

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

ADP/M/3

7 January 1981

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## Committee on Anti-Dumping Practices

### MINUTES OF THE MEETING HELD ON 20-22 OCTOBER 1980

Chairman: Mr. M. Lemmel

1. The Committee on Anti-Dumping Practices held its third meeting on 20-22 October 1980.
2. The Committee adopted the following agenda:

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(A) <u>Adherence of further countries to the Agreement and participation of observers</u>	

3. The Chairman informed the Committee that since its May 1980 meeting Czechoslovakia, India, Romania and Spain had signed the Agreement. The signature by India was accompanied by a statement about which the Director-General had notified the Parties to the Agreement in Let/1149. Some delegations commented on this statement (see for example ADP/5). There had been further consultations between some members of the Committee.

4. The representative of India made the following statement:

"It is India's understanding that the decisions relating to developing countries taken by the Committee on Anti-Dumping Practices on 5 May 1980, shall be applied together with the Agreement and that these decisions shall not be changed, except by consensus."

5. The Chairman confirmed that according to normal GATT practices, decisions of the Committee were not changed except by consensus.

6. The representative of India stated: "In the light of the Chairman's confirmation the Government of India fully accepts the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade."

7. The Chairman welcomed this statement and said that it was his understanding that the delegation of India would send a letter to this effect to the Director-General.

8. The Chairman recalled that a request for observer status from Mexico was pending before the Committee and said that he had consulted the Mexican delegation and that they confirmed the Mexican interest in the area of anti-dumping. He hoped that Mexico would find it possible in the future to adhere to the Agreement and therefore he thought that the Committee should invite Mexico to follow the proceedings of the Committee in an observer capacity.

9. The Committee agreed to invite Mexico in an observer capacity.

10. The representative of the United States said that although he did not object to the invitation of Mexico as an observer, he would like to reserve his rights to come back to this matter at a later stage if circumstances so required.

11. The Chairman drew the Committee's attention to the note by the secretariat (ADP/W/7) setting out all information available on actions taken under the Agreement. This note would serve as a background paper for the annual review of the operation of the Agreement.

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

12. The Chairman recalled that an invitation to submit notifications of national legislation and implementing regulations had been contained in the Note from the Chairman (L/4945) and the Committee had agreed that these notifications should be submitted by 15 February 1980. This deadline was extended until 30 June 1980. As of the date of the meeting the secretariat had received notifications from the following Parties:

European Communities	ADP/1/Add.1
Sweden	Add.2
United States	Add.3

Norway	Add.4
Finland	Add.5
Canada	Add.6
Switzerland	Add.7
Japan	Add.8
Romania	Add.9
Austria	Add.10

The Chairman invited Parties which had not submitted their notifications to inform the Committee when this would be done.

13. The representative of Czechoslovakia informed the Committee that he had just submitted his notification to the secretariat. The representative of Hungary said that the anti-dumping legislation had entered into force on 7 October 1980 and that the notification was under way to the secretariat. The representative of Yugoslavia informed the Committee that her government had accepted the Agreement on 16 September 1980 subject to ratification and that appropriate ratification procedures had been initiated. The Agreement, once ratified, would be published and would become law.

14. The representative of the United Kingdom speaking on behalf of Hong Kong said that Hong Kong had accepted the Agreement and therefore all the obligations contained in the Agreement. Hong Kong's present policy was not to take any anti-dumping actions. Should Hong Kong at any time contemplate any anti-dumping action such action would be in accordance with the provisions of the Agreement and the necessary changes to its laws and regulations would be notified to the Committee in accordance with Article 16:6(b). The representative of Spain informed the Committee that his Government had accepted the Agreement subject to ratification and that the ratification procedures was very much advanced. A Royal Decree was being prepared on adaptation of the Spanish legislation to the requirements of the Agreement.

15. The Chairman invited the Parties which had not submitted their notifications to do their best to submit them as soon as possible, preferably by 31 December 1980.

16. In view of the fact that not all the Parties had submitted their notifications the Chairman enquired whether the Committee wished to proceed with the systematic examination of the notifications received at this meeting. As the Committee so wished the notifications were taken one by one.

#### European Communities

17. The representative of Hungary commenting on the anti-dumping legislation of the European Communities (ADP/1/Add.1) recalled the Second Supplementary Note to paragraph 1 of Article VI in Annex I of the General Agreement and said that it was saying no more and no less than

that the application of the rule laid down in paragraph 1 of Article VI might not in all cases be expedient. This legal situation had not been changed by the new Anti-Dumping Agreement (see in particular Article 2:7). Article 2:5 of the EEC Council Regulation No. 3017/79 on protection against dumped or subsidized imports from countries not members of the EEC provided four methods for the determination of normal value in case of imports from non-market economy countries. These methods had been taken from Article 15 of the Subsidies/Countervailing Measures Code and as this Code had not yet been accepted by Hungary his delegation felt compelled to reserve its position in this respect. Referring to the fact that Hungary had always been challenging the EEC policy towards certain contracting parties as inconsistent with GATT, he pointed out that in its anti-dumping legislation the EEC prescribed different treatment to certain contracting parties, listing them by country names. This practice, according to his view, contradicted the basic rules of the GATT which did not allow for any differences between contracting parties on the basis of their different economic and social systems. The legislation of the EEC, instead of prescribing the substantial criteria for determination of the normal volume in certain cases as provided for in the second supplementary Note to Article VI:1 of the General Agreement, singled out arbitrarily certain contracting parties. He also pointed out that Article 5:2 of the EEC anti-dumping legislation concerning methods for the determination of normal value was absolutely categorical as to their application, while the Supplementary Note did not prescribe but only allowed application of other methods for the determination of normal value under conditions provided for in it.

18. The representative of Czechoslovakia associated himself with the views expressed by the representative of Hungary. He recalled his views expressed in the former Anti-Dumping Committee that the EEC Regulation No. 1681/79 which dealt with the determination of normal value in the case of imports from non-market economy countries was inconsistent with Article VI of GATT and with the Agreement. He also recalled that he had then requested that the EEC Commission take this into account in preparing the final implementing legislation. As the final legislation contained in the Council Regulation No. 3017/79 had not taken his position into account he considered it necessary to make known again the basic position of his country with respect to this legislation. He said that the legislation provided for several alternative criteria to calculate the margin of dumping in the case of imports from non-market economy countries, some of which were not consistent with Article VI of GATT and the Agreement. In particular the use of domestic prices of the importing country or of a third country might lead to determination of fictitious or arbitrary values. Such criteria were not provided for in the Agreement and had been explicitly prohibited in the Agreement on Implementation of Article VII as a method for determining a customs value. Furthermore the EEC Council Regulation, while dealing with imports from non-market economy countries, did not provide, in contradiction with Article VI:1 and its Supplementary Note, for a possibility to use the highest comparable price for the like product for export to a third country and did not allow comparison, where appropriate, of export prices with domestic prices of the exporting country.

19. The representative of the European Communities said that he could only recall what he had said at the November 1979 meeting of the Anti-Dumping Committee. He contested the statement that the EEC, by adopting specific rules for dumping from state-trading countries, infringed the principle of equal treatment of all GATT members. The Second Supplementary Note to Article VI did recognize that in case of dumping from state-trading countries special rules should be applied, but it never specified what these rules should be. Consequently a need had been felt by all major trading nations for many years to elaborate such rules and several of them, including the EEC, had done so. During the negotiations of the Subsidies/Countervailing Measures Code it was felt by all participants that this Code should provide something on dumping and countervailing measures concerning imports originating in state-trading countries. Consequently Article 15 of the Code contained special provisions dealing with such cases. These provisions were negotiated with the active participation of the Hungarian delegation, they were incorporated in the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement and consequently it would be difficult to pretend that these provisions were in contradiction with one of the basic principles of the GATT. The European Communities had simply implemented textually these provisions into its own law and he considered that this was in full conformity with the principles of the GATT. Referring to the remarks of the representative of Czechoslovakia on the use of domestic prices of the importing country for the determination of normal value he said that this method had never been used so far. Furthermore it was clearly provided in the EEC regulation that this method would be used only as a last resort and in this sense it was justified because in some cases no other price comparison might be possible. Such a comparison would frequently be to the advantage of an exporting country. There were many examples where the internal prices in the EEC were the most competitive prices of western countries.

