

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

ADP/M/5  
11 June 1981

Special Distribution

---

## Committee on Anti-Dumping Practices

### MINUTES OF THE MEETING HELD ON 27-28 APRIL 1981

Chairman: Mr. M. Lemmel (Sweden)

1. The Committee on Anti-Dumping Practices held its fifth meeting on 27-28 April 1981.
  2. The Committee adopted the following agenda:
    - A. Election of Vice-Chairman
    - B. Adherence of further countries to the Agreement
    - C. Examination of national legislation and implementing regulations (ADP/1 and addenda)
    - D. Reports on all preliminary or final anti-dumping actions (ADP/W/15 and ADP/W/16)
    - E. Semi-annual reports of anti-dumping actions taken within the period 1 July 1980-31 December 1980 (ADP/7 and addenda)
    - F. Questionnaire used in anti-dumping investigations (ADP/6, ADP/8 and ADP/9)
    - G. Draft understanding on Article 8:4 of the Agreement (ADP/W/14)
    - H. Report of the Joint Group of Experts on the definition of the word "Related"
    - I. Other business
- A. Election of Vice-Chairman
1. The Chairman informed the Committee that the Vice-Chairman, Mr. Victor Segalla (Austria) had been transferred back to Vienna and because of many other obligations was not in a position to continue as Vice-Chairman of this Committee. As a result of informal consultations he proposed Mr. Arif Hussain (India) as the new Vice-Chairman. The Committee elected Mr. Hussain its Vice-Chairman.

B. Adherence of further countries to the Agreement

2. The Chairman informed the Committee that since its last meeting in February 1981 no further countries had adhered to the Agreement.

C. Examination of national legislations and implementing regulations (ADP/1 and addenda)

3. Since the October 1980 meeting of the Committee the following Parties have submitted communications with respect to the implementation of the Agreement:

Czechoslovakia	-	ADP/1/Add.11
Hong Kong	-	ADP/1/Add.12
Hungary	-	ADP/1/Add.14

The Committee took note of these notifications.

4. The representative of Canada circulated informally a draft regulation covering certain parts of the proposed Canadian anti-dumping legislation. He said that he would welcome any comments other Parties might wish to make at that point of time or to send to him after the meeting. The representative of Switzerland asked for an explanation of the reasoning behind Article 14 of this regulation which exempted from the application of the Act pharmaceutical products not made in Canada. The representative of Canada said that the same provision existed already in the present law and the reasoning behind it was to stimulate competition on the Canadian market in this area.

5. The representative of India said that, as the draft regulation had been circulated just before the meeting he had had no time to study it but he expected that he would have this opportunity at the next meeting. He also wanted to inform the Committee that the present Indian Customs Tariffs Act did not envisage application of anti-dumping duties and consequently such duties had never been applied. However, his Government was taking steps to submit to the Parliament appropriate legislation which would provide for anti-dumping duties. If any decision was taken in this respect the Committee would be informed without delay.

6. The representative of Spain said that the Spanish Parliament had recently ratified the Agreement. This ratification would be officially communicated to the GATT secretariat. He also said that the administrative mechanism to be established in Spain would be communicated to the secretariat for circulation to the Parties.

7. The representative of Canada said that the preparation of their anti-dumping legislation was still at an early stage and the Parliamentary hearings were not completed. It was conceivable that the legislation would go to the Parliament in the autumn.

8. The Chairman said that depending on developments the Committee might come back to the Canadian legislation at a special meeting which would probably be held in July, or at its next regular session.

9. The representative of Switzerland asked whether it would be possible to have an indication at this stage to what extent Canada was taking into account

certain comments made at the previous meeting, for example on the definition of like product or on the possibility of not imposing anti-dumping duties in full margin of dumping. The representative of Canada said that he was not in a position to give such an indication although he could assure the representative of Switzerland that all comments made either in this Committee or bilaterally would be carefully examined and some of them would certainly be accepted while some others would not.

10. The representatives of the United States and of the European Communities said that the draft Canadian legislation contained many points which were not acceptable to them and that their silence at this meeting did not mean that they did not have serious problems. They expected that the discussion of the Canadian legislation would continue in order to find appropriate solutions.

11. The representative of the European Communities said that although he would not revert, at this meeting, to the United States' legislation he wanted to reiterate his concern about certain provisions. In particular he recalled that despite strong criticism nothing had been done about the so-called 8 per cent rule applied in the calculation of margin of profit and general expenses. He said that this rule was not in conformity with GATT and had serious practical implications in many cases involving goods exported by the EEC. He urged the United States to take appropriate action in this respect.

D. Reports on all preliminary or final anti-dumping actions (ADP/W/15 and ADP/W/16)

12. The Chairman recalled that at its May 1980 meeting the Committee had agreed that Parties should send to the GATT secretariat all formal decisions concerning preliminary or final actions taken with respect to anti-dumping duties, immediately after such decisions had been taken. These notifications were available in the GATT secretariat for inspection by government representatives. In addition the secretariat circulated a periodical checklist of notifications received during the preceding period. The experience gained with the operation of these procedures was that notifications were sent very irregularly and that not all actions had been so notified. As many of these notifications were sent with a considerable delay it was understandable that there was not much interest in them and that the number of inspections was very limited. In this connexion he wanted the opinion of the Committee as to whether the circulation of the checklist served any useful purpose and whether it should be continued.

