RESTRICTED
ADP/M/9
22 December 1982
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GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Anti-Dumping Practices

MINUTES OF THE MEETING HELD ON 25-26 OCTOBER 1982

Chairman: Mr. T.H. Chau (UK-Hong Kong)

1. The Committee on Anti-Dumping Practices held its ninth meeting on 25-26 October 1982.

2. 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. Semi-annual reports of anti-dumping actions taken within the period 1 January 1982-30 June 1982 (ADP/13 and addenda)

D. Reports on all preliminary or final anti-dumping actions (ADP/W/33, 34, 38, 39 and 40)

E. Questionnaire used in anti-dumping investigations

F. Annual review and the report to the CONTRACTING PARTIES

G. Other business

A. Adherence of further countries to the Agreement

3. The Chairman welcomed Australia as a new Party to the Agreement (Australia accepted the Agreement on 21 September 1982) and expressed the hope that Australia would shortly submit its national legislation for examination by the Committee.

4. The representative of Australia said that the text of the Australian anti-dumping legislation would be submitted to the secretariat within a very short period of time.

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

Spain

5. The Chairman said that since the last regular meeting of the Committee (April 1982) the delegation of Spain had circulated its anti-dumping

legislation (ADP/1/Add.17/Rev.1). He opened the floor for comments or questions concerning that legislation.

6. The representative of Japan wished to know what was meant by "fiscal fraud" or "monetary offence" in the context of Article 6 of the Royal Decree 925/1982. He also wished to know in what form provisional and final measures referred to in Article 7 could be taken and whether the provisions concerning the period of investigation corresponded to Article 5 of the Code.

7. The representative of Spain said that the Royal Decree established standards not only for anti-dumping but also for countervailing measures. In a case of a subsidized or a dumped product there might be a fiscal fraud or monetary offence. A fiscal fraud might occur when for the purpose of customs valuation the value of the product had been declared below its factual value and therefore the duties had been calculated on a lower than the normal value basis. Secondly as to a monetary offence - a product might come to the importing country in a regular manner but the payment for it could be, at least partially, effectuated through abnormal channels. Therefore when the Interministerial Commission examined cases of anti-dumping or countervailing duty, it should consider these aspects as well. If the Commission found that there had been a fiscal fraud or monetary offence then it would notify the competent authorities which might impose a subsidiary punishment on the fraud in the form of additional customs duties or appropriate fines. As to Article 7 of the Decree it had been virtually copied from Article 10:2 of the Code. Finally, the time-period in Article 8 for provisional measures was exactly the same as indicated in the Code under Article 10:3.

8. The representative of Canada said that the Spanish legislation had left a great deal to be filled in by administrative regulations and in particular Article 12 provided for ministers of finance and economy to issue additional provisions if necessary. It would be much easier and appropriate for the Committee to know, while examining the Spanish legislation, the content of these regulations and provisions. The representative of Spain said that it was a normal rule in Spain that the general law established only a framework to be filled by decrees and regulations. Such decrees and regulations had not been, so far, elaborated, but it was the firm intention of the Spanish Government to notify any such implementing regulation to the Committee for appropriate examination.

9. The representative of the EEC noticed that Article 1 of the Decree, which dealt with countervailing duties, did not make any reference to the Code on Subsidies and Countervailing Measures. Commenting on Article 2 he referred to the notion of injury but said that it did not contain either criteria for its determination nor for its assessment despite the fact that the relevant provisions of the Code were quite elaborate on these points. As to the answer to the question put by the representative of Japan he noted that it referred to the customs valuation. However any customs valuation should be based on the transaction price which could also be a dumped price. In such a case the GATT allowed only the use of anti-dumping duties and not simultaneous correction of values. In other words the person dumping could not be punished twice. Referring to Article 10 he noted that it provided for publication of provisional or final determinations in an official journal but it was not clear how detailed such publications would be and, in particular, whether they would give motivations and results of investigations. Finally he noted that

the Spanish legislation did not contain any provision on confidentiality on the one hand and transparency on the other.

10. The representative of Spain confirmed that Article 1 did not contain any reference to the Subsidies Code because the Code was signed only after the Decree had been submitted to Parliament. Subsequent provisions would correct this omission. As to Article 2, it did not contain any criteria on injury but it referred to Article 6 which would be supplemented by appropriate regulations. He confirmed that Article 6 did not mean that additional duties would be imposed on top of anti-dumping duties because of the fact that the goods were undervalued. Article 6 was meant to deal with cases of fiscal fraud, or monetary or tax offences when the goods had slipped through customs. Concerning Article 10 he said that the notices in question would contain all relevant information and motivation behind positive and negative findings and that countries concerned would also be notified. The question of transparency and of confidentiality would be dealt with by additional provisions as provided for in Article 12 of the Decree.