20. The representative of Hungary said that his delegation had nothing against a different method of comparison if it was based on objective criteria but it was against a different treatment based on differences in social and economic systems. He also said that his delegation had no objections to the methods listed in the EEC regulation but it could not accept that this list was exclusive as this was inconsistent with the Agreement and the GATT. He also wondered which were the major countries applying the same methods of enumeration as the EEC. For example, he had no difficulties with the United States' legislation in this respect. The representative of the European Communities said that he had not correctly understood the arguments advanced by the Hungarian representative in his previous intervention. His idea seemed to be that the present EEC country by country approach should be replaced by a product by product approach. He found this idea interesting but he wanted to stress that the Second Supplementary Note to Article VI:1 of the General Agreement adopted also an approach on a country by country basis. It would be very difficult to determine on a product by product basis whether there had been a state influence or not. It could only be determined through a full anti-dumping investigation and by price comparisons. The only difference between the United States' legislation

and the EEC legislation in this respect was that in the United States' legislation the country was described in a general manner while in the case of the EEC the decision as to which were countries with a state monopoly of trade had been taken in the Council regulation itself. The representative of Hungary replied that he had not referred to a product approach. He had spoken about cases and he continued to believe that any investigation against a Hungarian enterprise should be based on the merits of the concrete case.

21. The representative of Canada referred to Article 11:3 of the EEC legislation which provided the Commission with only five working days to decide whether or not to impose provisional duties and considered that this period was certainly too short. He also noted that the legislation of the European Coal and Steel Community, Article 2:6(b), provided for a basic price system and wondered why the EEC had established this system only for steel and coal. He would also like to know how the EEC was going to administer the system. The representative of the European Communities replied that the five days delay resulted from internal procedures between different institutions of the EEC. Under this legislation a provisional duty might be imposed only after a preliminary affirmative finding had been made that there was dumping and that there was sufficient evidence of injury. Member states could, under certain circumstances, ask the EEC Commission to make a ruling whether the conditions for the application of a provisional duty were fulfilled. The Commission's decision depended on the circumstances; if the conditions were fulfilled the Commission would impose a duty, if they were not, the request by a member State was rejected and negative determination was made. Thus the GATT criteria were respected in any case. Referring to the question concerning the basic price system he said that the Commission considered this system as something exceptional, to be applied only in critical situations. This was in accordance with the provisions of the Agreement which also considered a basic price system as an exceptional measure. As the steel industry had been in such a critical situation it had been decided to introduce this exceptional measure but strictly limited to the steel sector. Despite strong pressure from other industries, which also wanted the basic price system to be extended to them, the EEC had resisted, considering that there was no justification to go beyond what was strictly necessary.

22. The representative of the United States noted the increasing number of anti-dumping cases the EEC had had recently and the speed with which these cases had been disposed of. One of the points in relation to the speed was the amount of time given to the foreign firms subject to an anti-dumping investigation to respond. The representative of the European Communities agreed that the number of investigations had unfortunately increased but this was due to the general economic climate. As to the speed of investigations he said that they were done in depth with all the necessary care, but sometimes public pressure for prompt settlement of a case, which created real problems in the EEC market, had also to be taken into account. As to the time-limits given to foreign firms, there were normally four-week delays from the date of the opening of an investigation and further extensions up to two months were possible depending on the case. The representative of the

United States said that certain standardization designed to afford a reasonable opportunity for exporters to answer questionnaires would be desirable. The representative of the European Communities welcomed the idea of harmonization and said that, tentatively, a period of four weeks should be an absolute minimum.

23. The Chairman said that it would be desirable that the Committee worked out certain guidelines in this respect. He invited signatories to reflect further and to come back to this question later during the meeting.

24. The representative of Romania sought clarification from the representative of the European Communities whether, in case the investigating authorities decided to apply one of the criteria enumerated in paragraph 5 of the Commission Regulation, an exporter could defend his case by choosing another of these criteria. The representative of the European Communities said that the principle underlying EEC practices in this respect was that any comparison should be equitable and fair, and that it should follow criteria established in the negotiations of the Subsidies/Countervailing Measures Code. This principle being the starting point, the choice of a criterion would depend on circumstances but in every case it would be the fairest possible. The exporter would be given an opportunity to present his comments on the proposed choice and, if possible, such comments would be taken into account. The representative of Romania further enquired whether the criterion chosen by the EEC investigating authority would be exclusive and final or not. He said his understanding was that it was not necessarily the case and the practice proved it advisable to choose another criterion. In this respect he quoted two concrete examples where the criterion chosen was that of a domestic price in third countries, but in both cases these countries were, at the same time, also accused of dumping the product in question. For these reasons he considered it important that the legislation itself should clearly provide for a possibility to choose another criterion if the criterion previously chosen turned out to be impracticable. The representative of the European Communities said that in the first case referred to by the representative of Romania it was the exporter himself who had proposed the criterion of domestic prices in the one of the above-mentioned countries. As it turned out during the discussion with other countries involved that these prices were not representative, it had been agreed by all, including Romania, that domestic prices of another country should be chosen, at least for a preliminary determination of dumping. He could not visualise what more he could have done for the exporter. If the prices chosen were dumped the exporter should be even more satisfied, because the price comparison resulted in an extremely low margin of dumping. As to the second case the exporter had suggested for comparison prices in several market economy countries and one of these countries had been chosen because it was one of the most efficient producers. None of the exporters had suggested any alternative solution and subsequently a preliminary determination had been published and again nobody had protested. Therefore, he found every good reason to believe that the exporters were satisfied with the chosen solution. The representative of Romania wanted to make it clear that in both cases the prices proposed by the EEC investigating authority as normal value were

domestic prices of some third countries which themselves had been included in the anti-dumping investigation, which seemed to him to be paradoxical. How could one choose the domestic prices of a country considered as the most efficient producer, as a normal value, if those prices cannot be obtained even by the exporters of that particular country on the EEC markets. This was why Romania requested that prices from other countries, not included in the anti-dumping investigation, should be chosen. In conclusion he underlined the necessity that the provisions of the EEC anti-dumping regulations concerning the comparability of the prices for imports from countries to which reference was made in the Additional Note to the Article VI of GATT should not have a substituting character, that was not to substitute the provisions of Article VI of GATT, but at the most, they could only be complementary, this maintaining the possibility to use the criteria with general applicability as well.

25. The representative of the United States wanted to express the appreciation of his delegation for the important steps the EEC had taken recently to give other countries, through its decisions, a clear indication of the reasoning behind particular decisions. This improvement of transparency was to a large extent the result of Mr. Beseler's dedication.

Sweden

26. The Committee noted that there were no comments concerning the legislation of Sweden circulated in ADP/1/Add.2

United States

27. The representative of Canada referred to the United States' legislation circulated in ADP/1/Add.3. He expressed his concern as to the twenty-day limit for accepting or rejecting a complaint. In many cases this time-limit might force the administration to initiate cases without having an adequate basis for the case. It could be used as a harassment. The representative of the United States replied that this time-limit had been provided for in the legislation and it would be very difficult to modify it but if any country had any concrete case where the time limits provided for in the United States legislation had resulted in a harassment, his delegation would be ready to see what could be done about it.

28. The representative of the European Communities expressed his appreciation of the new United States legislation as an important step forward in the right direction. In particular he stressed the improvement resulting, inter alia, in the provisions for simultaneous consideration of the dumping and of the injury aspect and in material injury tests based on concrete criteria. There were however some shortcomings. One of them was the 8 per cent rule on profit. The Anti-Dumping Code provided for a profit rate corresponding to that normally realized on the market of the country of exportation. Therefore the decision on the profit rate to be included in the constructed price should be made on a case-by-case basis and there should be no fixed

minimum percentage to be applied. For example, according to some United States economic publications, the average margin of profit in the United States was between 4-7 per cent, while in Europe it was between 2-3 per cent. For these reasons he regretted that the United States' legislation maintained the fixed 8 per cent margin and he considered that something had to be done in the future to ensure that this legislation complied with the Code on this point. The Committee should discuss this problem and try to arrive at conclusions. He also raised the question of the distinction made in the United States' legislation between salesmen's salaries and commissions. In a price adjustment, differences in commissions were taken into account while differences in salesmen's salaries were not. It seemed to him arbitrary to distinguish between people who were paid on a commission basis and those who were paid on a salary basis. The third point he raised was that of the availability of information under protective orders to inhouse counsels. He shared the concern expressed on many occasions by EEC industries that in case of an inhouse counsel the protective order might not work and the confidentiality of information might not be observed. The inhouse counsel was in a situation different from that of an independent lawyer and the risk of a leak of confidential information was therefore much greater. A similar situation would arise because of participation of private accounting experts in investigations. Even if the firms were renowned, a risk of a leak, over a period of time, was stronger than in the case of accounting officials from the administration. He also pointed out that in the United States' legislation the imposition of an anti-dumping duty corresponding to the full margin of dumping was mandatory while the Agreement was permissive in this respect. He strongly supported this latter approach, so much so that he did not think that dumping was a crime but a common commercial practice, and therefore it was logical that the duty be less than the margin of dumping, if such lesser duty would be adequate to remove the injury to the domestic industry. Although he recognized that the United States' legislation was not in breach of the Agreement, he expressed the hope that the United States would find it possible to adhere to this principle of the Agreement.