13. The representative of Japan said that he was of the opinion that the circulation of the checklist should be continued as it was the most rapid way for the representatives in Geneva to get information about anti-dumping actions. The representative of the European Communities said that he had always considered that the checklists were not very helpful. The only satisfactory way would be to circulate all decisions but it would be too costly. In this situation, the existing procedures were better than nothing.

14. The Chairman said that the circulation of the checklist would be more useful if Parties notified their decisions immediately after they had been taken and not several months later. Therefore the Parties were urged to comply with this requirement. The secretariat would continue, at least until the autumn session, to circulate the checklists.

E. Semi-annual reports of anti-dumping actions taken within the period 1 July 1980-31 December 1980 (ADP/7 and addenda)

15. The Chairman recalled that an invitation to submit semi-annual reports covering the period 1 July 1980-31 December 1980 had been circulated in ADP/7 of 2 February 1981. Parties which had not taken any action within the reporting period were also invited to inform the Committee accordingly. The following Parties had notified, in addenda to ADP/7, that they had not taken any anti-dumping action during the period 1 July 1980-31 December 1980: Spain (Add.2), Norway (Add.3), Switzerland (Add.3), Hong-Kong (Add.3), Japan (Add.3), Romania (Add.4), Austria (Add.5), Czechoslovakia (Add.5), Yugoslavia (Add.5), Brazil (Add.5), Sweden (Add.6), Hungary (Add.8), India (Add.10). Anti-dumping actions had been notified by the following Parties: United States (ADP/7/Add.1), Finland (ADP/7/Add.5), EEC (ADP/6/Add.7) and Canada (ADP/7/Add.9). The Chairman proposed examining these notifications in the order in which they had been submitted.

United States

16. The representative of Japan referred to the US report in ADP/7/Add.1 and raised two points. The first point concerned confidentiality of information. He said that information submitted by a Japanese firm had been disclosed to an officer of the complainant. The second point was that annual reviews of outstanding anti-dumping cases by the Department of Commerce had a tendency to cover a larger sphere than just products considered to be dumped. It was indispensable that such reviews be limited to products with respect to which the final finding of dumping had been made. The representative of Canada referred to the case of steel jacks - an anti-dumping finding of 1966 - which was still in place. The firm concerned had requested the Department of Commerce to review it and he wanted to encourage the US administration to revoke this finding as soon as possible. The other issue was related to a dumping case covering horseshoes which had also been in place for quite a long time. The Canadian firm involved which had been dumping at that time was no longer in the business, two other firms however had moved in and were selling in the US market but they were still caught up in that anti-dumping finding which had related to a completely different firm. Also in this case he would like to encourage the US administration to promptly revoke the finding.

17. The representative of the United States said that as to the first question from the Japanese representative, he very much regretted it if inappropriate disclosure had occurred. He was not familiar with the facts but reaffirmed the principle that confidential information should not be passed on to another party which did not have a legitimate interest in the case and that the US regulations provided for satisfactory observance of this principle. If the representative of Japan had more specific information on that case the US authorities would look into it very closely. If such information could be given well in advance of the next meeting he would be able to respond with some specificity as to the circumstances around this case. The second question dealt with the product coverage after an order had been issued. He thought that the Japanese representative was correct in his assumption that once an order had been issued the product coverage was established thereby and should neither be expanded nor modified. Without knowing the specific situation he could only make a general comment that when orders were issued they were issued at a particular time with a specific product coverage. It might so happen that new products were produced that the US administering

authority might consider as covered by the scope of the finding if they were essentially a variation of the product investigated. In addition it was possible that their internal decision with respect to such a product variation gave the appearance of modifying the scope of a finding, but if there were new products which were alleged to be dumped this would have to be addressed in a separate investigation. As to the questions raised by the representative of Canada he wished to state, in relation to the case of horseshoes, that the US general procedures with respect to either revocation or the question of having new entrants into the market were that once an order applied on a country-wide basis was outstanding, it would apply to all producers of that product who were exporting to the United States. This, by definition, would cover even those producers who had not been investigated or had not been producing at the time when the order had been issued, as well as producers who were producing for the first time. Any such producers, if they were not dumping, should request a review of the outstanding order as it applied to them. It could be done either by requesting a review of the injury determination or, if after a certain number of years no sale at less than fair value had occurred, they could be excluded from the order. As to the question of steel-jacks he also wished to point out that any company was entitled to request a revocation. In this specific case it seemed to him that a legal action involving the same product had been brought to court and this slowed down the administrative process. He would endeavour to find out the exact situation and would inform the representative of Canada as soon as possible.

#### Finland

18. The representative of the European Communities referred to the report by Finland (ADP/7/Add.5) and wanted to know whether the investigation on coffee filter bags was still under way. In the meantime there had been a price undertaking but the EEC producer had requested that the injury investigation continue. The representative of Finland said that the investigation was still going on and should be concluded by the end of June.

