

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

ADP/M/6

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Committee on Anti-Dumping Practices

MINUTES OF THE MEETING HELD ON 26-30 OCTOBER 1981

Chairman: Mr. Å. Lindén (GATT)

1. The Committee on Anti-Dumping Practices held its sixth meeting on 26-30 October 1981.
2. The Committee nominated Mr. Å. Lindén (GATT) to chair this meeting of the Committee as both the Chairman (Mr. Lemmel, Sweden) and the Vice-Chairman (Mr. Hussain, India) had left Geneva.
3. The Committee adopted the following agenda:
  - A. Adherence of further countries to the Agreement
  - B. Examination of national legislation and implementing regulations (ADP/1 and addenda)
  - C. Reports on all preliminary or final anti-dumping actions (ADP/W/17, 18, 19, 20, 21 and 22)
  - D. Semi-annual reports of anti-dumping actions taken within the period 1 January 1981-30 June 1981 (ADP/10 and addenda)
  - E. Questionnaire used in anti-dumping investigations
  - F. Understanding on Article 8:4 of the Agreement (ADP/W/14 and ADP/M/5, Annex I)
  - G. Report of the joint Group of Experts on the definition of the word "Related"
  - H. Annual review and the report to the Contracting Parties
  - I. Other business
  - J. Date of the next meeting
4. The Chairman expressed, on behalf of the Committee, appreciation and gratitude to Mr. Lemmel, who had chaired the Anti-Dumping Committee under the old and the new Agreements since 1977, and to Mr. Hussain.
  - A. Adherence of further countries to the Agreement
5. The Chairman welcomed two newcomers to the group of Parties to the Agreement, Pakistan and Poland. He also informed the Committee that on 19 July 1981 Spain had ratified the Agreement. He recalled that as far as

Signatories of the 1967 Anti-Dumping Code were concerned only three of them, namely Australia, Malta and Portugal were not Parties to the 1979 Agreement.

6. The observer for Australia informed the Committee that the existing anti-dumping legislation had recently been amended by the Australian Parliament to ensure its conformity with the Agreement. When the remaining formalities had been completed, Australia would be in a position to accede to the Agreement. In response to a question as to the notification of anti-dumping actions taken under the 1967 Code, he said that this matter was currently receiving the attention of his authorities.

7. The observer for Malta said that his Government was studying the Agreement and that a decision might be taken in the near future.

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

8. The Chairman said that no new legislation had been notified since the April 1981 meeting. The present status of notifications of national legislation was given in ADP/W/24, paragraphs 4-8. Parties who had not, as yet, informed the Committee of their actions under Article 16:6 of the Agreement were urged to do so without delay.

9. The representative of Spain said that after the acceptance of the Agreement various administrative bodies were adapting the existing Spanish legislation to the requirements of the Agreement. He expected that this process would be finalized by the beginning of 1982 and that the modified legislation would be submitted to the Committee shortly thereafter. The representative of Yugoslavia said that the process of ratification was under way and that it would be completed by the end of November 1981. The legislation would be submitted to the Committee as soon as possible thereafter. The representative of Pakistan said that the Pakistan Customs Tariffs Act did not provide for the application of anti-dumping duties and that consequently Pakistan had so far not applied any anti-dumping measures. The representative of Poland said that as Poland had signed the Agreement on 12 June 1981 it had not yet been possible to complete all legislative procedures. However upon acceptance of the Agreement, its provisions had become a law in Poland. In the near future the text of the Agreement would be published in the Official Journal. As to implementing regulations they would be prepared in the framework of the reform of the economic system, and in particular the reform of the foreign trade régime.

10. The representative of the United States wanted to know the present status of preparations of the new Canadian anti-dumping legislation. The representative of Canada said that the Parliamentary Committee would probably complete its examination by the end of 1981 and subsequently it would take one or two months to draft the Bill. Depending on when the Bill would be put on the order paper in Parliament the whole procedure might be terminated by June 1982. The representative of the United States expected that appropriate provisions would be included in the legislation to considerably improve transparency of Canadian anti-dumping procedures. The representative of Japan expressed his concern about certain aspects of the Canadian legislation and implementing regulations. For example there was, in his view, an ambiguity concerning the expression "quantity discount as generally granted" or in the case of adjustments for "differences in quality, structure, design or material" of similar product. It was not clear whether these expressions

included quality guarantee, advertising or other circumstances which might influence sales conditions. There was also a problem concerning the proposed wording on adjustment for transportation costs. The representative of the European Communities associated himself with the remarks on lack of transparency made by the representative of the United States. The representative of the United States referred to the definition of sale in the proposed legislation. According to his understanding it was the Canadian intention to include leasing, renting, consignment and irrevocable tenders in the definition of sale. He would like to hear some clarifications on this point and he thought that it might be appropriate to have, at a later stage, a working party or a group of experts to examine the definition of sale in detail.