Canada

11. The representative of the United States asked the delegation of Canada to present a status report on the proposed anti-dumping legislation, in particular with respect to two questions - Article 28 dealing with basic prices and the question of definition of sale.

12. The representative of Canada said that since the last meeting of the Committee a Sub-Committee of the Canadian House of Commons had submitted its report to the House. A new draft legislation was being prepared in light of this report and other representations received by the Government. Once this process was completed, that draft legislation would be submitted to Ministers for approval and subsequently tabled in the House of Commons. He doubted whether this first reading would take place before the end of this year but the objective was to get the new legislation on the table as soon as possible.

13. The representative of Switzerland recalled that several highly controversial issues had been raised by the new Canadian legislation and wished to know whether the Committee would have another opportunity to revert to these issues before final decisions were taken. The representative of Canada said that there was no intention of referring the draft legislation back to the Committee for further discussion; however he could assure all interested Parties that their points had been carefully examined.

14. The representative of the EEC said that the new draft contained many interesting proposals of which one, however, needed some explanation. It was not clear what the proposal on preliminary determination of injury before imposition of provisional anti-dumping measures meant. Did it mean that a preliminary injury test would be applied only on request and not automatically? The representative of Canada said that that particular issue had been given very close consideration in the drafting and although it was highly possible that the final outcome would fully satisfy the representative of the EEC he could not commit himself at this stage.

Japan

15. The representative of the United States wished to know whether the Japanese authorities had been preparing new anti-dumping regulations and if so when such regulations would be submitted to the Committee. The representative of Japan recalled that the Japanese anti-dumping law had already been circulated in ADP/1/Add.8. As to the anti-dumping regulations he said that if his authorities were to decide on such regulations, they would be subsequently notified to the Committee in accordance with the Code.

United States

16. The representative of the EEC said that there was a tendency in the US Congress to promulgate legislation providing for damage in cases of predatory dumping. Such legislation would be in contradiction with Article VI of the GATT. The representative of the United States said that the legislation in question had been reintroduced for the fourth time in six years in Congress. The US Administration, including himself personally, had testified in the Senate against that legislation and he wished to assure the EEC representative that the Administration would continue to oppose that legislation in the form as it was. He also wished to add that the United States took its obligations under the GATT and the Code very seriously and that these obligations would be fully taken into account in formulating any future legislation.

General aspects

17. The representative of Romania said that he had gone through some legislations submitted to the Committee and he had found that the only constructive solution provided for in the Code, namely price undertakings, had not been duly reflected in many of them. He considered that the way in which that very important provision of the Code was taken into account by a national anti-dumping legislation constituted one of the main criteria of conformity of that legislation with the Code. For these reasons he proposed that the secretariat review all notified legislations and, in case they did not contain appropriate provisions on price undertakings, request the Parties in question to inform the Committee, in time before its next meeting, on how they had assumed their obligations under Article 7 of the Code. He also wished to raise another question, namely time-limits within which a country could enter into a price undertaking. He recalled that while examining the Canadian draft legislation he had suggested that such a period should not be limited only until the preliminary determination of a dumping had been made. The main point was that prices should be increased to the level necessary to remove the injury and not necessary the margin of dumping. It should, therefore, be possible to enter into an undertaking at any time before the completion of an anti-dumping procedure or even after the final determination had been made.

18. The Chairman said that as proposed by the representative of Romania the secretariat would prepare a factual note on how the problem of price undertakings had been reflected in various legislations. In the same note the secretariat could also request Parties which had not provided for price undertakings to inform the Committee about their intentions in this respect.

19. The Chairman said that the present status of notifications of national legislations was given in ADP/W/42, paragraphs 3-5. He noted that some Parties had not, as yet, formally notified the Committee of their actions under Article 16:6 of the Agreement and requested them to do so without further delay.