#### European Communities

19. The representative of the United States referred to the report by the European Communities (ADP/7/Add.7) and said that as a result of an incident in the case of vinyl acetate monomer he would like to raise a more general question of changing the time-period covered by investigation. In conducting its investigation the EC Commission had chosen a period of one year. The submissions contained data concerning this period and a preliminary determination was made on the basis of these submissions. Subsequent to that the Commission had decided that the period of time should be extended to include an additional six-month period that covered the period during which the case itself had been investigated. He believed that the investigation period should not be changed once it was set and that a determination regarding dumping should be made on the basis of data submitted in the questionnaire for the selected period. In addition he wanted to make two other general points. The first dealt with the time for responding to questionnaires. The Commission had been most reasonable in granting an extension of the time limits if the originally required time was not sufficient for responding companies. However it would be more appropriate if such time limits were longer or if they were counted from the moment the company received the questionnaire. The second question concerned the participation by exporters and foreign producers in the injury determination. In particular there had been some concern expressed by certain

companies in the vinyl acetate monomer case that they had not been given adequate input into the injury determination process. The representative of Canada referred to the case of potato granules which had been going on for some time. There were two Canadian producers involved, one of them had agreed to enter into an undertaking while the other had not and he was concerned about the lack of consultation, specifically with respect to how the values had been calculated. According to his information the margin of dumping calculated by the EC Commission was something like 2 per cent and the question was whether this dumping could cause injury. The representative of Sweden referred to the case of edible and pharmaceutical gelatine and said that the decision published by the EC Commission to initiate the investigation referred to a very high alleged margin of dumping. Incidentally the case had finally been dismissed because no dumping had been found. However such allegation, although provided by the complainant, when officially published received an official status, which was detrimental to the interests of the producer. He considered that such adverse effects could have been avoided if the EC Commission had referred only to the allegation of dumping without specifying the margin.

20. The representative of the European Communities said that as far as the change in the period in the course of an investigation was concerned he considered that in some cases there was a need to up-date the information necessary to make the final determination. Otherwise there would be no reason to make a distinction between preliminary and final determinations. Of course such a change should not be made in an arbitrary way, as for example extending the investigation period retroactively. However if the circumstances changed, for example dumping had ceased or increased, the investigating authorities should take them into consideration for the final determination. As to the time-period for responding to the EC questionnaires it had been fixed at four weeks. He would be ready to consider the US suggestion to extend this time-period but thought one should avoid unnecessary waste of time, especially in cases where a four-week period was sufficient. Therefore he continued to believe that the present practice was more pragmatic and efficient, i.e. to give a four-week period and then to extend it if the need arose. As to the possibility of counting the four-week period from the date the questionnaire had been received by a company, it raised the question of the onus of proof - who was going to prove when the questionnaire had been received? On the problem raised by the US representative relating to the facts to be taken into consideration for an injury determination, he said that if one worked under certain time constraints it was not always possible to examine certain new arguments presented at the very last moment. However, he assured the Committee that all arguments would be taken into consideration insofar as they did not presuppose a new on-the-spot investigation. In the case raised by Canada one exporter, who had a very high dumping margin, offered a price undertaking while the other one, with a relatively low margin of 2 per cent on an average weighted basis, dumped, in certain transactions with a margin of 10 per cent or even more. Therefore, in order to make the price undertaking meaningful it was indispensable to impose anti-dumping duties on the other exporter, at least as long as he was not willing to offer an undertaking. In the case raised by the representative of Sweden there was an interesting point of principle. There was some contradiction between the openness of an investigation and the danger than such openness might create embarrassment, or even harm, to the firms concerned. In the Tokyo Round negotiations the choice had been made in favour of openness. Consequently the EC Commission justified everything and tried to give as many details as possible, including a summary of the complaint and the allegation of the existing margin of dumping. This

did not mean that the investigating authorities were confirming anything or taking a stance on the complaint. It seemed to be important to the exporter to know what the allegation was, also it might be interesting for the consumers to have this information. From the very beginning of an investigation this openness was counterbalanced by the openness and detail of preliminary and final determinations. Consequently, if a stigma had been inflicted on a firm which was innocent, it would always be neutralised by a clear statement in the final determination that the firm had been innocent.

21. The representative of Canada said that he fully agreed with the previous speaker on the need for openness, however one could still achieve it while preserving indispensable confidentiality. The representative of the United States reverted to his questions. As to the changing period he said that once a period had been selected and information provided on that basis, the investigating authorities should stick to this period. Commenting on the time-limits for responses to a questionnaire he said that the problem of the date on which such a questionnaire had been received could be easily solved by sending it by registered mail. Another solution would be to indicate in the questionnaire that there would be the possibility of extension of the time-limit if warranted by objective difficulties in replying in the given time. As to the question of injury, the problem was that not all views had been heard and that exporters had not had adequate opportunity to rebut the views presented by the domestic industry in the EEC.