11. The representative of Canada said that as far as the question of transparency was concerned the Canadian procedures, in particular those of the Anti-Dumping Tribunal, were more open than those of other Parties. The Department of National Revenue's procedures had also become more transparent and the Department now gives much more information in its notices than it had done in the past. He also added that one of the main preoccupations of the Chairman of the Parliamentary Sub-Committee which was looking into Canadian legislation was the question of transparency and the Chairman was determined to proceed as far as possible in this direction. Referring to the question of the definition of sale he said that sale was used as a point of reference for a legal definition in the Canadian law, but this was not the case in the General Agreement which used the expression "enter into commerce of". The problem was what this expression exactly meant. Canada had never accepted that it meant when the goods crossed the border. In his interpretation the definition of sale had been expanded to catch up all of the activities, including such as entering into a contract or irrevocable tender, which would be considered in the Canadian legislation as covered by "entering into the commerce" of Canada. As to the specific points raised by the Japanese delegation the expression "generally" meant that a discount was granted on at least 50 per cent of the sales used in determining the normal value. Referring to the question of adjustment, he said that account had always been taken of promotion expenses, advertising costs, travel expenses, salary's commissions, etc.

12. The representative of Switzerland said that it was unclear to him what had happened to various proposals made at previous meetings with respect to the Canadian draft legislation. He wished to know to what extent they had been taken into account. Referring to the question of the definition of sale he said that he believed that as the General Agreement was dealing mainly with "goods", every contracting party should stick to this line when implementing the Agreement. The representative of Canada said that all comments made in the Committee had been or would be taken into consideration. It did not mean that all of them would be reflected in the legislation but none was left unexamined. He agreed that Article VI of the General Agreement referred to "goods" and the Canadian definition of sale was also only related to "goods".

13. The representative of Japan, referring to the United States anti-dumping procedures, said that his Government was very concerned about disclosure of confidential information. This information was given to a lawyer who, at the same time could be one of the executives of the complaining party. The representative of the United States said that under the United States anti-dumping procedures confidential information was made available only under a very strict protective order which included very severe sanctions for a

breach. Some further measures were under consideration to ensure that confidentiality would never be breached. At any rate there was a possibility to withdraw confidential information before it was disclosed under a protective order. The representative of Switzerland said that the question raised by the Japanese delegation on the disclosure of confidential information merited further attention. He wondered whether the possibility of withdrawing confidential information existed only in the case of administrative proceedings or if it was also possible in judicial proceedings. The representative of the United States said that if a request for access to confidential information was made under a protective order the company supplying such information was advised and it had an opportunity to withdraw such information. This opportunity existed only in administrative proceedings but not in judicial ones.

14. The Chairman said that as there were some cases where points had been raised without the examination being really terminated the Committee would maintain this item on its agenda in order to allow the Parties to revert to particular aspects of some legislations at a later stage or in the light of their practical implementation.

C. Reports on all preliminary or final anti-dumping actions (ADP/W/17-23)

15. The Chairman referred to notifications made under Article 14:4, lists of which had been circulated in ADP/W/17-23. The representative of the European Community said that circulation of these lists should be continued. The Committee agreed that this procedure should be continued.

D. Semi-annual reports of anti-dumping actions taken within the period 1 January 1981-30 June 1981 (ADP/10 and addenda)

16. The Chairman recalled that an invitation to submit semi-annual reports under Article 14:4 of the Agreement had been circulated in ADP/10 on 20 August 1981. The following Parties had notified the Committee that they had not taken any anti-dumping action during that period (ADP/10/Add.6): Brazil, Czechoslovakia, Hungary, India, Japan, Norway, Poland, Romania, Spain, Sweden, Switzerland, United Kingdom on behalf of Hong Kong and Yugoslavia. Anti-dumping actions had been notified by Finland (ADP/10/Add.1), the European Communities (ADP/10/Add.2), the United States (ADP/10/Add.3), Austria (ADP/10/Add.4) and Canada (ADP/10/Add.5). Pakistan had recently sent a letter to the secretariat notifying that no anti-dumping action had been taken with respect to any of the Parties.

Finland (ADP/10/Add.1)

17. The representative of the European Communities said that the notification by Finland had indicated that the actions mentioned therein had been terminated. He wanted to know whether there was any final determination of dumping or injury and whether it had been published. The representative of Finland said that price undertakings had been offered on 17 December 1980 and subsequently on 19 September 1981 and accepted by the Ministry of Finance and a relevant decision had been published on 9 October 1981. The Ministry, while accepting these undertakings, had decided to terminate the anti-dumping investigation. The representative of the European Communities said that he was aware of these facts. However the Agreement required that if the undertakings were accepted, the investigation of injury should nevertheless be completed. Therefore he wanted to know whether there had been an official

finding of dumping or injury and of causality between the two. The representative of Finland said that as the Ministry of Finance had accepted the undertakings it had decided to terminate the procedures. Under the Finnish law it was sufficient that the relevant decision had been published in an Official Gazette but he was ready to submit, if the Committee so required, a more detailed report. The representative of the European Communities said he was surprised to hear that it was sufficient, under the Finnish law, to terminate an investigation and to publish that fact in an Official Gazette. He wanted to draw the Finnish representative's attention to Article 8:5 which required that a public notice should be given of any preliminary or final finding, whether affirmative or negative, and of the revocation of a finding. He considered it to be a clear obligation of the Finnish authorities to publish such a notice containing at least the basic conclusions and a summary of the reasons therefor. The representative of Finland said that he would convey the opinion expressed by the representative of the European Communities to his authorities.