29. The representative of Japan shared the concern expressed by the representative of the European Communities on the 8 per cent profit rule and expected the United States to reconsider this matter.

30. The representative of Sweden said that he understood that the discussion of national legislation was not final and that participants would be free to take up specific cases whenever a need arose in the light of practical experience. He also shared the concern expressed by previous speakers on the percentages applied in the United States for profits and general expenses. Another question concerned circumstances under which an anti-dumping investigation might be suspended. The Agreement provided for price undertakings or undertakings to cease exports whereas the United States' legislation seemed for example, in the provision in paragraph 353.42(g) also to provide for the possibilities of quantitative limitations. His basic concern in this regard was that anti-dumping procedures might be used as a substitute for safeguard actions which otherwise would be difficult to take, as the

injury requirements for action under Article XIX of the General Agreement were more stringent in the United States' legislation than those for the imposition of anti-dumping measures.

31. The representative of the United States referring to the point raised by the representative of Sweden concerning the possibility of a suspension agreement involving quotas said that this was not possible under the anti-dumping law. It was, however, possible in a countervailing duty investigation. However, even if it had been possible, an anti-dumping or countervailing duty action could never have taken place as a separate action because the only imports affected were those of the single country subject to an investigation. As to the point concerning salesmen's salaries, the United States was carrying out a review of regulations in this respect. This point had not been prescribed by law but by a regulation, and on a preliminary basis, his personal view was that a satisfactory solution would be found. Referring to the question of protective orders he said that the United States' system was based on full transparency among the parties. The specific problem of inhouse counsels had not yet been resolved. His personal view was that the lawyers in the United States, whether they were inhouse counsel or independent counsel, were bound by a canon of ethics and both were subject to complaints before a bar if those ethics were breached. Had there been a breach under a protective order, the bar of which the attorney involved was a member would immediately have been notified and the sanction would be equally effective for outside counsel and inhouse counsel. However some of the arguments about the likelihood of leaks had been taken very seriously and concrete steps would be taken in guarding against possible leaks. The problem of inhouse counsels would probably be taken up again in the future, but for the moment it remained an open question. As to the question of private accountants there were cases where major accounting expertise and capacity were required and there were not a sufficient amount of qualified accountants from the administration. Therefore, although the process of training highly qualified experts was under way, it might take some time before the need to use private experts would disappear. These experts were selected in such a way that they did not have any conflict of interests. Moreover, they were subject to the same sanctions for unauthorized disclosure of confidential information as were government employees. As to the question of anti-dumping duties equal to dumping margins, the United States' position remained unchanged. His Government could not accept a mandatory provision that dumping duties should be less than the dumping margin if it would take care of an injury. If the internal situation changed so as to make such an approach possible the Committee would immediately be informed and constructive discussions would be undertaken. As to the point concerning the provision for 8 per cent mark-ups, he said that the 8 per cent figure was a pre-tax figure and not a net profit. This figure was a requirement of the United States' law and therefore it could not easily be changed. It was an issue on which he would like to hear the views of other delegations, but he would not like to encourage false hopes as to a possible change because such a change would require congressional action.

32. The representative of the European Communities repeated that the 8 per cent principle was of very great importance and although he understood the reasons of internal United States policy which made a change very difficult, he could not accept that the change would not be possible. International rules had been established and all those rules were very clear on the profit mark-up's and all parties to the GATT and to the Anti-Dumping Code were obliged to comply with these rules whatever their internal difficulties were. Consequently he suggested that the Committee should further reflect what should be done in this area, not necessarily now, but possibly at a later stage, in order to get the things moving in the United States.

33. The Chairman said he would like to invite the United States delegation on this point, as well as all other delegations on other points where they were concerned, to consider the questions and problems raised in the Committee and to see what could be done about them.

Norway

34. The Committee proceeded to the examination of the legislation of Norway (ADP/1/Add.4). No specific comments were made but the representative of the European Communities made a general comment concerning all Parties which had very short legislations. He stressed that, if such a legislation was ever to be applied, it would not give the legal guarantees to the importers and exporters which they should have under the Anti-Dumping Code. Therefore he hoped that either such summary rules would never be applied in practice or, if ever they were applied, they should be completed by some additional regulations which would go into all the necessary legal details to assure all necessary guarantees.

Finland

35. The representative of the European Communities referred to the national legislation of Finland (ADP/1/Add.5). He remarked that Article 27 of this legislation provided for the publication of decisions taken under an anti-dumping investigation. However, nothing had been said about the publication of the motivation for these decisions. He also wanted to know why Article 26 of this legislation did not provide for a non-confidential summary in cases where confidential treatment of information was requested. The representative of Finland said that her authorities did their best to give their motivations. As to the non-confidential summary, Article 28 did not deal with this matter. Its purpose was to ensure that confidentiality of information was strictly observed by all who had access to it. The non-confidential summary will be supplied under the appropriate provision of the Agreement itself which was law in Finland. The representative of the European Communities referred to Article 28 of the Finnish legislation which provided for the establishment of a Committee for Customs Matters. It seemed to him that this Committee, which had a decisive role to play in the course of an anti-dumping investigation was composed, in part, of representatives of the Finnish industry. This fact caused him some concern because it did not seem possible that the impartiality of an anti-dumping investigation could be assured if one of the interested parties was directly involved in the decision-making process. The

representative of Finland said that this Committee could only discuss the matter and give its expertise. It had no decision-making authority. The representative of the European Communities said that according to his reading of the Finnish law the Committee's function was to follow the investigation and to prepare decisions under the order of the Ministry of Finance. The second aspect of this problem was that of confidentiality. How could confidential treatment of information be ensured if this information was to be disclosed to a Committee composed of, among others, representatives of the domestic industry. He stressed his concern and urged the Finnish delegation to reconsider their law in this respect. The representative of the United States joined the previous speaker and also strongly insisted that Finland should re-examine this provision of its law, not so much in the terms of its own intentions, but in what it might do as a precedent. The representative of Finland stressed again the general consultative role of the Committee for Customs Matters and said that no confidential information had ever been disclosed to it.

Canada

36. The following legislation to be discussed was that of Canada. The representative of Canada said that the Committee might wish to examine the proposed Canadian legislation, the draft of which had been published in Canada and which was yet to be studied by Parliament, following which a Bill would be drafted which would constitute the legislation.

37. The representative of the European Communities referred to section 2, lines 15-20, page 26 - definition of "like products". He pointed out that while the Agreement required that the like product had to have characteristics closely resembling those of the product under consideration, the Canadian draft used the words "characteristics or uses". He said that there was a big difference between the use of a product and the characteristics of a product. The term "use" covered all substitutions of a product and in an anti-dumping investigation it would make a huge difference. Therefore he insisted on a wording which followed closely the letter of the Agreement and which referred to characteristics and not uses and consequently did not include substitution products. He noted that in line 15 in the same section the definition of a subsidy included the so-called downstream subsidies, i.e. the subsidies paid on certain components of the product in question. If one followed this line of thinking in the anti-dumping area the next logical step would be to apply anti-dumping duties also to the up-stream products if components of certain products were dumped. He also had some problems with lines 40-45 concerning undertakings. The Canadian draft provided that undertakings should be given on behalf of exporters that accounted for all, or substantially all, the exports to Canada of the dumped goods. He found that this requirement was not consistent with the Agreement. According to the Agreement, if several exporters were involved in an anti-dumping investigation some of them might be willing to give price undertakings and others might not be. The situation then would be that undertakings would be accepted while anti-dumping duties would be imposed on those who, for one reason or another, had not been able to give undertakings. Another solution

consistent with the Agreement would be that anti-dumping duties were imposed on the country of exportation with the exclusion of firms which had given a price undertaking.

38. The representative of Canada, referring to the concern expressed about the definition of like product, said that this definition used different words from that contained in the Agreement but it was meant to deal with cases where a dumped product, although not identical in all respects with the product produced by the injured producers, was a good substitute in that it had characteristics and uses which closely resemble those of the domestic product. As to the definition of subsidies and downstream subsidies, he said that he did not think that this problem could be transposed into the dumping area. Concerning the question of undertakings he said that the Canadian system in this respect was somewhat unique because the authorities had to submit the case to the courts on questions of injury. If an undertaking had been provided by only a part, or some of the suppliers, it would be extremely difficult to put that particular case to the Anti-Dumping Tribunal for a determination of whether or not injury resulted from dumped imports from only one or some of the exporters but not all of them. There would also be tremendous administrative problems if the system had been split so as to differentiate between exporters.