22. The representative of the European Communities said that he could not accept the view that an investigation period should be something absolutely static. There had to be the possibility of taking into consideration what happened between the provisional determination and the final one. This should be possible in a case where dumping had ceased as well as in a case where it had increased. In his opinion the margin should be calculated on the basis of information from the most recent period. As to time-limits in responding to a questionnaire he said that he had noted the points raised by the US representative although he reiterated his previous statement that there had never been any problem with the extension of a time-limit. Referring to the question of injury determination he said that Parties had different procedures but it was a strict Community principle that all arguments had to be taken into consideration. This did not mean that all arguments, when taken into consideration, would be accepted. Having considered an argument, the investigating authority might come to the conclusion that they should do something other than the exporter requested. Furthermore all relevant files were open and if an exporter considered that something had not been taken into consideration or brought to his attention he always had access to all non-confidential information.

23. The representative of Switzerland said that the question raised by the representative of Sweden was very important because publishing alleged anti-dumping margins could seriously embarrass an exporter. Therefore the question of whether or not to publish these margins should be dealt with on a case-by-case basis. It seemed to him that such a practice was followed by the US administration. Having said this he wanted to stress that in general he was fully for the openness of anti-dumping procedures and for providing all the necessary details as practical experience showed that in many cases information provided by the investigating authorities was rather incomplete. The representative of the European Communities said that the proposal to decide on a case-by-case basis was very interesting, but it raised further questions. First how should one decide on such a basis whether to publish the

margin or not, without knowing the reaction of the involved exporter or producer. Secondly if one did not publish the alleged margin at the very beginning of an investigation could not wake up the importers and consumers, which was one of the important functions of every anti-dumping notice. The representative of the United States said that if the issue was related to the initiation stage only, he shared the concern expressed by the Swedish and Swiss representatives. Publication of alleged margins would have very chilling effects in particular when the real margins would be much smaller or even nonexistent. He also wondered why consumers should be involved since he thought that the relevant issue under the Agreement was not consumer interest but whether the industry in the importing country had been injured by reason of dumped products. The representative of the European Communities said that there was a fundamental difference between the US concept of the anti-dumping legislation and the European one. Under the US legislation there were two criteria: dumping and injury and if these took place the anti-dumping duty had to be imposed. Under the EC legislation there was a third criterion - the public interest test and as it had to be checked in every investigation the interests of consumers were taken into account.

#### Canada

24. The representative of the United States referred to the semi-annual report by Canada (ADP/7/Add.9) and said that as this report had been circulated only recently he would like to have an opportunity to come back to certain actions listed therein at a later time. For the moment he wanted to raise a question relating to sporting ammunition and in particular to express his concern about unique methods used by Canada in calculating adjustments, i.e. by capping, which has led US firms to change their marketing procedures. The representative of Canada said that as the case was presently in court he could not say very much on it. It was up to the court to decide whether the reappraised value and all other adjustments should be taken into account.

#### Australia

25. The Chairman drew the Committee's attention to a notification made under the old Anti-Dumping Code by Australia. This notification had been made according to the reporting procedures agreed under the new Agreement and it had been circulated in COM.AD/55. The observer for Australia informed the Chairman that he would be ready to answer questions from members of this Committee irrespective of whether they were Parties to the old Code or not during the reporting period.

26. The representative of the European Communities referred to the case of carton boards exported by the Netherlands. He wondered what the reason was behind the imposition of anti-dumping duties on this product while its share in the domestic consumption was 1 per cent. The representative of the United States said that as the Australian notification was circulated only recently he had not had the possibility of examining it carefully and would like to revert to it at the autumn meeting. The representative of India said that the Australian report contained three anti-dumping cases against Indian products. He had some information about these cases but his earlier efforts to find out more details of the investigations had not been successful. He wondered whether it would be possible for the observer for Australia to prompt his government to give more information which would help in the preparation of the defence of these cases.

27. The observer for Australia said that the action referred to by the representative of the European Communities had not been limited to the Netherlands but it also involved other countries. Evidence of the existence of dumping and injury had been submitted and as a result of an investigation anti-dumping duties had been imposed on all imports except from one country. The 1 per cent share attributed to the Netherlands should be seen in the context of injury caused by all dumped imports. As to the request by the representative of the United States he said that as his report was made on an exceptional basis he would not be able to commit himself, at this stage, for the future. He also said he would be ready to seek additional information from his Government in order to help the Indian delegation; however he would need more details on the three cases they had in mind. The representative of India explained that the three cases he had in mind were those notified in COM.AD/55.

F. Questionnaire used in anti-dumping investigations (ADP/6. ADP/8 and ADP/9)

28. The Chairman recalled that at its May 1980 meeting the Committee had agreed that Parties using questionnaires in anti-dumping investigations should submit them to the Committee for information (ADP/M/2, paragraph 30). The secretariat had received copies of questionnaires used by Canada, the United States and the European Communities. Given the length of the questionnaires they had not been circulated but they were available in the secretariat for inspection by interested delegations. The Committee should decide whether this procedure was sufficient or whether the questionnaires should be circulated in a limited number of copies, and in the original language only, in an ADP/Spec/.. document.