European Communities (ADP/10/Add.2)

18. The representative of the United States said that he had been concerned with respect to a recent case involving vinyl acetate monomer where price undertaking had been negotiated by the EC Commission with United States exporters and then vetoed by the EC Council. The United States understanding was that the purpose of an anti-dumping action, in general, was to neutralize an unfair trade practice, which was the intent of a price undertaking, and not to penalize the exporters, which was the effect of rejecting such an undertaking. His other concern, of a general nature although related to the specific case of bed linen, was how the Community determined the injury. He said that the EC textile industry was systematically harassing US exporters. The complaint in this case was manifestly inadequate in many respects, in particular with respect to injury. The complainant represented considerably less than the majority of all the EC producers and only after the case had been brought, had it been expanded to include injury to other EC producers. He believed that, had the provision of the Agreement been fully observed, such a case would never have gone beyond the preliminary stage of review with regard to injury. He was very concerned that the complaint, based upon allegations which had not been substantiated, had been accepted and that a fraction of the industry was considered as representing the industry in the sense of the Agreement. Acceptance of such a low standard constituted a precedent which certainly nobody would like to see used against him and which could result in a flow of anti-dumping cases in other countries as well.

19. The representative of the European Communities said that the problem of non-acceptance of undertakings was related to some particular aspects of the EC legislation, namely that price undertakings might be negotiated with the Commission but could only be accepted if they were approved by the Anti-Dumping Committee composed of representatives of the EC member States. Discussion in the Anti-Dumping Committee had shown that there were some practical problems with acceptance of the price undertakings. One of these problems was that in accordance with the EC procedures exporters were requested to commit themselves to respect normal value established in the course of the investigation. However, it had been discovered that prices on the US market fluctuated so much that it was impossible to express normal value in a certain figure term. Therefore it was considered that the acceptance of a price undertaking would not be practical. As to the bed linen case he said that no determination had so far been made, as the investigation

was still at its preliminary stage. Referring to harassment, he considered this a great exaggeration. The European Communities had had many opportunities to take severe measures against US textile exporters but it had always acted in a reasonable and moderate way. He could not agree that the complaint had been brought forward by less than the majority of the EC producers. The case had been brought initially by the British bed linen producers who represented 50 per cent of the EC production. These producers had been supported by Euro-Cotton, representing 100 per cent of EC bed linen producers, but even if this had not been the case, the definition of industry in Article 4 of the Agreement referred not to a majority but to a major proportion, and 50 per cent certainly was a major proportion. The representative of the United States said that his criticism was directed to the acceptance of this case and it was not intended as a criticism of the way it might subsequently be carried on. His concern was that a complaint which, on its face value, was so deficient both in terms of the question of an injury and in the calculation of the alleged margin of dumping, had been accepted. The representative of the European Communities said that the complaint had been based on the information available on the US market, because it was the only information the complainant could get and he had used it for the calculation of the margin of dumping. As this calculation had been done in a reasonable way there had been no reason for rejecting such a complaint. As to the injury the facts were that the EC industry had made enormous losses and the imports from the United States had been going up for a considerable time. In the course of investigation the US industry had submitted counter-arguments alleging that there was no causality between the two. This problem was still under examination. The representative of the United States said that his concern was not limited to this case only but in general to standards used by the EC authorities in accepting anti-dumping complaints deficient in a number of aspects. He strongly hoped that this case would not constitute a precedent nor would it establish new standards. The representative of the European Communities said that he would like to have concrete examples of cases where standards required by the Agreement had not been met. He considered that in this specific case all requirements had been met.

20. The representative of Canada was stated his surprise at the growth in the number of anti-dumping actions taken by the European Communities and wondered whether one of the reasons was that just raised by the representative of the United States. He referred to the case of potato granules and said that there were only two Canadian firms and both of them had offered to give price undertakings which had been accepted but subsequently, despite the undertaking in place, the European Communities had imposed a definite duty, thus extending its application to other producers who, at that time had neither been investigated, nor had they been exporting to the Community. In addition, since the final decision had been made, an EC producer had been substantially undercutting the prices provided for in the undertaking and in the EC anti-dumping order. He wondered how this price-undercutting from a presumably injured producer would affect the injury determination in this case. In another case concerning plywood he would like to know whether this case was going to be terminated. The representative of the European Communities said that the plywood case would indeed be terminated. As to the potato granule case he said that the EC Commission had accepted price undertakings from all major Canadian exporters, so if there were no other exporters there was nothing to worry about. However, as there had been at least one more Canadian producer and as he had not offered price undertakings the only way to deal with him, and possibly others unknown to the Commission, was to impose an

anti-dumping duty. As to the price undercutting he said that the Commission had no possibility of preventing it if it happened after the final decision had been made. At any rate this decision had been made on the basis of data covering the majority of the EC producers and such a separate fact would certainly not have influenced its content. The representative of Canada said that this case had raised a very important point of principle, and he wanted to know whether the EC policy in this area would be the same, i.e. that in all cases where there were more producers than those actually investigated and from which price undertakings had been accepted a definitive duty would nevertheless be imposed, listing also those who had entered into such undertakings. The representative of the European Communities said that if there were some producers who co-operated and some who did not, then the only way to deal with the case was to impose a definite duty which, of course, would not be applied to those who had made price undertakings. The representative of Canada replied that in this case there was no question of non-co-operation because these firms had simply not been investigated. He considered that what had happened in this case was contrary to the Agreement.