39. The representative of the United States referred to the definition of like product and said that in the United States' legislation there was a double requirement, i.e. the like product had to have the same characteristics and uses. However, in the Canadian legislation there was an alternative - characteristics or uses - and therefore an anti-dumping action would affect products which were completely different, but had similar uses. The second issue he wanted to raise was clarification of the notion of dumping of component parts. He hoped that the Canadian position in this respect was that in an anti-dumping investigation one should look at the price of the final product and not at the price of the components. As long as the final price was fair, the question of whether components were below fair value should be absolutely irrelevant. The third point concerned the definition of sale provided for in section 2 of the Canadian draft. He considered that this definition was too broad and seemed to go far beyond the spirit of the Agreement. The representative of the European Communities agreed with the previous speaker that uses should not be an alternative to the characteristics; they could be combined with characteristics but never replace them. As to the question of undertakings he agreed that there was a real problem of how to make an injury determination when price undertakings were accepted from some exporters and the investigation was continued with respect to others. The solution in the EEC in such cases was that the preliminary dumping and injury determination should be made for the firm which had given the undertaking, and then afterwards when the injury determination was made for the other firms which had not given price undertakings the injury could be accumulated. Furthermore he did not think that the administrative burden in cases of simultaneous application of anti-dumping duties and undertakings was much greater than in a case where only one measure was applied.

40. The representative of Canada said that he would consider the comments made, in particular those concerning the definition of "like product". On the question of the definition of sale he said that the

relevant term in the definition provided for in Article VI:1 of the General Agreement was "introduced into the commerce of". He thought it meant much more than "sale". It covered such normal commercial practices as renting, leasing, cross-border trade, etc. In all these cases dumping could occur and if they were not covered by the definition of sale in our domestic law there would be no way of dealing with them.

41. The representative of the United States said that it seemed that in the Canadian legislation there was much of what could be described as a "displaced mental eligibility", and he wanted to ask whether the Canadian delegation would recommend, on each point they had in their legislation, that this was something that other countries should include in their anti-dumping laws. The representative of Canada said that he did not see any problem at all and that his answer was yes. The representative of the European Communities said he shared entirely the reservations of the United States delegation on the definition of "sale" which was too broad. He had always believed that Article VI of the GATT was dealing with the importation of goods, while the Canadian definition went much further.

42. The representative of the European Communities referred to section 3, lines 15-20 which provided that an anti-dumping duty had to correspond to the full margin of dumping. He recalled that the Agreement emphasized that the anti-dumping duty should be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.

43. The representative of the European Communities referred to lines 20-30 of section 5 dealing with the retroactive application of anti-dumping duties. The Canadian legislation provided for several possibilities. The first possibility was a considerable importation of like goods that were dumped. He wondered what was meant by considerable importation of like goods. Was it a reference to the history of dumping as provided for in the Anti-Dumping Code or was it a case when there was a provisional duty and the authority wanted to cash this provisional duty? If it referred to the case of the history of dumping, he would think that the term "considerable importation" did not cover exactly what the words "history of dumping" in the Anti-Dumping Code meant. Another possibility of retroactive application was sporadic dumping. According to the Code sporadic dumping meant massive imports in a relatively short period of time. The Canadian draft placed the word "or" between "massive imports" and "relatively short period of time" making it an alternative. This changed completely the meaning of the Code and therefore "or" should be replaced by "and". The representative of Canada said that the word "considerable" under the first alternative was designed to replace the history of dumping. As to the second alternative he said that he would need to think it over, but his immediate reaction was that the Canadian legislation fully conformed with the Code but made clear that one element in sporadic dumping was either a single shipment which was "massive" or a series of shipments which were, in the aggregate, "massive".

44. The representative of the United States wondered whether he had understood correctly that the word "considerable" was to replace the history of dumping. The representative of Canada replied that it was designed to deal with volume in the sense that dumped imports had

taken place over a period of time. The representative of the United States asked whether the representative of Canada considered that the Anti-Dumping Code talked in terms of volume. The representative of Canada said that in his understanding Article 11 of the Anti-Dumping Code talked of volume, although it did not use this word. It used, for example, the word "massive". The representative of the United States said that his understanding was that Article 11:1(ii) provided for two parallel tests: one was the criterion of massive volume of dumped product, but in addition there had also to be a history of dumping. He wanted to know whether the representative of Canada believed that section 5(a)(i)A was designed to meet the Anti-Dumping Code language on the history of dumping.

45. The representative of the United States referred to section 4 and suggested that in drafting their final legislation the Canadian Government should exclude from the scope of any anti-dumping order firms which had been investigated and found not to be dumping. Otherwise it would create a presumption that these firms were in fact dumping and therefore subject to continuing review. The new Canadian legislation should thus provide for specific companies to be excluded from dumping orders.

46. The representative of the European Communities referred to section 9 and said that before provisional duties were applied there should have been sufficient evidence of injury. He wanted to know what kind of an injury determination was made and by whom when Canada applied provisional duties. The representative of Canada said that the Deputy Minister of National Revenue is required to have sufficient evidence of injury throughout the investigation including at the time of making a preliminary determination. If this information is not available the case would be terminated. The representative of the European Communities asked whether the Deputy Minister of National Revenue was making a formal determination and whether motivations were published and the interested parties informed. The representative of the United States wanted to know whether, when a petition came, the Canadian Government did require detailed injury information from the petitioner and whether the Minister had ever rejected a petition because it had failed to show injury. The representative of Canada said that under the draft legislation the Deputy Minister was required at all stages to have evidence of both dumping and injury. He also said that when a complaint was received the Deputy Minister would look carefully to see if there was evidence of injury before he would initiate an investigation. The representative of the United States enquired whether the petitioner had to file injury information or the government would procure it. The representative of Canada confirmed that it was up to the petitioner to provide evidence of injury. The representative of the European Communities said that he realized that the Canadian law required the presence of evidence of injury on the record, but there was a fundamental difference between the evidence being on record and a preliminary injury determination for the purpose of imposing provisional measures. At the time of determination the investigating authorities should have satisfied themselves through appropriate investigation that the injury had really occurred. Therefore he thought that Canada should do more than just accepting information on record. The representative of Canada said that the Deputy Minister of National Revenue, before he made a preliminary determination, has substantial evidence available to

him. Before the notice of a preliminary determination is made the Deputy Minister confirms this evidence, but had not conducted a full enquiry since this would be carried out by the Anti-Dumping Tribunal.

47. The representative of the European Communities referred to section 12 which provided for conditions under which the domestic price in the exporting country could be taken into consideration as a basis for determination of normal value. Under these conditions the sales in the domestic market should be substantially of the same quantity as those to the foreign importer and it seemed to him that this requirement was too restrictive.

48. The representative of Hungary, without prejudice to the reservation in paragraph 17 of these minutes referred to section 12, paragraph 7(c) and said that the comparison with the home market price of a third country, as the basic method of the determination of normal value, was unjustified, both from the economic and legal point of view. The draft text did not specify, in this context, any economic criteria which should be taken into consideration by the Deputy Minister when designating a country for the purpose of comparison, e.g., the level of economic development, necessary ratio between the volume of domestic production of a given product and that of the exports of the country serving for comparison, the competitiveness of the exporter under investigation, etc. Neither did the draft provide for the comparison of the export price of countries subject to the regulation with that of a third country, although this possibility was provided for in paragraph 2(a) of Article 15 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT. Referring to paragraph 7(d) of the same section he said that the draft did not specify that the determination of normal value, on the basis of comparison between the export price and the Canadian prices, could take place only as a last resort, as envisaged by Article 15 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT.

49. The representative of Czechoslovakia also commented on paragraph 7 designed for the calculation of a margin of dumping or an amount of a subsidy. He recalled that some countries had not accepted the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT, inter alia, because of the comparison criteria contained in Article 15 of this Agreement. These countries were therefore bound only by the Anti-Dumping Code which did not provide for such criteria as those contained in the draft Canadian legislation, like for example the domestic price of the importing country. For these reasons he considered that this draft was, in this respect, inconsistent with Article VI of the GATT and the Anti-Dumping Code itself.

50. The representative of Canada said that while referring to the condition of substantially the same quantity, the representative of the European Communities had confused two questions: the actual quantity that the investigatory authorities would look at in order to arrive at the same level of quantity and what sales they would exclude from a comparison. This second question, which was really the one the representative of the European Communities had in mind, was dealt with

under section 12:2 where the language used was "such a number of sales as to make a proper comparison". As to the questions raised by the representatives of Hungary and Czechoslovakia he said that what was in section 12:7 was Canada's interpretation of what both the Agreements were saying. He said that as far as the section 12:7(d) was concerned, it was really a last resort method and he did not expect that it would be used other than in exceptional circumstances. As to the question of third country's export prices he considered that there was no obligation in the Agreement to use these prices, and the methods provided for in the draft legislation were consistent with those that had been used for the last ten years.