29. The representative of the European Communities said that as the circulation of questionnaires would be very costly he preferred the present procedure. The representative of India said that as the questionnaires contained certain aspects which would require detailed consultations in the Committee it would be preferable to circulate them, at least in the original language, in an ADP/Spec/.. document. The Chairman said that the best way to proceed would be to require those who used questionnaires to submit a sufficient number of copies to the secretariat in order to make them available to those who were interested. The representative of Canada said that the representative of India should reconsider his request because the circulation of questionnaires in an ADP/Spec/.. document would be very costly while the number of those really interested in them was very limited. The representative of the United States said that he supported the Chairman's view that Parties should supply additional copies which would be kept by the secretariat and be available to those who might need them. The representative of India said that the Committee should decide that these questionnaires be submitted in an adequate number of copies in order to make them available, from the secretariat, to all Parties and interested observers. He also reiterated his view that the Committee should, at a later stage, discuss the content of some of the questionnaires. The Chairman said that there might be a need to have a specific item on the agenda of a subsequent meeting to go through all the questionnaires and to that end it might be helpful to circulate to each of the Parties copies of questionnaires submitted. For these reasons he would like to reiterate the request that Parties using questionnaires submit a sufficient number of copies to the secretariat for distribution. The representative of the European Communities expressed his

doubts as to the real necessity to have such an item on the agenda and as to special distribution of questionnaires. The appropriate way to proceed would be to provide the secretariat with some copies which would be available on request. The representative of India said that he thought that a certain time should be set aside to discuss the content of certain questionnaires.

30. The Chairman said that Parties should have the possibility to raise specific questions on questionnaires in the Committee. However he would like to avoid a procedure under which these questionnaires would be circulated to all the members of the Committee. He thought that this was something the Committee should reflect on and for the moment this item should be retained on the agenda for the next meeting. The Parties which used questionnaires should submit some additional copies to the secretariat. It was so agreed.

31. The Chairman said that the secretariat had also received a questionnaire used by Australia which, for the time being, was not a Party to the Agreement. This questionnaire was also available for inspection in the GATT secretariat.

32. The representative of the United States said that he had some questions with respect to the questionnaires used by the European Communities. The first question concerned the length of time covered by the questionnaires. The European Communities was using a twelve month period which seemed a little bit too long as it required a lot of data to respond to such a questionnaire. The second problem was that the questionnaire required full information on all transactions accompanied by sale invoices and other material. There was also the problem of sales to third countries and it was not clear whether the information should cover all such countries or only selected ones. Fourthly he wanted to know whether the Commission was interested in the level of trade and whether the questionnaire should rather focus on these transactions which, because of the quantity involved, were interesting to the European Communities. The questionnaire should also contain certain procedural information, for example that the time-limit for responses could be extended, and some information on how an extension should be requested.

33. The representative of the European Communities said that the six-month period used by the US administration was, in certain cases, too short and the twelve-month period used by the EC was more reliable. As to the scope of the questionnaire he considered that one should ask for information on all transactions during the investigating period but in certain cases it would be unpractical, and therefore in more complicated cases the Commission relied either on a simplified procedure or on information covering only selected months from the investigating period. As to the problem of exports to third countries it was very exceptional that the Commission looked into this question, although under the Code it was entitled to do so. Referring to the problem of focussing the questionnaire on certain particular problems which were interesting for a particular case, he said that it was difficult to know in advance which problems would be interesting. In most cases one could determine that only on the basis of replies to the questionnaire. He also agreed that it would be useful to provide some procedural information and guidance as to how the questionnaire should be completed.

34. The representative of Switzerland said that questionnaires should be considered as a sort of model which should be tailored to specific cases. It was very important, so much so that many other countries were using these

questions without any selection. He considered that it would be very helpful to have guidance as to how the questionnaires should be completed. He was also of the opinion that questionnaires sent to Swiss companies should be first sent to the Swiss administration which would help them to prepare their responses. The United States suggested that it might be helpful in tailoring the questionnaire if the complaint were made publicly available immediately upon receipt.

G. Draft Understanding on Article 8:4 of the Agreement

35. The Chairman recalled that at its February 1981 meeting the Committee had agreed that the Draft Understanding on Article 8:4 of the Agreement (ADP/W/14) should be referred to respective governments for consideration with a view to taking a final decision on it at the next meeting of the Committee (ADP/M/4, paragraph 35). Following this consideration some delegations had submitted to the Chairman several amendments which had been incorporated in the revised text which had been circulated in an unnumbered document and on the Chairman's responsibility (see Annex I).

36. The representative of the United States said that in the revised text the two first paragraphs from ADP/W/14 had been retained. Paragraphs 3 and 4 appear to have been changed with a view to providing reasonableness in an area that had become extremely difficult. The basic idea was that monitoring schemes were not something any of the Parties should support and that they had a trade distorting effect but that there might be certain circumstances under which resort to such schemes might be necessary or a least worst solution. The text established a mechanism whereby the use of monitoring schemes had been discouraged but at the same time it was recognized that they provided a necessary mechanism to deal with unusual circumstances for a limited period of time. The idea in this text was to establish certain standards and criteria which would be objectively valued and that all special schemes would be subject to review and subject to consultations before they were implemented in such a way as to reduce to a minimum their trade distorting effects. He concluded by saying that the intent behind the new version of the draft was to have some agreed rules and strict discipline in the case of special schemes when their establishment was objectively unavoidable. The representative of the European Communities said that he could support the revised text.