21. The representative of Japan referred to the action with respect to polypropylene film and said that as the complaining industry was highly concentrated and there was not much room for competition, the injury test should be made with special care and, in particular, criteria provided for in Article 3:3 of the Agreement should be observed. The representative of the European Communities said that the internal EC stage of the investigation had been almost completed and the provisional decision would probably be made in December 1981. He wanted to assure that the injury investigation would be carried out with the utmost care.

22. The representative of Yugoslavia would like to know at what stage the investigation concerning codeine was and whether any provisional measures had been taken. He was also interested in having some explanations as to the arguments which had led to the opening of the investigation. The representative of the European Communities said that the injury investigation had been conducted in the EEC and the dumping investigation in Yugoslavia and the situation in these two areas was already clear, in that there was a considerable dumping and that there was an injury. No provisional measures had been so far taken because some discussion within the EC was still going on.

23. The representative of Czechoslovakia requested the EC Commission to improve the communication channels with Czechoslovak exporters in cases where investigations were initiated or when decisions to accept undertakings were reviewed or investigations reopened. In several cases relevant information reached the interested exporters with a considerable delay. Consequently they were not in a position to submit, in time, all the evidence they considered useful for the examination of a given case. He believed that communication channels could be easily improved and that, in the future, interested exporters would be informed, in time, about all relevant decisions of the EC Commission. The representative of the European Communities said that he had not been aware that any such problem existed and that he was willing to look into this question. He added that if some delays occurred, for example because of postal delays, the concerned exporters could advise the Commission and ask for an extension of time-limits.

United States (ADP/10/Add.3)

24. The representative of Japan recalled that according to Article 3:6 of the Agreement, determination of threat of injury should be based on facts and not merely on allegation, conjecture or remote possibility. In this context he wanted to discuss two anti-dumping cases brought by the US administration. The proceedings in these two cases gave rise to serious concern. In the first case the USITC had rejected a request from Japanese television exporters for revocation of an anti-dumping finding. This decision had been based on an allegation that Japanese exporters intended to continue the dumped exports. The second case was a very recent one and therefore was not covered by the report. It related to exports of high power amplifiers for satellite communication. Allegation that there would be the possibility of a sharp increase in sales of this product had been used as a justification for the finding of a threat of injury. This allegation was based on one simple tender bid, although the price proposed by the Japanese seller was reasonable. The representative of the United States said that the case of television receivers should be considered in the light of Article 9 of the Agreement and not Article 3:6 and the USITC had been acting in accordance with the provisions of Article 9. Under this Article there was no question of determining an injury or a threat thereof. If an anti-dumping duty was in place it meant, by definition that there was an injury. Therefore the question to be answered under Article 9 was a hypothetical one - namely if the anti-dumping duty was revoked would there be an injury. This necessarily called for some degree of speculation on the part of the decision-maker. In this case the ITC had been of the view that the Japanese television industry retained a capacity to continue dumping causing injury. If Japanese exporters could give certain indications as to their future intentions, the ITC would be ready to reconsider the case. With respect to the second case, the ITC decision was only a preliminary determination of a reasonable indication of an injury. The Japanese price had been substantially below prices quoted by the American firm. In these circumstances the ITC had been of the view that there had been a reasonable indication that the US producer had been threatened with an injury. It did not mean that the final finding would be that of injury. The representative of Japan was concerned about the statement by the US representative to the effect that the criteria of Article 3:6 were not relevant to Article 9 of the Agreement. He considered it illogical to say that determination of injury or definition of industry were not applicable to Article 9. Had it been the case, what would have been the criteria for application of Article 9?

25. The representative of Canada wanted to raise three old cases, none of which had been reported in the US notification. The cases concerning steel jacks and sulphur dated from 1966, where Canadian firms had asked, for revocation of the relevant anti-dumping order and he wanted to urge the Department of Commerce to deal with these cases as fast as possible, especially as according to our reports dumping was non-existent or minimal. The third case was that of horseshoes. The new Canadian exporter to the United States had submitted a questionnaire to the Department of Commerce asking for a revision of the 1974 anti-dumping order and he hoped that this order would be revised as soon as possible.

Canada (ADP/10/Add.5)

26. The representative of Finland wished to know at what stage the investigation of the case of paper-making machinery was. The representative

of Canada replied that there had been a preliminary determination and that the case was now before the Anti-Dumping Tribunal. The representative of Finland said that in the context of the investigation Canadian on-the-spot investigators had made the Finnish firm understand that they had not found any dumping, while in the preliminary finding such dumping had been found. Furthermore it had been indicated in the Canadian notification that the basis for determination would be the home market price. He wanted to know whether deliveries, at the same level and of a like product had been found. Another problem was whether, taking into account the technical differences, the Canadian producer who had brought the complaint was actually producing the same product. The representative of Canada said that while it appeared in Finland that margins of dumping were not substantial, Canadian investigators back in Canada were able to refine their calculation based on available data. As to the question of like product he considered that Canadian and Finnish machines were similar products though not identical. He also said that bilateral discussions were going on and that the Canadian side would make every effort to respond adequately to Finnish concerns.

