in the draft Final Act of the Uruguay Round, and the EEC's comments on this point were groundless. In fact, there were many outstanding issues currently being examined by

panels. Regarding the EEC's question as to the timing of Japan's decision to bring this matter to dispute settlement, he said there was no time-limit as to when a matter could be raised; a Party could not lose its right to challenge a practice simply because it had delayed bringing a complaint. Also, a persistent breach of GATT rules did not confer legality. Japan appreciated the EEC's efforts in bilateral consultations to reach a solution to this dispute. Regarding the statement that Japanese companies had not contested the dumping determination, he said that with the exception of one company - which was the smallest of the three - all of the companies involved had contested the dumping determination. Furthermore, it was not unusual for companies not to contest such determinations by the EEC, as this was a difficult, time-consuming and expensive process. He also noted that this particular company had contested the injury determination. Regarding the EEC's statement that prices of these products in the EEC had continued to decline even after the imposition of anti-dumping duties, he said that this was proof that dumping had not been the major cause of the injury to the EEC industry. In Japan's view, the decline in these prices had been due to the overall situation of the world economy; in fact, prices were also declining in the Japanese market. As to the dumping margins alleged by the EEC, the rule used by the EEC for such calculations was fundamentally flawed and had artificially created margins or grossly exaggerated them. Thus, any conclusions based on these calculations were meaningless. As to symmetry, the EEC had consistently claimed in the Uruguay Round negotiations that its anti-dumping regulations were consistent with the Agreement, because Article 2:6 of the Agreement said that certain costs and losses could be deducted in cases where the importers were related to the exporters. In Japan's view, Articles 2:5 and 2:6 had to be interpreted in conjunction with each other. The comparison between the export price and the normal value had to be fair and equitable; the EEC's practice and regulations were neither, as, for example, could be seen in the EEC's treatment of advertising costs. As to injury, the EEC had referred to the increase in Japanese imports; however, this was a 439 million unit market, and the increase accounted for by Japan was only about 2 per cent. The total consumption in the EEC market had been 339 million units in 1985, and 439 million units in 1988, which was an increase of 29 per cent. Thus, Japanese imports were not a major cause of the injury. As to cumulation, there were two segments in this market - high-price and low-price; Japanese companies supplied the high-price products. The EEC had ignored this price difference in its decision to cumulate Japanese and Korean imports. As to price undercutting, this had been discussed extensively in the bilateral consultations. Japan had found that such price undercutting had taken place in only one member State, for only one product and for only one company. Regarding the margin of undercutting, the EEC had simply ignored the fact that in many instances the Japanese products were sold at prices higher than the domestic like product. In the bilateral consultations, the EEC had stressed the importance of price depression and suppression; however, paragraphs 72 and 76 of the EEC provisional Regulation were not persuasive.

27. The representative of the United States said that the issues in this case were very weighty and merited serious reflection. He reserved his delegation's right to express specific views on these issues at a later time. However, he wanted to raise two aspects preliminarily at the present meeting. Firstly, it was clear that many of the key issues involved had been discussed at great length during the Uruguay Round negotiations and were reflected in the text on anti-dumping in the draft Final Act. His authorities would certainly focus on this fact in their analysis of the matter at hand. Secondly, should it be true, as the EEC had alleged, that certain issues presented in Japan's conciliation request had not been raised in the course of the administrative proceeding, the position of his delegation would be that it was not proper that they be raised at this point in the proceeding.

28. The representative of Singapore said that Singapore shared Japan's concern regarding the Community's regulations and their application in the determination of dumping, particularly the asymmetrical comparison between the export price and normal value. Singapore supported Japan's request for conciliation.