37. The representative of Switzerland said that the revised text reflected a very important conceptual change. While in ADP/W/14 the main concept was to stop proliferation of special schemes the new draft provided for certain discipline in the use of such systems without really preventing their proliferation. This approach could have very dangerous implications. First of all special anti-dumping schemes were not defined nor described anywhere. It was not so important in ADP/W/14 because the result of that text was to stop their proliferation and to phase out the existing ones. The new text allowed for the introduction of new systems while even the mechanisms of the existing systems were not sufficiently known. Therefore, before embarking on the way proposed by the revised text, it was indispensable to have a better knowledge of the kind of systems which would be covered by it. Secondly, the Agreement did not contemplate such systems at all. Therefore it seemed that, by adopting the revised text, the Committee would create some new rules going beyond the intent of the Agreement. Thirdly the language used in some parts of the revised text was too weak and it would be indispensable to impose a much stricter discipline. For all these reasons the Committee should have another look at this question in order to find a more reasonable and

acceptable solution. Such a solution could possibly be found by introducing a certain flexibility to the previous version so as to allow, at least on a temporary basis, maintenance of the existing schemes.

38. The representative of Canada said that he could support most of the comments made by the representative of the United States but he had some problems with the revised text. The representative of Switzerland was quite right in saying that this text was a completely new instrument as compared with ADP/W/14. It required a lot of consideration because it allowed countries to introduce very restrictive measures. He was not in a position to agree on anything at this meeting. However he was ready to work further on this text with a view to finding an appropriate solution which would move closer to that developed in ADP/W/14.

39. The observer for Australia said that although the first draft had not been treated with any particular kindness in the Committee the second might achieve even less. While paragraphs 1 and 2 would be acceptable to him paragraphs 3-6 would be unacceptable for a number of reasons. First they established a preferential treatment for existing special schemes or, conversely, the conditions for the establishment of new schemes set out in paragraphs 4-6 imposed obligations on any such schemes which were not imposed on existing schemes. Furthermore the conditions for the establishment of any new scheme in the first sentence of paragraph 4 seemed to make no sense in relation to the rest of the paragraph and to paragraph 5. He recognized that countries have a right to monitor imports for any purpose, but stated that this right should not be circumscribed by the conditions set out in paragraphs 4 and 5. The provision for an annual review in paragraph 6 related to new monitoring schemes only, therefore strengthening the preferential treatment for existing schemes. With regard to the contents of paragraph 7, such a proviso would be necessary to protect the rights of non-assenting Signatories, however the existence of this paragraph raised the very fundamental question of the "legality" of the rights which would be confirmed by the understanding itself, since the proviso in paragraph 7 carried a very clear implication that the rights the understanding would confer might, in fact, be contrary to the rights of the contracting parties under the General Agreement. His basic position on this understanding was that equitable treatment must be accorded to existing and new agreements. Thus, if a Party or a group of Parties insisted on their rights to maintain existing monitoring schemes, then all Parties should have the right to introduce similar schemes. Consequently his position was that Article 8:4 should be removed from the Agreement, thereby obviating the need for yet another attempt to draft an understanding on this subject as such an exercise seemed to raise more questions than it answered.

40. The representative of India said that he was prepared to go along with the understanding contained in ADP/W/14 and that the objective they sought in this exercise was to remove certain ambiguities resulting from Article 8:4 of the Agreement. His strong preference was that existing special anti-dumping schemes should be phased out as soon as possible, in the interest of maintaining an open trading system, however he would be ready to allow their continuation in a limited form, subject to annual reviews. The modifications suggested to ADP/W/14 would result in perpetuation of such schemes. For these reasons the matter required further intensive consultations and discussions. The observer for Chile recalled that at the previous meeting he had been in favour of ADP/W/14 but now, and for the same reasons as those presented by some previous speakers, he could not support the revised text. The revised

text, as opposed to that in ADP/W/14, allowed proliferation of special schemes. This was a completely new objective and it was achieved by institutionalizing the conditions under which special schemes would operate. As there was a fundamental change as compared with the draft presented to the Committee at its previous meeting he would not be in favour of the revised text.

41. The representative of Yugoslavia said that his authorities, after careful examination of the draft text in ADP/W/14, had decided that they would accept it as a possible interpretation of Article 8:4 of the Agreement. The text in ADP/W/14 effectively prevented the proliferation of special anti-dumping schemes or their extension on other products. It also provided for the establishment of multilateral surveillance of existing systems and their gradual phasing out. As to the new text he had not had enough time to examine it in depth and therefore he could not take any stand on it at this meeting. He would like to revert to the revised text at the next meeting, however, at the first reading he noted important differences as compared to the previous text. The new text nullified the standstill provision and, despite some limitations, allowed proliferation of special schemes. If this first impression was going to be confirmed he would have serious difficulties in accepting the revised text. The representative of Czechoslovakia said that all special anti-dumping schemes contained elements which were outside the scope of the Agreement and, without being necessarily inconsistent with specific provisions of the Agreement, were burdensome and increased the uncertainty inherent in selling into countries using such schemes. For this reason his position was that all such schemes should be gradually phased out and that no new schemes should be introduced. Taking all this into account his preference was for the text contained in ADP/W/14 as it was more reasonable and balanced. At any rate the matter required further discussion and consideration before any decision could be taken by the Committee.