27. The representative of the United States said that he wanted to revert to the action with respect to sporting ammunition and to ask what the status was of the case. The representative of Canada said that the anti-dumping finding was still in force.

28. The representative of the European Communities drew the attention of the representative of Canada to Article 6:5 of the Agreement on notification procedures in an on-the-spot investigation. The EC member States had complained that in certain cases these notifications had been made in a very general way and he wanted to request that the governments be, in future, informed in a more specific and detailed way. The representative of Canada said he considered his authorities complied with Article 6:5 and appropriate notices were always sent to capitals and to the embassies in Ottawa. The representative of the European Communities said that public notices normally gave certain indications but he wanted special notifications just before the on-the-spot investigation was about to start so that interested governments could object if they so wished.

#### Australia

29. The representative of India recalled that in three anti-dumping cases notified by Australia against India his Government had not been able, despite repeated efforts, to find out what had been the basis for the initiation of investigations. Subsequently some information had been given in Canberra, however, it did not cover all the aspects of the cases. Recently Australian authorities had imposed a provisional duty on electric motors exported by India without giving any information. This led him to conclude that Australian procedures needed more transparency and that they should be brought into conformity with Article 6 of the Agreement. The observer for Australia said that his authorities would be bilaterally providing details of investigations to the Indian High Commission in Canberra. With regard to the imposition of a provisional anti-dumping duty the concern of the Indian representative had been registered and would be passed on to the Australian authorities.

E. Questionnaire used in Anti-Dumping Investigations

30. The Chairman recalled that Canada, the European Communities, the United States and Australia had submitted their questionnaires to the secretariat and that these questionnaires were available for inspection by interested delegations.

31. The representative of Japan said that his authorities had received a number of comments from the industry with respect to the new questionnaire introduced by the US Department of Commerce. He considered that some balance should be achieved between the requirement for information and the burden of extensive requirements imposed on the respondents. In particular the thirty-day time-limit seemed to be too short, particularly in view of the language constraints some Japanese firms had. He wished to request the US authorities to provide for some of the questions in the questionnaire to be answered on a best-endeavour basis. If some information had not been submitted within the thirty-day limit it should be possible to submit it at a later stage. This was especially important when there was a need to submit a non-confidential summary of confidential information. The representative of the United States said that he welcomed any comment which would help to improve the questionnaire. He explained that the short time-limits resulted from requirements of the domestic legislation. He also agreed that a balance should be obtained regarding the required information and the burden on the respondents.

32. The representative of Czechoslovakia associated himself with the concern expressed by the Japanese delegation. He said that questionnaires used by some Parties were designed in a way that necessitated too much information, which was frequently not necessary in order to conduct an anti-dumping investigation. He thought that the purpose of questionnaires was to gather information relevant to the case under investigation. The amount and character of information differed with each particular case and not always all the sections needed to be answered fully or at all. A possibility should be given to the focussing of replies in certain areas which were relevant to a particular case. The representative of the United States said that his experience was that if as much information as possible was given as quickly as possible by a respondent, it was better for that respondent. The problem had always arisen when not sufficient information was available. He recognized that providing all the information created a burden but he thought it was important to respond as quickly as possible. The representative of India said that he associated himself with the representative of Czechoslovakia but he wanted to add that for developing countries the questionnaires posed particular problems because the respondents did not possess the resources to respond adequately. For example the standard US questionnaire had been designed for the well-established corporate structure in developed countries which had large accounting and legal departments. Most of the firms in developing countries did not have such facilities. It also happened that firms which had responded to a questionnaire were requested to respond again to lengthy questionnaires within a very short time-limit. He recognized a need for providing all relevant information, but the Committee should take note that firms in developing countries faced very real problems and that responding to very complex questionnaires often constituted harassment because it placed an undue burden on these firms.

33. The representative of Switzerland said that countries using questionnaires should know that responding to lengthy and complex questions constituted a real burden. It might be difficult to realize at the beginning of a procedure what information would be relevant. However, the Parties should make efforts to shorten questionnaires and balance the need for information against burdensome requirements imposed on respondents.

34. The representative of Canada referred to the US trigger price mechanism and said that a tremendous amount of information was required on pre-clearance for steel. He also pointed out that some Canadian firms were requested to submit, in addition to normal information, a significant amount of information related to subsidies which might have been provided to those firms. He wondered how that kind of information was related to an anti-dumping investigation. The representative of the United States said that such information had nothing to do with anti-dumping or countervailing duty investigation since no provisional or final measures were imposed on the basis of them. Such measures could result only from a full anti-dumping investigation. If his authorities decided to initiate such an investigation they would certainly have sought much more information than provided in response to these kind of questionnaires.

35. The Chairman said that the problem of questionnaires would remain on the agenda for future meetings.

F. Understanding on Article 8:4 of the Agreement

36. The Chairman recalled that at the 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 circulated in ADP/M/5, Annex I. Subsequently further consultations had taken place and a new version of the Understanding had been prepared which was now before the Committee (ADP/W/27).