20. Concluding the discussion on this item the Chairman said that the Committee would maintain it 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. Semi-annual reports of anti-dumping actions taken within the period 1 January 1982-30 June 1982 (ADP/13 and addenda)

21. The Chairman recalled that the invitation to submit semi-annual reports under Article 14:4 of the Agreement had been circulated in ADP/13 on 6 August 1982. Responses to that request had been issued in addenda to that document. In addition Parties which had taken anti-dumping actions had been requested to supply data indicating what proportion of the global volume of trade between countries concerned had been affected by actions taken within the period 1 July 1981-30 June 1982. This information was required pursuant to the decision of the Committee that the secretariat prepare an expanded version of the summary table included in the annual report to the CONTRACTING PARTIES. No such information had, however, been submitted.

22. In this relation the Chairman said that it was regrettable that the reports containing anti-dumping actions had reached the secretariat only very recently and it was not possible to make any meaningful analysis of the situation in this respect. Therefore he wished to strongly appeal to all Parties to submit their semi-annual reports as soon as possible after the end of each reporting period. The compliance with this appeal would considerably facilitate the work of the secretariat and the preparation of regular sessions of the Committee.

23. Following the Chairman's appeal the Committee agreed that the deadline for the submission of semi-annual reports would be 28 February and 30 September of each year.

24. The Chairman recalled that the following Parties had notified the Committee that they had not taken any anti-dumping action during the period 1 January 1982-30 June 1982: Austria, Brazil, Czechoslovakia, Finland, Hong Kong, Hungary, Japan, Norway, Poland, Romania, Spain, Sweden, Switzerland and Yugoslavia (ADP/13/Add.4). Pakistan had also informed the secretariat that it had not taken any anti-dumping action. No reports had been received from Australia, Egypt and India and these Parties were requested to submit their reports without further delay.

25. Representatives of Egypt and India said that no anti-dumping action had been taken within the reporting period.

26. The representative of Canada said that while preparing semi-annual reports an effort had been made to comply with the Committee's request for additional data on the percentage of the global trade volume affected by anti-dumping actions. The percentage in particular cases was, however, extremely small and including such data seemed meaningless. The

representative of the EEC shared this view. The representatives of Yugoslavia and India considered that before one could judge whether such data were meaningless the Committee should have a chance to look at them. They therefore requested that the Committee's decision be duly implemented and appropriate data submitted to the secretariat. The Chairman confirmed that the decision should be implemented.

27. The representative of the EEC said that some Parties, in particular Australia and Canada, while conducting an on-the-spot investigation had not given appropriate prior notice to the government of the country concerned. Such a procedure was clearly provided for in the Code and he wished to record his request that all Parties comply with this obligation.

28. The representative of Canada said that his authorities' practice was in conformity with Article 6:5 of the Code. If in particular cases there was some concern, they had tried to accommodate these concerns by providing further details and advance information regarding on-the-spot investigations. If this was still not sufficient he was ready to discuss the matter with those countries again with a view to finding a satisfactory solution. The representative of Australia said that he too wished to assure all interested Parties that his authorities had always notified the countries concerned through their local representatives. It was possible that in some cases there had been communication problems and therefore he would be ready to send direct notifications overseas if so requested in individual cases.

29. The representative of the EEC said that there were two ways to deal with such notifications. One was to include very general and vague information in the notice about the initiation of an investigation to the effect that an on-the-spot investigation might be required at a later stage. Another possibility, more appropriate and conforming to the spirit of the Code, was to inform the exporting country by a separate letter that at a given date, in a given firm an on-the-spot investigation would be carried out by the following officials. He insisted that such a precise notification should be sent in all relevant cases. The representative of India associated himself with the remarks of the EEC representative. The representative of Finland said that the discussion between investigators and the exporting company would be facilitated if, before their arrival, the exporting country could have access to all information on which the anti-dumping investigation was based.

United States (ADP/13/Add.3)

30. The representative of Japan said that in the anti-dumping investigation concerning high power amplifiers the final determination of the Department of Commerce was arbitrary because of the inappropriate use of the best information available. The Department of Commerce had twice calculated the normal value in Japan and had not found that Japanese prices were below that level. However in its final determination the Department of Commerce had disregarded these calculations and used data provided by the petitioners, which had resulted in a high margin of dumping. This procedure was not in accordance with Article 6:8 of the Code. He requested the US authorities that, when using the best information available, they should inform the company concerned about the reasons therefor and give it ample opportunities to submit its comments. In the same case of high power amplifiers there was a problem in respect of the determination of the material injury. The ITC had determined that the US industry had been injured. This determination ignored

certain facts which had previously been accepted by the commissioners themselves and therefore it was arbitrary and raised serious concern. He wished to point out that according to Article 3 of the Code the determination of injury should be based on positive evidence and involve an objective examination of all relevant factors.