42. The representative of the United Kingdom speaking for Hong Kong said he shared many of the reservations that had been expressed on the wording of the new draft. It was important not to legitimize, in any way, the existing practices or to allow for their proliferation. There were also risks in laying down criteria in respect of any future actions because they might be recognized as acceptable practices. He was prepared, although reluctantly, to go along with a decision on the basis of the previous draft in ADP/W/14 on the understanding that it would stop proliferation of such practices. As to the new version he was not willing to support it, although he agreed with other speakers that the matter required further consideration. The representative of Sweden said that he had a rather favourable position as regards ADP/W/14 although he considered that the text contained therein should be further strengthened. The revised text required further examination but his first reaction was similar to that of the representative of Switzerland. The observer for Argentina said that some of the comments he had made at the previous meeting applied to the revised text as well. He fully shared the views expressed by the observer for Australia and by the representative of Hong Kong. He could not take a definite position on the revised text but he noted that it contained a notion of discrimination, in particular vis-a-vis countries which had not adopted such systems. The representative of Austria said that his authorities had not had sufficient time to study the revised text and therefore he would like to revert to it at the next meeting.

43. The representative of Japan said that the following points should be taken into account in elaboration of any understanding to be adopted by the

Committee: (i) prior consultations and a notification to the Committee should precede establishment of any special anti-dumping scheme; (ii) all schemes should be subject to an annual review by the Committee; (iii) all schemes should be temporary; (iv) world trade should be neither distorted nor hampered by the operation of such schemes; (v) imposition of anti-dumping duties should be preceded by a full anti-dumping investigation under the normal procedures consistent with the Agreement; (vi) all conditions contained in paragraph 5 of the revised text should be fully observed and in no case should be mitigated. He also wanted to know more details about the operation of monitoring schemes put in place by the European Communities, in particular whether the monitoring authorities could take an anti-dumping measure without initiation of any investigation if they suspected that a product had been dumped.

44. The representative of the European Communities said that he could understand the preoccupations expressed by a number of previous speakers and that indeed there was a considerable difference between the two drafts and that the new paper was more flexible than the previous one. On the other hand he was a little bit surprised because he had not got the impression from the discussion at the previous meeting that those speakers were in favour of the text in ADP/W/14. However members of the Committee should decide whether they wanted strict discipline and certain limitations or nothing. Members of the Committee should realise that there were certain difficulties with the first draft. As this draft was not acceptable to some delegations the question arose of what to do. Should the Committee go back to Article 8:4 which could not help anybody? If the Committee did not agree on anything, there would be no discipline at all in the application of special schemes. He thought that an agreed solution, even if not fully satisfactory was better than no discipline whatsoever. In this relation the approach of the Japanese delegation seemed the most appropriate, namely listing certain conditions which any special scheme should meet. The revised text contained all those conditions. It provided for prior consultations before the establishment of any special scheme and for annual reviews. It stated that old and new schemes should be temporary. It also stated that such schemes would not create any impediment to the international trade and guaranteed that they should not allow any derogation from the rules of the Anti-Dumping Code. Finally it provided that a full anti-dumping investigation should be made before the imposition of any anti-dumping measures. Referring to the question asked by the representative of Japan he said that the purpose of the revised text was to make it impossible to impose an anti-dumping duty before a normal investigation had resulted in a preliminary or final finding. Taking into account all the positive features of the revised text he concluded by saying that he was in favour of its adoption.

45. The Chairman said that the discussion had shown that there was a need for further informal consultations. Both drafts were still on the table but he thought that a third draft should result from these consultations which would be used as a basis for discussion in the Committee. He proposed that the Committee should meet at the beginning of July and that in the meantime further efforts should be undertaken in order to arrive at a generally acceptable compromise. He also proposed that informal consultations be started in the very near future so as to leave enough time for governments to study any possible text which might emerge from them. It was so agreed.

H. Report of the Group of Experts on the Definition of the Word "Related"

46. The Chairman said that the Group of Experts established by the Committee on Anti-Dumping Practices and the Committee on Subsidies and Countervailing Measures had completed its work and prepared its report to the Committee (reproduced in Annex II). He proposed that the Committee consider this report with a view to adopting it at this, or at the next, meeting.

47. The representative of Japan said that he fully appreciated the work done by the Group of Experts and could accept the idea of the notion "related" as contained in their report. However he wanted to state that there might be some other ideas or that they might change with the time and therefore decisions on whether one firm was related to another might be taken on a case-by-case basis. The representative of India said that he also very much appreciated the work done by the Group of Experts but he had the impression that the report might cause certain conceptual problems and therefore he would need some time for reflection. He proposed that the Committee revert to this report at its next meeting in July.

48. The Chairman said that as some members of the Committee wished to have more time for reflection this item would be put on the agenda of the July meeting.

J. Other business

49. The Chairman invited the Parties to inform him as soon as possible on whether there were any changes in the list of panel members submitted by them in 1980.