29. The representative of Canada said that this was a complicated case on which it was difficult to comment in any detail at the present meeting. Regarding issues related to the determination of dumping, Canada had no grounds at the present time on which to contest the consistency with the Agreement of the EEC's decisions; Canada was looking at these further and might want to return to them later. Canada did have some concerns regarding the injury and causation aspects of the EEC decision, and would like to return to these as well at a later date. One aspect of this case had not yet been discussed in the Committee; this was the Community's initiation practice, which had been mentioned in Japan's request for conciliation. Canada had expressed very strong concerns regarding the initiation practices of other Parties to the Agreement and was concerned by the information it had on the case at hand. In particular, it appeared to Canada that some products - "jumbos" and "pancakes" - had been the subject of the initiation decision, but six months later had been determined to be separate products. However, it seemed that it was only after three years that the investigation of those products had actually been terminated, and on grounds of deficiency of evidence. He asked the EEC if it had any comment on the consistency of that set of facts with the obligations of Article 5 of the Agreement, and in particular whether there could be said to be special circumstances in this case that would justify the continuation of this investigation well beyond the one-year period referred to in Article 5:5, especially in a case where there had been no evidence to support the initiation in the first place.

30. The representative of the EEC said that, regarding Japan's remark that the continuation of price declines even after the imposition of anti-dumping duties indicated that dumping was not the cause of injury, there was another way to look at this matter. This was that the Japanese companies were in a position such that even when duties were imposed, exporters could continue to sell at before-duty prices, or even lower, if

the market situation was such as to permit this. The reason was simple: a closed market provided a deep pocket, particularly when the companies in question had become extremely rich and dominated the world market. Should this situation continue, and should the EEC receive a formal complaint, his authorities would not hesitate to review this matter in order to determine the extent to which dumping might have increased. On the question of calculation of the margin of dumping, he asked why - if Japan questioned the conformity with the Agreement of the EEC's practices - Japan was fighting so hard to have these rules changed in the Uruguay Round. Regarding Japan's example of the 100 companies only one of which was dumping, he said that the margin of dumping in this case would be zero. Regarding injury, he said that a normal situation was one in which an industry controlled 80 per cent of the market and a new exporter captured 10 or 15 per cent of the market price by undercutting; however, the case at hand involved a market dominated by one country. The EEC industry had been reduced to the point where, if it wanted to sell its product, it had to align its prices with prices of Japanese imports. However, the EEC's decision on injury had not been based on price-undercutting as a decisive factor. Regarding the investigation of audio tapes on reels, there had been a complaint alleging that these and audio tapes in cassettes were like products. In another similar case the EEC had concluded that this was not the case, but before applying this conclusion to the case at hand, had sought more specific information on this matter. On the basis of the information received, the EEC had proceeded with the investigation. However, towards the end of the case, the producers had decided to withdraw their complaint, and that - not insufficiency of evidence - had been the reason for the termination of the investigation. Japanese exporters had been informed well in advance of this decision. He said that he had not heard any answer from Japan regarding the EEC's suggestion regarding the state of competition in the Japanese market. Other Parties would no doubt have an interest in this case and in the opening of the Japanese market for audio cassettes.

31. The representative of Japan said that regarding the relationship of this dispute to the Uruguay Round, the purpose of the anti-dumping negotiations in the Round was to make better rules, and it was thus natural that Japan should have participated very actively in those negotiations. As to the state of competition in the Japanese market, this issue was irrelevant in the Committee, as every industrialized and free-market economy had its own competition laws to apply.

32. The representative of the EEC recalled that Article 14 of the Agreement provided that:

> "The Committee shall carry out responsibilities as assigned to it under this Agreement or by the Parties and it shall afford Parties the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives."

In the EEC's view, the mention of the issue of competition was perfectly relevant in the context of the furtherance of the Agreement's objectives. The surest way to eliminate anti-dumping measures was to eliminate the need for them and the reasons therefore.

33. The representative of Japan said that his authorities would consider seriously what had been said at the present meeting. However, because of the fundamental differences of view of the EEC and Japan in this case, the prospects for success in conciliation efforts were not good. Japan would make every effort in this regard, but might have to return to the Committee to request the establishment of a panel on this matter.

34. The representative of the EEC said that the EEC hoped that Japan, whatever the difficulty, would consider carefully what the EEC had said, and in particular its final suggestion. The EEC hoped that a way could be found to avoid an abusive use of the dispute settlement procedures.

35. The Chairman encouraged the parties to the dispute to continue their efforts to reach a mutually satisfactory solution to the dispute, consistent with the Agreement.

The Committee took note of the statements.