51. The representative of the European Communities referred to section 12:2 and enquired whether, in case of substitution of places of sale, there would be adjustment made for, for example, transportation costs. The representative of Canada confirmed that an adjustment would be made. The representative of the United States wanted to know whether there would be an adjustment depending on circumstances surrounding the sale. The representative of Canada confirmed that such adjustments would be made. The representative of the United States further asked whether in case of home market sales between related parties the investigating authorities would look at the rule to determine whether a home market sale to a related party was at arm's length and, if so, they would accept it. The representative of Canada said that they would probably go to the first open market sale and then make an adjustment for the appropriate trade level to get the true export price.

52. The representative of the United States complained about the complete lack of transparency on how decisions were reached. He also considered that in most of the decisions there had not been adequate motivation. The representative of the European Communities supported the United States representative and said that nobody wanted the Canadian authorities to publish concrete figures and detailed information. What was needed were grounds for determinations and decisions.

53. The representative of the United States said that time-limits provided for in the draft legislation were certainly too short. There had been complaints about the time-limits required by the United States but these limits were twice as long as those proposed by Canada.

54. The representative of the European Communities referred to section 16:4, lines 20-25 and said that when the administration came to the conclusion that there was not sufficient evidence of injury and it did not open an investigation, the complainant had a right to go to the Anti-Dumping Tribunal and ask for a ruling against the administration. This provision was unbalanced since the importer did not have the same possibility.

55. The representative of Canada said that the Canadian authorities had examined time limits under the present procedures and they had found that in all cases the Department of National Revenue had been able to complete all of its investigations in a period of six months. Therefore the first period of ninety days was devoted to gathering information essentially on the dumping case, the second ninety day period would be

devoted to refining and putting the final order in place. He did not feel that the time limits were too short. On the question of section 16:4 he said that the same provisions had always been in the Canadian law and he considered that the system was fair. If the case went before the Tribunal the importer would have the right to make his case. If, however, the Minister decided that the case should be closed the importer would certainly be satisfied and would not want to continue the case. This was why it was only the complainant who, in such cases, would be interested and have the right to go to the Tribunal.

56. The representative of the United States wished to know whether it would be acceptable to the Canadian authorities that whenever the United States' administration had a dumping case against Canada it would be instructed to make a preliminary determination within three months. The representative of Canada said that if they had information on dumping and injury, they should go as fast as they possibly could.

57. The representative of the European Communities said that he had the same problem with section 20, line 20, concerning massive imports in a relatively short period of time as the one discussed in connexion with the retroactivity. The representative of Canada said that if one looked at Article 11 of the Agreement, one would find that the wording of the Canadian provision was very close to that of the Agreement. It was different in only two respects. In section 5(a)(i)A it used the words "considerable importation" to replace history of dumping. In section 5(a)(ii) Canada had defined, for its own domestic legislation, what was meant by "sporadic dumping", namely that it constituted a single massive importation or it could be massive in the sense of being a series of importations which, taken together, constituted massive importation. These provisions had been in the Canadian law since 1968. The representative of the United States said that there was a difference between the history of dumping which was required by the Code and whether there had been a considerable importation. He did not see how one could say that considerable importation of goods could mean history of dumping. The representative of the European Communities supported the previous speaker and said that "considerable importation" had nothing to do with a "history of dumping". The history of dumping meant that dumping had occurred in the past and was reoccurring again. The same applied to "sporadic dumping". The definition of "sporadic dumping" under the Code relied on two criteria which were cumulative. First there should be massive imports and secondly those massive imports had to occur in a relatively short period of time. The Canadian legislation had split up this definition and out of cumulative criteria it made alternative criteria. He again urged the Canadian delegation to reconsider its position. The representative of Canada said that he disagreed completely with the representative of the European Communities on both points. Section 5(a)(i)A said "there has occurred a considerable importation of like goods that were dumped". It was purely past tense and it had been put in because "history" had no precise meaning in the Canadian legal context. On the second point in 5(a)(ii) there were two things: in (a) it was obviously a simple shipment, and it was therefore going to occur in a relatively short period of time, and there was no need to repeat these words. Under (b) there had to be

a relatively short period of time and therefore these words appeared in the text. This was intended to deal with cases where a large volume of goods might be in a customs warehouse but because a case had been initiated the importer and exporter could get together and clear everything out of the warehouse before a preliminary determination could be made. If there were no provision which allowed for a ninety-day retroactivity period, there would be no way in which one could apply duties against such goods. The representative of the European Communities said that he entirely agreed on the problem of customs clearance out of a warehouse because it was a massive import in a relatively short period of time. However, if one opened the door to apply the duty retroactively to any massive imports without any further specification, the entire concept of the retroactivity rules of the Code would be changed. Retroactive application should be exceptional and take place only when the massive imports occur in a short period of time.

58. The representative of the United States referred to section 21 and asked why there was a reference to services and what it meant. The representative of Canada said that the reason why there was such a reference was that the Tribunal looked not only at questions of injury caused by dumping but it was also a body of economic enquiry.

59. The representative of the European Communities referred to section 22:2(a) which provided that an undertaking should not be accepted where there had been a preliminary determination of dumping with respect to the goods. He said that if in such a case an undertaking should not be accepted, he would like to know under what circumstances an undertaking should be accepted. In his opinion an undertaking should never be accepted without a preliminary determination of dumping and injury. The representative of Canada said that this section provided for an acceptance of an undertaking up to the point of a preliminary determination. Beyond that point, this section did not provide any authority for the government to accept price undertakings. The logic was that when a preliminary determination had been made, it geared up the Tribunal on the injury question. If the investigating authorities were before the courts with a particular case and if they had already spent several months on it there was no justification, at that point of time, to provide an opportunity for an exporter who knowingly was dumping to offer an undertaking at that late stage in the enquiry. The representative of the European Communities said that the Code provided that no price undertaking should be accepted outside the framework of a formal anti-dumping investigation which implied that there should be at least a preliminary determination on dumping and on injury. He considered that the Canadian legislation should be consistent with the Code also in this respect. The representative of Canada said that the consistency with the Code was assured by section 23(a) which provided that after accepting an undertaking the Deputy Minister would make a preliminary determination of dumping. The representative of the European Communities said that although section 23(a) provided for a preliminary determination, it provided for it after the acceptance of the price undertaking. Furthermore, there was a curiosity in the Canadian legislation under section 25, that if someone protested against the acceptance of a price undertaking the

Tribunal and if the Tribunal found that there was injury, the anti-dumping duty would be applied and the price undertaking would lapse. He wondered what was the logic of these procedures and why a price undertaking would be nullified only because the Tribunal thought that there was injury. If there was no injury, the authorities should not have accepted the undertaking. The representative of Canada said that the reason for having a preliminary determination issued only after an undertaking had been accepted was to ensure that if there was a violation a few months later, the investigation would start at the preliminary determination stage, not from the very beginning. On the second point he said that the right to appeal to the Tribunal was given to exporters if they felt that the decision made at the administrative authorities was not correct. However, if the Tribunal made an injury finding, the exporter who had knowingly started the whole expensive and time-consuming process should be subjected to the full weight of the law.

60. The representative of the European Communities asked about the exact meaning of section 26(b). In his understanding a certain decision could be reversed if new information was obtained or there were new elements and he wondered whether this was what this section envisaged. He suspected, however, that the meaning of this section was that when it was finally found that there had been dumping and injury the acceptance of the undertaking would be withdrawn. Such a meaning caused him concern because it affected the whole concept of anti-dumping. Anti-dumping policy should not be considered as a part of criminal law and anti-dumping duty not as a kind of fine. Anti-dumping duty should be destined only to remove injury caused to an industry. The concept of the General Agreement was clear - dumping was not an offence and anti-dumping policy was not equivalent to criminal law. The representative of Canada said that this provision had been put in for administrative reasons to deal with a situation where newcomers would ship the same product, damaging those who had given an undertaking as well as the domestic industry. The aim was to subject exporters to the same regime. He also noted that once all concerned were subjected to the same regime the impact on those who had given price undertakings and were honouring them would be nil.