37. The representative of India said that in the interest of maintaining an open and liberal trade system, basic price systems and other anti-dumping schemes were inconsistent with the spirit of the Agreement which required a full examination both of the fact and the effects of dumping on a case-by-case basis and did not envisage the use of a single bench-mark price as an indication that a dumping had taken place. One of the reasons was that such systems disregarded the volume of imports which should be an important factor in any decision whether to initiate an anti-dumping investigation. He recalled that at the April 1981 meeting his delegation had been prepared to accept a draft understanding as proposed in ADP/W/14 because it provided for non-proliferation of such systems and general elimination of existing ones. However the present draft and in particular paragraph 3 left the door open for the establishment of new systems and for indefinite continuation of existing schemes. For these reasons he would prefer that the Committee revert to the previous draft. He would have difficulties in going along with the present draft, in particular its paragraph 3.

38. The representative of Yugoslavia associated himself with the concern of the representative of India. He recalled his statement at the April 1981 meeting when he had said that basic price and related systems should be

limited and gradually eliminated. The draft in ADP/W/14 correctly reflected his preferences. In particular it prevented proliferation of such systems to new products and provided for the establishment of a multilateral surveillance of the existing systems. The new draft had abandoned most of the important ideas in ADP/W/14. Adoption of such a text would open the door for continuation and intensification of measures inconsistent with the Agreement. For this reason he considered that the draft needed modifications to introduce more discipline in this field.

39. The representative of Japan said that he would go along with the new draft. He could understand the concern expressed by previous speakers but he also realized that it would not be possible to go much further at the moment. Taking into consideration the existing situation the text seemed to constitute a reasonable compromise. He wanted to register his concern with the last sentence of the second paragraph which read: "Article 8:4 is not essential to the effective operation of the Agreement and shall not provide basis for any anti-dumping investigation or for imposition and collection of anti-dumping duties." His understanding was that it did not mean that Article 8:4 would not be operational any longer. Decision to such an effect would have amounted to amending the Agreement and the Committee could not do that by a simple decision. Therefore the only meaning of this sentence was that a basic price system was not an indispensable requirement for the effective operation of the Agreement and that it should not be interpreted in such a way as to give an independent base for any anti-dumping action other than under relevant provisions of the Agreement.

40. The Chairman said that his understanding was the same as that of the representative of Japan.

41. The observer for Chile recalled that his delegation had been satisfied with the draft in ADP/W/14. The subsequent draft (ADP/M/5, Annex I) had abandoned the most important intention of the previous draft and therefore his delegation could not go along with it. He found that the present version, and in particular paragraph 3, did not conform with the spirit in which the treatment of this matter had been started. He wanted to record his concern and preference that the Committee return to the spirit of ADP/W/14.

42. The representative of Canada said that the discussion of basic prices had been initiated in relation to the draft Canadian legislation which contained a provision on the matter. He would have liked to know what Article 8:4 meant exactly before drafting the final version of the legislation. At the moment he could not accept anything formally but he hoped he would be able to present an interpretation by the Committee of Article 8:4 to the Parliamentary Committee so that they could take it into account while drafting the final legislation. His Government would also have preferred the draft contained in ADP/W/14 but he realized that the present draft went as far as one could realistically expect at this stage. He expected that one day special anti-dumping schemes would be subjected to a more stringent international discipline but one could arrive at this slowly and not just in one big step.

43. The representative of the United States said he shared the concern expressed by other delegations that the present draft did not go far enough, but he thought it was better to have a partial solution than nothing at all. He noted that there had been no comments to the first two paragraphs but he wanted to stress that all three paragraphs were very carefully drafted in a spirit of compromise. He hoped that, in a spirit of consensus, the Committee

would produce something on the matter which would direct not only the delegation of Canada but also other delegations with regard to what should be the meaning of Article 8:4 and more broadly with regard to basic price systems in general. It would already be a major step forward, and more specific elaboration of the text should be left for the future. He urged the Committee not to turn its back on the draft but to focus upon the things on which the Signatories would agree at this stage.

44. The representative of the European Communities said he shared the views expressed by the representatives of the United States and Canada. He wanted to remind those delegations which regretted that the present text did not go as far as the text contained in ADP/W/14 that, at the time the latter text had been submitted, they had considered that it did not go far enough. The present text constituted a realistic compromise and the Committee should try to achieve what could be achieved.

45. The representative of Finland speaking on behalf of the Nordic countries said that he shared the views of those who considered that the present text did not go far enough, on the other hand he would regret very much if no decision was reached at this meeting. He said that for this reason he could accept the present text but he wanted to state that the consistent view of Nordic delegations was that basic price mechanism under Article 8:4 and, in particular, special monitoring schemes constituted a threat both to the letter and spirit of Article VI of the GATT and to the Agreement. Proliferation of such schemes should be effectively discouraged and the existing ones phased out as soon as possible. He would find it very useful if ambiguities related to Article 8:4 could be clarified in an understanding by the Committee. He would also welcome an understanding which would make explicit that special monitoring schemes should conform to the requirements of the Agreement. The Nordic countries, while being ready to accept the present text, expected that this would only be the first step to counter what they considered to be very dangerous protectionist devices. Further examination of the matter by the Committee should lead to the dismantling of monitoring schemes and should prevent such new schemes from being established.