31. The representative of the United States replied that although the Department of Commerce had excellent co-operation with the Japanese Government there had been no co-operation with the producer who had not even provided the required data. In this situation the Department of Commerce had to base its determination on the best information available. However the Department of Commerce had been ready to consider the new data and recalculate the margin of dumping before the final duty had been imposed. The Japanese company had been aware of that but it had never supplied such new data. In any event the anti-dumping order would be reviewed annually and he hoped that in the course of the next review the Department of Commerce would have at its disposal data submitted by the company in question. Referring to the injury side he said that as high power amplifiers were high technology products the producers would gain an advantage with respect to future sales because of the experience gained from their getting early contracts. The ITC had recognized the particular injurious nature of those initial sales into the US Market at dumped prices and therefore found that there was material injury.

32. The representative of Japan asked whether in the US practise the injury test varied from one field to another and whether the high technology field was different from other fields. The representative of the United States said that the injury test itself did not vary but the application of the test might be different. For example the important penetration criterion was not required in some cases. The ITC could find, in one case, no injury at very high level of penetration but in another, because of the nature of the case, the injury could be found even if the market penetration was very small. This approach was recognized both by the Code and by the US law by providing that no one single criterion would be determing in any case. The ITC would probably follow this precedent and look carefully at a potential injurious effect when there would be an initial dumped sale of high technology goods.

EEC (ADP/13/Add.2)

33. The representative of the United States asked about the procedures the EEC was currently considering in applying the injury test in processing shipments. In one case he was aware of, the EEC was considering applying the injury test to inward processed goods, to determine the amount of injury caused even if those goods had never effectively entered the internal market.

34. The representative of the EEC said that no decision had been taken in the case referred to by the US representative. The product concerned was exported by the US to a member States of the EEC and the majority of that product was subsequently subject to inward processing and then the product was re-exported. A part of the product was imported into the EEC. This product was, without any doubt, dumped. The question therefore had arisen whether it would be possible and appropriate to apply an anti-dumping duty. The question was even more pertinent as there was a considerable injury to the EEC producers caused also by the exports which were subject to inward processing. The fact that the product was processed somewhere in the EEC deprived local producers from selling the same raw material to the processors. Consequently

these producers requested that some relief be given to them against dumped exports. However, the question had arisen whether injury could be caused only by a product that was effectively imported or could it also be caused by products imported for "inward processing". This question was still open. The Code was clear on the point that no anti-dumping duty could be applied to a product which was not imported but came in only for inward processing. The question still remained whether it would be appropriate, in an injury determination, to accumulate imports which really came in and imports for inward processing. Were this appropriate, then anti-dumping duties could have been imposed, at least on the effectively imported product. The practical effect of such a duty would be nil but it would constitute a warning, especially in cases where there was a change of qualification of imports of the product from inward processing to effective entrance.

35. The representative of Czechoslovakia said that in the EEC anti-dumping regulation it was indicated that for injury investigation purposes the imports from the country in question were accumulated with those of other countries. He wondered whether such an accumulation was correct and equitable. There was no provision in Article 3 of the Code which authorized such a procedure. Consequently the EEC approach was contrary not only to Article 3 but also to the basic legal concept that nobody could be held liable for acts of another for whom he did not bear any responsibility.

36. The representative of the EEC said that it was his understanding of the Code, shared by all other Parties which applied anti-dumping measures, that cumulation under certain circumstances was not only allowed but was fair. It was clear that an anti-dumping duty could be imposed if an injury was caused by one single exporter who had obtained, for example, 20 per cent of the market. However if the 20 per cent market share was obtained exports from two countries each of them having 10 per cent, the effect would be the same and this could not prevent the importing country from imposing anti-dumping duties on imports from each country. Of course there were situations where cumulation was inappropriate, for example when products were not comparable. But when products were fully comparable there was no other possibility but to cumulate the injury.

Japan (ADP/13/Add.1)

37. The representative of Japan said that in June 1982 the Canadian Anti-Dumping Tribunal had found that imports of drywall screws from Japan caused threat of injury to the Canadian industry but no injury had been found. Since the new Code had entered into force there had been five cases against Japan, in two of which anti-dumping duties had been imposed on the basis of a threat of injury. He considered that this practice was contrary to the provisions of Article 3:7 of the Code which provided that in cases of a threat of injury the application of anti-dumping measures should be studied and decided with special care. In a case of polyester filament fabrics the anti-dumping investigation had been initiated without any evidence of the existence of an injury and without establishing which Canadian producers were producing comparable fabrics and therefore could be potentially injured. According to Article 5:1 an investigation could be initiated only if there was sufficient evidence of an injury. As this provision had not been observed he wished to reserve every right his Government had under the GATT and under Article 15 of the Code.