61. The representative of the European Communities referred to section 28:1 and asked whether there would be any possibility of application of differentiated basic prices for different exporters or different countries. The Code provided that there should be one basic price system for all imports. He also referred to section 28:2(i)-(iv) and, commenting on paragraph (i) he said that he had never seen an anti-dumping investigation which was not complex and which did not raise many new issues. Consequently under the draft text a basic price system could be introduced on whatever product and in whatever investigation one could imagine. Commenting on paragraph (iii) he said that there was a common feature of any anti-dumping investigation that investigating authorities had difficulty in obtaining satisfactory evidence. To apply paragraph (iii) criteria for the institution of a basic price system would make it too easy. It would be even easier under paragraph (iv) which opened a door to everything. He said that everybody knew the dangers of basic price systems and therefore the use of them should be

limited to an indispensable minimum. The representative of the United States said that section 28 went far beyond any sort of reasonable application of an anti-dumping legislation. As he understood this provision, the Deputy Minister, for almost any reason he decided, could stop an anti-dumping investigation without any determination and impose anti-dumping duties and anybody who objected to those duties would have the right to insist on an investigation. He could not think of a better way of ensuring consistent pressure on the Canadian authorities to take action which many Parties to the Code would find intolerable. He also referred to a paragraph on page 8 of Proposals on Import Policy which read: "There are certain situations in which a basic price system might be useful. One example is where a wide range of products is produced in a single industry and the taking of anti-dumping action against a particular product may not be effective since the exporters could simply dump an alternative product." He said that under the Code actions should be product specific. The notion behind the Code and the General Agreement was that one should look at a single product and action should be restricted to that product. He asked whether in this case Canada would also like other countries to adopt the sort of proposals that had been put forward in the Canadian draft legislation. The representative of Canada said that his authorities had not had any experience with a basic price system and he recognized the dangers involved in such systems. However, they faced a dilemma. The Code clearly provided the rights to establish a basic price system. They could not put the provision of Article 8:4 directly into the Canadian law, but they had to give it more precision. This was the first time that someone had tried to write down what this provision meant in law. This was an attempt and he did not consider it as final. He was looking for guidance from the Committee and he suggested that it should examine what Article 8:4 really meant and then all Parties could decide whether the notion should be kept or whether it would be better to drop it. The representative of the European Communities said that there was only one case where a basic price system had been examined in GATT and the conclusion which resulted from the long debate on this case was that such a system should be something really exceptional. At present there were only two Parties which had applied the basic price system and even in the case of one of them - the United States - it was not sure whether the trigger price system was really a basic price system. In the second case - that of the EEC - the system was applied to a very limited number of products in only one sector. The representative of the United States said that the trigger price system was certainly not a basic price system. It was a system for monitoring imports and deciding when, if ever, anti-dumping investigations in full compliance with procedures under the Code should be initiated. Duties were never collected under the trigger price system. Therefore there was a fundamental difference between this system and that proposed by Canada. He felt that, whatever the drafters of the Code had had in mind with respect to the basic price systems, it was not close to that proposed in the Canadian legislation which constituted a serious and fundamental breach of the Code. He supported the proposal that the Committee shall study the question of basic price systems before any action was taken by Canada.

65. The representative of Canada referred to the Japanese anti-dumping legislation circulated in ADP/1/Add.8 and asked whether the six-month period for application of provisional duties provided for in section 9 was in conformity with Article 10:4 of the Code. Concerning section 4 he asked whether the wording "any person who has an interest in an industry in Japan" was not too broad in the context of the Code. The representative of the European Communities said that he had exactly the same point to make on section 4. The wording "any person" was too broad and differed from the Code. He also referred to section 5 and said that the word "or" should be replaced by "and" to make it clear that an investigation should be opened only when there was a complaint which contained sufficient evidence on dumping and injury. He also raised an issue which had not been mentioned in the Japanese legislation, namely the so-called "disclosure conferences". He urged the Japanese delegation to provide for such conferences in their anti-dumping regulations. The representative of Japan said that the Japanese legislation had been amended to comply with the new Code and was in full conformity with its provisions. The points raised at this meeting would be submitted to the competent authorities. However, he thought that as the new law had been specifically prepared to comply with the Code, it would be difficult to envisage changes or new elements.

66. The Committee noted that there were no questions or comments on notifications of national legislation submitted by Romania (ADP/1/Add.9) and Austria (ADP/1/Add.10).

67. The Chairman, referring to suggestions made earlier at the meeting, proposed that the Committee hold a special meeting around the end of January 1981, to discuss problems related to the basic price systems. The Committee agreed to this proposal.

(C) Reports on all preliminary or final anti-dumping actions

68. The Chairman said that since the May 1980 meeting the secretariat had received reports on anti-dumping actions from the European Communities, Canada and the United States. The checklists of these reports have been circulated in ADP/W/5 and ADP/W/6. As there were no comments on these reports the Chairman concluded that these procedures should be continued.

(D) Semi-annual reports of anti-dumping actions taken within the preceding six months

69. The Chairman informed the Committee that the following Parties had submitted their semi-annual reports (ADP/4 and addenda): Austria, Canada, European Communities, Finland, Hungary, Japan, Norway, Spain, Sweden, Switzerland and the United States. He also referred to semi-annual reports submitted under the old Anti-Dumping Code, which covered the period 1 July-31 December 1979. Some of these reports had been circulated in COM.AD/54 and addenda (Austria, European Communities, Finland and Portugal) and the reports by the United States, Hungary and Spain had been circulated together with their reports under the present Agreement in ADP/4/Add.1, Add.2 and Add.4 respectively. The Committee also had before it copies of the semi-annual report submitted by

Australia. The Chairman proposed that the reports under the old Anti-Dumping Code and the present Agreement be examined at the same time, country by country.

70. The observer for Australia said that the report submitted by his delegation covered only the period 1 July 1979-31 December 1979. The report for the first semester of 1980 would be submitted at a later stage.

Austria

71. The representative of the European Communities referred to the report submitted by Austria (COM.AD/54). He asked the Austrian delegation to explain why, and on what basis, the provisional duties had been imposed only two weeks after the opening of the investigation. The representative of Austria said that he was not able to answer this question at this stage, but the question would be answered through the appropriate diplomatic channels or at the next meeting.

European Communities

72. The representative of Czechoslovakia referred to the report submitted by the European Communities (ADP/4) to flag certain points of a general nature. In the case of electric motors confidential information had been supplied by the Czechoslovakian exporter to the investigating authorities and there had been some leaking of this confidential information. It influenced negatively the competitive advantage of the exporter. He hoped that in future any confidential information would be handled in conformity with the Agreement and adequately protected. Furthermore, exporters and importers known to the investigating authority to have an interest in a particular investigation related to the export of Czechoslovak goods were not notified about the initiation of the investigation, although such notifications were made by the Commission in investigations related to goods of other origin. The representative of the European Communities said that he was worried about the alleged leak of confidential information and if there were any concrete reasons for complaint he would like to know all the details in order to investigate further because a leak was something that should never have happened. As to the notifications to interested importers and exporters, he said that no discrimination had ever been made between countries. All importers and exporters known to be involved in a case had always been informed. The list of involved importers were usually supplied by the exporter and it might happen that they were incomplete. In addition anti-dumping proceeding notices were published in the Official Gazette which was available to everybody. Furthermore, embassies of the countries concerned were normally notified. Here, however, there was a problem with Czechoslovakia as Czechoslovakia had no mission accredited to the European Communities. The representative of Czechoslovakia said that the problem of accreditation could be solved by sending the notification through the Commission's delegation in Geneva to the Permanent Mission of Czechoslovakia at the same place.

73. The representative of the United States raised a question about the recent EEC decision on a case involving polyester yarn. The concern of his delegation was that the EEC decision-making process went too far and the investigation up to provisional determination was too quick and too superficial. The representative of the European Communities said that he agreed with the United States delegation that certain quality standards should be observed in every investigation. In the polyester case there were special circumstances and the action had been taken very quickly. He hoped that the Commission would not be compelled any more to act so quickly as in this case. He recognized that there was a more general problem which the Committee should discuss sometime, namely how much time should be left to the other side in order to prepare its defence. Some guidance should be developed which could then be applied by all parties.