46. The representative of Hungary said that the one year long negotiating history of the draft understanding which was now before the Committee, clearly demonstrated the preoccupations of the Parties over the possible misuse of the basic price systems and some special monitoring schemes. He agreed that as far as the basic price system was concerned, the draft represented real progress, because it provided an agreed interpretation of Article 8:4 of the Agreement. However the third paragraph of the text relating to the special monitoring schemes was much less positive and did not reflect satisfactorily the position of those delegations which wanted the proliferation of this kind of monitoring schemes stopped and subsequently phased out. For these reasons he wanted to put on record that in case the text was adopted in its present form he would regard the text as only the first small step towards the prevention of proliferation and, later, the phasing out of such monitoring schemes. He hoped that the Committee would revert to this question soon and would determine a time-table and the ways and means of how to achieve this ultimate purpose.

47. The representative of Switzerland said that the position of his delegation regarding basic prices and special anti-dumping schemes had been stated at the previous meeting and he did not want to repeat it in detail. He considered that these measures should be prevented from proliferation and

should be phased out. The present text did not reflect with sufficient clarity this position although it was shared by many delegations. However it constituted a step in the right direction. He did not have any problem with paragraphs 1 and 2. With respect to paragraph 3 he would prefer a clear wording on non-proliferation and phasing out of such schemes. It contained, however, an important statement about the detrimental effects of such schemes on world trade. This recognition would be very important in the future work. The Committee should carefully consider what way it should take in further dealings with the matter. In particular it should not be understood that the wording of paragraph 3 in any way legitimized the existence of special monitoring schemes. He also said that in determining his position at this meeting he had taken into account the fact that some countries, and in particular Canada, were actually drafting or redrafting their anti-dumping legislations and that they wanted to take the common position of the Committee on this specific matter into account. He wished to see how this matter and other problems raised in the Committee in relation to the Canadian legislation would finally be taken into consideration. He wanted to reserve his right to revert to this matter in the light of future developments in this respect. He expected that the Committee would continue its consideration of the special monitoring schemes and that the present draft was only the first step on the way. On this assumption and not wanting to oppose a decision on this important matter he was ready to accept the draft understanding.

48. The representative of Czechoslovakia said that he continued to share the preoccupations of other delegations about the danger of various special anti-dumping schemes. These schemes were outside the scope of the Agreement and while not necessarily inconsistent with its provision, increased the uncertainty in selling into countries using such schemes. He considered that in the interest of maintaining an open trading system the existing schemes should be phased out and no new schemes should be introduced. For these reasons paragraph 3 should be more explicit and he hoped that the Committee would revert to the matter in the near future. He did not want to stay in the way of a possible consensus and therefore he would not oppose a decision by the Committee.

49. The representative of Romania said that the main objective of the understanding should be to strengthen the international discipline with respect to basic prices and special anti-dumping schemes. He had no problem in accepting paragraphs 1 and 2 of the proposed draft. As to the third paragraph he shared the opinion expressed by the representatives of India and Yugoslavia that monitoring schemes should not proliferate and should be eliminated and that this paragraph should be more explicit. He considered that the members of the Committee should have more time for consultation and reflection and he would prefer that the decision be postponed until a better wording had been worked out. If however the Committee was going to take a decision he would reserve his position on the third paragraph.

50. The representative of the United Kingdom speaking on behalf of Hong Kong said that his delegation was on record as favouring the draft in ADP/W/14. There were certain aspects of the present draft which, although he did not agree with them, he would not oppose. He realized that some delegations had problems in going further and that this draft was probably all that could be agreed at this stage. He was against special anti-dumping schemes and he too

would like to see a more definitive statement about them. The wording of the present draft was, however, sufficiently condemnatory at this stage. Taking this into account he would, although reluctantly, be ready to accept the proposed understanding.

51. The observer for Australia said that he was inclined to share the views expressed by the delegations of Hungary, Switzerland, Finland and Hong Kong concerning the general attitude towards basic price systems. In previous meetings he had mentioned that he had been concerned, inter alia, that treatment should be equitable, that there be no blessing of existing systems, and that countries have no fewer rights as a result of the adoption of this understanding in relation to other countries. He saw the revised text as an improvement on the draft circulated at the April 1981 meeting and he was prepared to go along with it as a first step by the Committee towards the examination of the operation of anti-dumping monitoring schemes and believed that the Committee would not let the matter die but would continue to examine the issue with a view to strengthening discipline in this area. The representative of Austria said that although he was not fully satisfied with the text proposed in ADP/W/27 he considered it as a possible compromise and therefore he would agree to it.

52. The Chairman said that having heard statements made by the parties to the Agreement, he would propose that the Committee adopt the understanding circulated in ADP/W/27 and that all statements and reservations expressed in this relation would be reflected in the minutes of this meeting. It was so decided.

53. The representative of Poland said that he did not want to oppose the acceptance of the understanding which constituted a delicate compromise. However he wanted to stress that he fully shared the doubts expressed by some delegations as to the insufficiency of the text in ADP/W/27. The observer for Argentina said that the text had been adopted with so many reservations that it looked more like an understanding between some of the Parties than a decision by the Committee. At any rate his delegation would not feel bound in any way by this understanding.