K. Date and the agenda for the next meeting

50. The Chairman proposed that the Committee meet on Tuesday, 7 July 1981 at 10 a.m. The agenda of this meeting would contain the following items:

- (a) Understanding on Article 8:4 of the Agreement;
- (b) Report of the Joint Group of Experts on the Definition of the Word "Related";
- (c) Other business.

It was so agreed.

51. The Chairman said that it would be preferable if the Committee could agree on fixed dates for its regular sessions. He proposed that these sessions should be held in the last week of April and the last week of October of every year with possible modifications resulting, for example, from holiday periods. It was so agreed.

52. Consequently the next regular session of the Committee would be held in the week of 26 October 1981. This meeting should precede the meeting of the Committee on Subsidies and Countervailing Measures.

ANNEX I

DRAFT UNDERSTANDING ON ARTICLE 8:4 OF THE  
AGREEMENT ON IMPLEMENTATION OF ARTICLE VI  
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

1. The Committee discussed the extent to which basic price systems may be utilized in conformity with the provisions of the Agreement.
  
2. The Committee agreed that basic price systems as provided for in Article 8:4 were intended exclusively as a device to facilitate the calculation and collection of antidumping duties following a full investigation for each product and country concerned, and for suppliers concerned, resulting in a finding of injurious dumping. However the Committee recognized that the wording of Article 8:4 contained ambiguities and, in the light of different possible interpretations, concluded that Article 8:4 is not essential to the effective operation of the Agreement and shall not provide the basis for any anti-dumping investigation or for imposition and collection of anti-dumping duties.
  
3. At the same time the Committee reviewed special anti-dumping monitoring schemes such as trigger price mechanisms and related systems. The Committee concluded that they could have the effect of extending the meaning of the Agreement beyond its intent and may burden and distort trade in a manner

which can only be justified in exceptional circumstances. The Committee agreed that special anti-dumping monitoring schemes in effect on the date of this understanding shall not be extended to cover new product categories, and no new scheme shall be adopted, unless the conditions set out in paragraphs 4-6 to have been met.

4. Such schemes shall be used solely to monitor imports. Such monitoring schemes shall be as limited and temporary as practicable and appropriate to the causes which led to their introduction. They shall not be used as a substitute for carrying out full anti-dumping investigations under the normal procedures consistent with the Agreement.

5. Such schemes shall not be instituted unless there is adequate evidence to substantiate (a) widespread and significant dumping, (b) material injury to an industry in the importing country, (c) a causal link between the dumped imports and injury, and (d) exceptional circumstances; and, unless there have been prior consultations with interested supplying signatories. Exceptional circumstances are understood to include such conditions as:

- the existence of a large number of exporting firms and supplying countries;

- sharply increased imports over a relatively short period; and
  
- severe price suppression.

6. The Committee will be notified in advance of the implementation of any such scheme and will review its operation annually.

7. The rights of any party to the General Agreement shall not be affected by actions taken in accordance with this understanding.

ANNEX II

Group of Experts on the definition  
of the word "related"

REPORT TO THE COMMITTEE ON ANTI-DUMPING PRACTICES  
AND TO THE COMMITTEE ON SUBSIDIES AND COUNTERVAILING MEASURES

1. The Committee on Anti-Dumping Practices and the Committee on Subsidies and Countervailing Measures established, at their May 1980 meetings, a Joint Group of Experts with the following terms of reference:

"to identify and examine, at a technical level, problems involved in the definition of the word "related" as required by footnote 7 to Article 4 of the Agreement on Implementation of Article VI of the GATT and footnote 21 to Article 6 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT and to report to both the Committees" (SCM/M/3, paragraph 42).

2. The Group met on 24 October 1980, 4 February 1981 and 27 April 1981. It elected Mr. M. Lemmel (Sweden) as its chairman.

3. Interested Signatories and Parties which had not nominated their experts, and interested observers wishing to make their contributions on the matter were invited to submit them to the Chairman (ADP/Spec/2-SCM/Spec/3).

4. The Group based its discussion on contributions from individual experts and on the definition of the word "related", contained in Article 15 of the Agreement on Implementation of Article VII of the GATT (Valuation Code). It was recognized that the matter of defining the word "related" should be seen as limited to the purposes of interpretation of the term "domestic industry" in anti-dumping or countervailing proceedings.

5. The experts were of the opinion that the best approach would be to combine certain relevant criteria from the definition in the Valuation Code with the requirement that the effect of the relationship was such as to cause the producer concerned to behave differently from non-related producers. At the same time they recognized that, as certain criteria were extremely difficult to evaluate, any such definition should allow sufficient flexibility and should be applied with appropriate care.

6. Taking into account all the views expressed, the Group agreed to propose the following text for consideration and possible adoption by the Committee on

Anti-Dumping Practices and the Committee on Subsidies and Countervailing Measures respectively:

For the purpose of Article 4:1(i) of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade and of Article 6:5 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, producers shall be deemed to be related to the exporters or importers only if:

- (a) one of them directly or indirectly controls\* the other; or
- (b) both of them are directly or indirectly controlled\* by a third person; or
- (c) together they directly or indirectly control\* a third person;

provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers.

---

\*For the purposes of these Articles, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.