Canada

74. The representative of the European Communities referred to the report by Canada (ADP/4/Add.3). There were two problems: one concerning the generators from Italy and the other concerning steel sheet pilings from certain members of the EEC. As to the first problem the question was whether a firm bid, especially an irrevocable one, could be assimilated to an import and whether consequently anti-dumping investigations could be opened without any real import having taken place. In this case the investigation had never really started because the lowest bid by an Italian exporter had not been accepted and the contract had been awarded to a Canadian producer and the investigation had been closed - consequently there had been no investigation on dumping, and no investigation of injury, but the result had been obtained - the contract had gone to the Canadian industry. He hoped that the Canadian delegation would agree that this procedure was not fair. The second case was full of curiosities. The Canadian production started in June 1980. Canada had never before produced steel sheet pilings. The anti-dumping proceeding notice stated that the EEC traditionally had 85 per cent of the market in Canada. Canadian producers wanting to obtain a market share started their production in June 1980 and three weeks later on 4 July an anti-dumping investigation had been opened, after only three weeks experience of the Canadian industry. The notice said that there was retardation of the establishment of the industry and that the Canadian industry had made estimates on what market share it could obtain and it amounted to 50 per cent of the Canadian market. He wondered how an industry could make such an estimation to move from 15 per cent to 50 per cent within the first year of its activities. Furthermore the notice stated that the Canadian industry had obtained an 18 per cent share of the market within three weeks, despite the competition from the European producers. Therefore he wondered where the injury was. The representative of Canada said that as far as generators were concerned, the Canadian authorities always had maintained that an irrevocable tender was entering into the commerce of the country. If one took any other view there would be no way that one could provide the protection which was normal under the Agreement, especially in the case of heavy equipment manufacturers. As to the steel sheet pilings, before the National Revenue initiated the case they had had significant information on both

the injury and dumping. It was true that this was a new producer just starting up but the evidence submitted to the authorities included offers and tenders and price information covering the previous three to four months. The producer had always been undercut by European producers. He considered that this case was covered exactly by the notion of retardation. The representative of the European Communities commented on the meaning of retardation. He said that it covered a case when a country envisaged establishing a certain industry, where concrete plans existed for the establishment of such an industry, the construction of factories had started and then suddenly a newcomer came in and the establishment of such an industry was made impossible. Article VI of the General Agreement and the Agreement covered cases of newcomers. However, the Canadian case covered another case, i.e. where there was an exporter with a traditional market share in the importing country and the newcomer on the market of the importing country was a domestic industry which wanted to establish itself and obtain a certain market share. He did not think that this was envisaged by the Code.

75. The representative of the United States said that in a recent case involving sporting ammunition from the United States the calculation of the normal value and the injury determination had raised some questions. In the calculation of normal value a number of transactions by the United States companies under investigation had been disregarded. With respect to the nature of the injury determination: the industry was defined as sporting ammunition within which there were a number of sub-groups, while the Canadian industry did not produce a number of the products that constituted the sporting ammunition industry. The representative of Canada said that for the moment he did not know why certain transactions had been excluded. On the injury determination the Tribunal had found a threat of injury and it had concluded that the producers could supply the entire market had they chosen to do so. On this case an appeal had been made and was before the courts. The representative of the United States wondered whether the Canadian order extended to products which were not produced in Canada. It seemed to him too far fetched to include such products. The representative of Canada said that for the moment he could not answer the question in detail. The representative of the United States urged the delegation of Canada, while looking at their legislation, to reconsider the product definition so that if the Canadian industry did not produce a product this product would not be covered in an anti-dumping order. The representative of the European Communities quoted several cases where the final determination of dumping had been made some months after the injury had been found. He wanted to know how the procedure of final determination worked in Canada. The representative of Canada said that the decision on the imposition of definitive duties was made by the Anti-Dumping Tribunal. The Deputy Minister's final determination which came after the Tribunal determination was really the actual calculation of the margin involved in each case. In the proposed legislation the system had been turned around so that the final determination would come a month before the Tribunal's decision and that decision would be taken into account by the Tribunal in its determination of injury. In addition a requirement had been written into the new legislation that all cases concerning the calculation of the actual amount of dumping should be cleared out within six months of

the final decision by the Tribunal. The representative of the European Communities wanted to know what would happen if the period between the finding of injury by the Tribunal and the final dumping determination was relatively long. Under the new law, would the Canadian authorities apply a provisional duty or a definitive anti-dumping duty. The representative of Canada said that under the proposed system the final determination would not trigger anything, it would simply be a reconfirmation by the National Revenue that they had evidence of dumping and they would be able to prescribe the amount of the dumping. That final determination would relate to the entries that had been subject to the review, none of which would be subject to duties.

Finland

76. The representative of the European Communities wanted to raise certain general points concerning the anti-dumping action taken by Finland with respect to certain paper products imported from the EEC. It seemed that in this case the investigating authorities had asked for the cost of production calculation, despite the fact in the complaint that there was no allegation of a sale at loss. His understanding was that a country could ask for a calculation of costs of production when there was no domestic price in the country of exportation, or when it was alleged that this price did not cover the production cost. If no such allegation was made he would have thought that the importing country should satisfy itself by just requiring an indication of the normal domestic price in the country of exportation. Furthermore, this case raised the problem of the definition of "like product". The EEC exporters claimed that the Finnish producers did not produce the same product. The third problem was that of retardation of the establishment of the domestic industry. He wondered whether it was possible to speak of retardation when the foreign exporters had a traditional market share of 90-95 per cent in Finland. Was the injury caused by the foreign traditional exporters or by the price fighting provoked by the domestic industry which wanted to get into the market? The representative of Finland said that it was too early to discuss the case because the investigation had only started in July and no preliminary determination had been made so far.

77. The representative of Canada said that this kind of situation with respect to retardation as described by the representative of the European Communities had not been envisaged by the Code and if the exporter wanted to keep their market share they should do it on fair terms. The representative of the European Communities said that such an answer led back to the question of what was dumping - was dumping a crime or was it a common business practice? For him it was a common business practice. It was quite normal that a firm had one price level in one country and another in another country, but in order to be able to impose an anti-dumping duty two requirements should be fulfilled - there should be dumping and an injury caused by it. Who was responsible for injury in the case described by him? Was it the exporters who had 95 per cent of the market share? In such a case the in all probability the price undercutting had been done by the one who wanted to get into the market.

United States

78. The representative of Canada referred to the report submitted by the United States (ADP/4/Add.1). The first case related to methanol. The ITC had determined that there was only a threat of injury and a provisional duty had been collected over a period of six months and then it had been turned into a definitive duty. It had happened under the old law, but it seemed to be a clear violation of the present Code. The second case concerned canned clams. There was only one firm complaining in the United States but the Department of Commerce had decided to initiate the case without looking into the question of whether this firm could be considered as the industry. The third case concerned carbon steel. The finding had been made in 1964. The case was still on the books, the Treasury had done nothing about collecting duties, yet two weeks ago a firm in Canada had received a request from Washington requesting detailed information on all shipments dating back to 1972. The representative of the United States said that the last question raised by the representative of Canada and that of methanol concerned cases dealt with under the previous law and a similar situation should not happen in future. He said that as Canada was going to reconsider some points concerning its legislation his delegation would, in a spirit of reciprocity, reconsider these cases to see what could be done. As to the case concerning the canned clams, what had happened was that a small business submitted a petition and the evidence was accepted because of the relatively small capabilities of the petitioner to develop information. In this case standards for evidence were easier to meet than they would have been, for example, in the case of the United States steel industry. The ITC had found that there was no injury and the case had been dismissed. The representative of Canada said that it seemed that the United States had double standards. If the industry was large it had to provide sufficient evidence, if it was small an investigation would be initiated just based on a letter. In the case of a small country like Canada, most of the firms would be small according to the United States' standards. The Canadian practice in the case of firms not capable of gathering sufficient information was to help it get the information, even if it had to delay the case. The authorities would never harass exporters by initiating an investigation. Neither would they initiate an investigation on the basis of one firm's complaint only.

79. The representative of the European Communities urged the United States delegation to look into their review procedures and to speed up proceedings with respect to findings which had been outstanding, sometimes for several years.

80. The representative of Japan said that his Government believed that each and every anti-dumping case should be dealt with faithfully in compliance with the new Anti-Dumping Code, thus ensuring greater equity and uniformity. He was concerned about the danger of anti-dumping procedures being operated in a protectionist spirit. He considered it imperative that Parties should consolidate and administer their relevant national legislation in conformity with the Code. He referred to a specific case concerning spun acrylic yarn subjected to anti-dumping proceedings in the United States. He said that his authorities were

very concerned about this case, and also that they were of the view that in the light of the Anti-Dumping Code the determination of injury in this case was questionable, in particular with regard to the way in which the USITC had considered the causal link between the imports from Japan and the alleged injury. The ITC decision lacked adequate proof to whether factors other than the import from Japan had not caused the injury. Had these factors been taken fully into account the ITC would not have concluded that the injury had been caused by imports from Japan. In its report on the case the ITC stated that it had not found it necessary to establish causal links in cases involving such unfair practices as dumping. Should the United States continue to adopt such an interpretation the danger of positive findings on injury would be even greater. This would be in contradiction with Article 3 of the Agreement. He also said that in its reply to a petition from the Japanese industry to the United States Court of Customs, the United States Government had stated that in the case of a conflict between the United States legislation and an international code the former should take precedence over the latter. All this was a source of great concern to the Japanese Government. The representative of the European Communities said that the EEC also had an interest in the export of spun acrylic yarn to the United States and the previous intervention gave him an occasion to appeal to all delegations to have a very close look at the causality problem at every stage of each investigation. Even for a preliminary determination one should get a clear picture of the causality. The representative of the United States said he felt that the United States law was consistent with the Anti-Dumping Code. The new legislation had created a greater opportunity to examine in detail the question of causality and the injury question. As to the question of spun acrylic yarn the consideration of the injury was very difficult. In considering the question of injury the ITC had taken very seriously the international obligations of the United States that it had to be some causal link between the dumped imports and the injury caused to the domestic industry. In this regard the ITC had taken into account the size of the margins involved. In the case of Japan this margin had been found to be approximately 23 per cent. In this situation the question of price suppression became very important. In the case of spun acrylic yarn, even very small price undercutting might result in substantial switches and therefore the elimination of the margin of dumping was indispensable in order to eliminate any price undercutting. With respect to causal link the ITC had found specific evidence of purchasers who had stopped buying domestic acrylic yarn and switched to Japanese imports because of the dumped price at which the Japanese product had been offered. The ITC had taken into account the decline in demand for the spun acrylic yarn, nevertheless imports from Japan and Italy had contributed to considerable increases in inventories of the industry concerned. All these factors had been considered and taken into account. The Japanese producers had a right to appeal the ITC decision and the matter was presently before the United States courts. The representative of Japan pointed out that the imports of the spun acrylic yarn from Japan had decreased rapidly in 1978 and became almost nil in 1979. The price of this product on the United States market had been below the prices of the United States produced acrylic yarn only in 1977 and the beginning of 1978. Therefore it was difficult to understand on what basis the ITC had determined the injury to the