54. The representative of Canada said that a Committee of the Canadian Parliament was currently examining a proposal on whether a basic price system should be incorporated into Canadian domestic legislation. It had not yet finished its examination but it was aware that this Committee was also discussing this issue. He believed that the discussions in the Committee had been very useful in establishing an important consensus on the interpretation of Article 8:4 of the Agreement. The text just adopted also contained an important statement on special monitoring schemes which could give cause for concern. He would welcome further discussion of these schemes in the Committee. The understanding would be brought to the attention of the Parliamentary Committee which would certainly examine it carefully before making its final report to Parliament. Pending this report he had to reserve his position on the text. The representative of the United States said that he had noted very carefully what the Canadian delegation had just said on the

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<sup>1</sup>The text of the understanding is reproduced in Annex I.

relationship of this particular text to the process under way in Canada with respect to the new anti-dumping legislation. He hoped that the Parliamentary Committee would embrace the position confirmed in paragraph 2 of the text when formulating its recommendations on the relevant provision of the anti-dumping legislation. His delegation would carefully follow the evolution of this legislation in Canada and should it be the case that legislation contained provisions contrary to that which was contained in the understanding just adopted with respect to basic prices, his Government would certainly want to revert to that particular matter in this Committee. The representative of Switzerland recalled that his delegation had also reserved its right to come back to this and to other aspects of the Canadian legislation in the light of future developments. The representative of Finland said that the Nordic countries continued to have serious concerns about the draft Canadian legislation. These concerns had been conveyed bilaterally to the delegation of Canada. As to this particular aspect of this legislation the Nordic countries fully shared the position of the United States delegation. The representative of the European Communities expressed a strong hope that the legislative process which was going on in Canada would take full account of the rules contained in the understanding and he also wanted to reserve his right to bring the matter before the Committee if, after close scrutiny of the final version of the Canadian legislation, it would appear that it was not in conformity with this understanding. The representative of Spain said he would associate himself with the views just expressed by the representative of the European Communities.

55. The Chairman said that the adoption of the understanding did not mean that this was the end of the matter. On the contrary, this was only the first step and the Committee would certainly revert to it at future meetings.

G. Report of the Joint Group of Experts on the Definition of the Word "Related"

56. The Chairman recalled that the Group of Experts on the Definition of the Word "Related" established jointly by this Committee and the Committee on Subsidies and Countervailing Measures in May 1980 (SCM/M/3, paragraph 42) had completed its work and had submitted a report to the Committee in April 1981 (ADP/M/5, Annex II). The Committee had had a preliminary discussion of the report at its April 1981 meeting and had decided to revert to it at this meeting with a view to adopting it (ADP/M/5, paragraphs 46-48).

57. The representative of Japan said that at the present stage the most realistic approach to the report would be to adopt it. He considered, however, that the Committee should develop more specific guidelines than those proposed by the Group of Experts. Therefore he wanted to suggest that the Committee review, in future, the operation and implementation of this report, and, in the light of practical experience, explore possibilities of introducing more specific guidelines. The representative of the European Communities said he could accept the report. The representative of India said that having reflected on the report he was prepared to go along with it. The representative of Spain said that the Spanish expert in the Group had expressed the view that criteria concerning the same concept should be the same in all Agreements and therefore he had referred to the criteria developed in the Valuation Code. As those criteria were not fully reflected in the report he wanted to express his concern, but he did not want to stand in the way of a consensus.

58. The Chairman proposed that the Committee adopt the report. It was so decided.

H. Annual review and the report to the Contracting Parties

59. The Chairman said that the background information for the annual review of the operation of the Agreement had been circulated in ADP/W/24. On the basis of this information and taking into account developments that had taken place at this meeting the secretariat had prepared a draft report to the CONTRACTING PARTIES which was before the Committee in ADP/W/28.

60. The Committee examined the draft report and made certain amendments. It agreed that the report, as set out in L/5229, should be submitted to the CONTRACTING PARTIES.

I. Other business

Panel members

61. The Chairman recalled that the Parties should inform him about any changes in the list of panel members circulated in ADP/W/24.

J. Date of the next meeting

62. The Committee noted that, according to the decision taken by the Committee at its April 1981 meeting (ADP/M/5, paragraph 51), the next regular session of the Committee would take place in the week of 26 April 1982.

ANNEX I

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

The Committee discussed the extent to which basic price systems may be utilized in conformity with the provisions of the Agreement.

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 anti-dumping 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.

At the same time, the Committee discussed special monitoring schemes, in so far as they are related to anti-dumping systems. The Committee recognizes that such schemes are not envisioned by Article VI of the GATT or the Agreement and it is of the view that they give cause for concern in that they could be used in a manner contrary to the spirit of the Agreement. The Committee agreed that such schemes shall not be used as a substitute for initiating and carrying out anti-dumping investigations in full conformity with all provisions of the Agreement. The Committee further agreed that, as monitoring schemes may have the effect of burdening and distorting trade, it is advisable that the effects of such monitoring schemes on international trade continue to be examined with, inter alia, a view to assessing the need for strengthening international discipline in this area.