domestic industry. The representative of the United States said that the ITC decision had been set forth in detail with rationale provided. As to the time period, it was normal to choose some past period to see what the market and price situation had been. Furthermore any decision could be questioned in the court and there were also normal review procedures.

Poland

81. The representative of Poland informed the Committee that no anti-dumping action had been taken in Poland during the period under review. A notification to this effect had been submitted to the secretariat.

82. The Chairman said that the following Parties had notified that they had not taken any anti-dumping actions during the period under review: Czechoslovakia, Hungary, Japan, Norway, Spain, Sweden and Switzerland. He asked other Parties which had not taken any actions to inform the Committee accordingly so as to ensure the full transparency in the area of anti-dumping activities.

(E) Questionnaires used in anti-dumping investigations

83. The Chairman recalled that at its May 1980 meeting the Committee had agreed that Parties who used questionnaires in their anti-dumping investigations should submit them for information (ADP/M/2, paragraph 30). The secretariat had received copies of the questionnaire used by the Canadian authorities. Given the length of the questionnaire it had not been circulated but it had been made available, in English and French, in the GATT secretariat for inspection by interested delegations. He invited other Parties which used questionnaires to submit them for the information of the Committee.

84. The representative of the European Communities said that they had redrafted their questionnaire in the light of the new Code and it would shortly be transmitted to the GATT secretariat. The representative of the United States said that they had just completed redrafting their questionnaire and it would be submitted to the secretariat within the following week. The representative of Switzerland said that the questionnaires he had seen were very comprehensive and detailed and he wondered whether producers would be requested to answer all the questions contained therein or, whether the questions would be tailored to each specific case. The representative of Switzerland also considered that the questionnaires should be sent to the responding party through the respective government. The representative of Canada said that the questionnaire submitted by Canada was a master form and the specific questionnaires would be tailored to correspond to the requirements of each case. The representative of the United States said that they were also trying to successfully tailor their questionnaire to each case. As to whom the questionnaire should be sent he said that the normal practice was to send it to both the responding firm and the interested government. He had no objection that the questionnaire be sent to the firm through its government but he was afraid it could shorten the time for reply within the prescribed time-limits.

(F) Report to the CONTRACTING PARTIES

85. The Chairman recalled that in accordance with Article 16:7 of the Agreement the Committee should inform the CONTRACTING PARTIES of developments during the period covered by the annual review. He proposed that the secretariat prepare a draft report which would be submitted to the Committee before the end of the meeting for examination and adoption. It was so decided.

(G) Other business

(a) Panel members

86. The Chairman informed the Committee that the following Parties had indicated to him persons available for serving on panels: Austria, European Communities, Canada, Finland, Japan, Norway, Spain, Sweden and the United States (ADP/W/7). He invited other Parties to do so without delay.

(b) Group of Experts

87. The Chairman recalled that at its May 1980 meetings the Committee on Anti-Dumping Practices and the Committee on Subsidies and Countervailing Measures had set up a joint group of experts to examine issues involved in the definition of the word "related". The following Parties had so far nominated their experts: Brazil, Canada, European Communities, Finland, Hungary, Japan, Spain, Sweden, Switzerland and the United States. The group had had a short meeting of a procedural character. It had chosen its Chairman and it was decided that the Chairman of the Committee should also chair this group. The group had agreed on how to proceed with its work. The next meeting would be held around the end of January to discuss substantive aspects of the question and the group would report to the Committee.

(c) Other

88. The Chairman recalled that during the discussion of the United States' anti-dumping legislation some concern had been expressed with regard to the 8 per cent rule applied in the calculation of margin of profit and general expenses. Some informal consultations had been held between interested delegations and the Committee should now agree on how to proceed further on this matter.

89. In this context the Committee noted that Article 2:4 of the Agreement provided that "As a general rule the addition of profit shall not exceed the profit normally realized on sales of products of the same general category in the domestic market of the country of origin." The Committee urged the United States to examine the 8 per cent rule contained in its legislation in the light of the above quoted Article and agreed to discuss the matter at a subsequent meeting.

90. The Chairman recalled that earlier during the meeting several delegations had expressed their concern regarding too short time-limits given to respondents in anti-dumping proceedings to prepare their cases.

91. The Committee expressed concern on a too restrictive application of time-limits and invited the Parties to the Agreement to leave sufficient time for respondents to prepare their cases.

92. The representative of Brazil said that since there was no legislation in Brazil that provided for the imposition of anti-dumping measures the Government of Brazil intended to publish the Anti-Dumping Agreement, so that it would be applied domestically in Brazil. Brazil intended to establish an administrative structure and set up administrative procedures in order to implement its future domestic legislation in conformity with the provisions of the Agreement. This process would start as soon as possible, but would require a further period of time for completion. Consequently, for domestic legal reasons, the Government of Brazil requested the Committee to adopt the proposed Decision as set out in Annex I. The Committee adopted this decision.

93. The representative of Hungary said that his delegation had no problem with the substance of the decision just adopted. It clearly resulted from the Agreement and current practices of the Committee that it was up to each Party to choose how to implement the provisions of the Agreement. It was also up to each Party to decide whether to adopt detailed procedures and to have special machinery for the implementation of the Agreement. Irrespective of the solution chosen each Party was obliged to ensure full conformity with the Agreement when taking anti-dumping measures. Therefore Brazil could proceed with the solution described in the proposed decision even without any special authorization of the Committee. However, taking into account the special internal requirements and the status of Brazil as a developing country he did not object, in this particular case, to the solution just adopted. The representative of the European Communities said that in his understanding the reference to anti-dumping duties in paragraph (ii) of the Decision covered any kind of anti-dumping action. The representative of Brazil confirmed that this provision covered all anti-dumping actions under the Agreement.

94. The Committee examined the draft report to the CONTRACTING PARTIES prepared by the secretariat. It adopted this report as set out in L/5052.

95. The delegation of Canada requested the secretariat to prepare a short background note on the discussion of basic price systems in the GATT for a special meeting of the Committee to be held in January (see paragraph 67). It was agreed that the exact date of this meeting would be established by the Chairman in consultation with delegations.

96. The Committee agreed that the date of its regular spring session would be established by the Chairman in consultation with delegations. It took note that the agenda for the next meeting of the Committee would

be circulated, after consultation with delegations, in advance of the meeting and it would include, inter alia, traditional items such as:

- (a) adherence of further countries to the Agreement
- (b) examination of national legislation and implementing regulations
- (c) reports on all preliminary or final anti-dumping actions
- (d) semi-annual reports of anti-dumping actions taken within the period 1 July 1980-31 December 1980
- (e) questionnaire used in anti-dumping investigations

ANNEX I  
DECISION BY THE COMMITTEE ON ANTI-DUMPING PRACTICES

The Committee, recalling that, in accordance with the Decision taken on 5 May 1980, "developing countries may face special problems initially in adapting their legislation to the requirements of the Code, including administrative and infrastructural problems, in carrying out anti-dumping investigations initiated by them",

- (i) recognizes that Brazil will require a further period of three years to establish an administrative structure and to set up administrative procedures in order to implement its domestic legislation in conformity with the provisions of the Agreement, relating to the imposition of anti-dumping duties, as provided in Article 1;
- (ii) notes that Brazil undertakes not to impose anti-dumping duties until such time it notifies the Committee that it is able to proceed with the full implementation of domestic regulations and administrative procedure deriving from obligations of the Agreement which relate to the imposition of anti-dumping duties;
- (iii) agrees that this matter will be subject to review after three years from the date of Brazil's acceptance.