38. The representative of Canada said that in the case of drywall screws the Anti-Dumping Tribunal had made a finding of threat of injury and that this finding was final and could only be appealed on questions of law. The Tribunal was an independent body and it had always taken special care in all rulings, especially those on threat of injury. He further said that on the question of polyester fabrics there had been considerable bilateral discussions between Canada and Japan. The investigation had only been initiated and no findings, even provisional findings, had been made. The complainant had satisfied the Canadian authorities that he had the capacity to produce comparable fabrics and that he was suffering injury because of Japanese imports. The investigation would likely further clarify all the points raised by Japan.

39. The representative of Switzerland referred to the case of capacity voltage transformers and said the investigation had been initiated in September 1981, there had been a positive preliminary determination of dumping in March 1982 but there had been a negative finding on injury by the Anti-Dumping Tribunal. The problem was that the investigation had been initiated without sufficient evidence of injury. It had been said in the Committee, on many occasions, but in particular in relation to Canadian practices, that it was not sufficient as evidence of injury to have on record the information supplied by the complainant in his petition. In this particular case the notice about the initiation of the investigation had read that the imports of the allegedly dumped goods had resulted in loss of the complainant's market share, plants under-utilization and lost sales. No further precision, e.g. statistical data had been supplied to substantiate this allegation. In March 1982 a preliminary determination had been made. On the injury aspect, one could only read that the complainant had recently confirmed that material injury as a result of the dumping was continuing for the reasons mentioned. On the basis of this information the Canadian authorities had made a preliminary determination and had imposed provisional duties. However the Code clearly provided, in Article 10, that provisional measures would only be taken after an affirmative preliminary finding had been made that there was dumping and that there was sufficient evidence of injury. Subsequent developments confirmed that the Canadian authorities had not made sufficient and serious enquiries before making a preliminary determination of injury. When the matter went before the Anti-Dumping Tribunal, it found that the complainant, during the period under investigation, had effectively utilized all production capacities, employment had been high, sales had more than doubled and the profitability had been good. Consequently the Tribunal had been unable to find that there had been material injury. Comparing the preliminary determination with the decision of the Tribunal, one had to conclude that the injury investigation by the Canadian administration had not been serious and not in conformity with the Code. None of the allegations, so readily accepted by the administration, had been confirmed by the Tribunal. Quite opposite results of the preliminary and final determinations pointed to a situation unacceptable to all Parties and confirmed serious concerns previously voiced in the Committee about Canadian practices.

40. The representative of Canada said that the Department of National Revenue which had been conducting the investigation had found a prima facie case of injury presented by the complainant. It had found that there was a 30 per cent margin of dumping and as it believed that there was sufficient evidence of injury, the matter had been referred to the Tribunal for a final determination. The Tribunal had done its work and found that there had been

no injury and the case had been terminated. It was entirely possible that the Department's review of injury based on preliminary information would differ from the final injury determination made by the Tribunal.

41. The representative of Switzerland said that the matter was not as simple as the Canadian representative had implied. He was pleased with the negative determination of the Tribunal but wished to point out that before that determination had been made, serious harm had been done to the exporter. The conclusion of his previous intervention was that the Canadian authorities were too easily initiating anti-dumping investigations and were too easily making provisional determinations of injury. There were also other aspects involved in this case and he might wish to revert to them at a subsequent meeting.

42. The representative of Sweden referred to the stainless steel plate case and said that the notice on the opening of the investigation indicated that the complainant had alleged that the Swedish export prices were at or below the estimated costs of production of the goods in question. Consequently the complainant had alleged a margin of dumping ranging from 6 to 46 per cent. The fact that the notice was limited to the contention of the complainant gave the impression that the Canadian authorities automatically considered sales at a loss as dumping. One could argue that sales at a loss would affect the comparable price but there was nothing in the Code to indicate that sales at a loss automatically constituted dumping.

43. The representative of Canada said that sales at a loss had never been automatically assumed to be dumping. In that particular case the single complainant represented the entire industry concerned and therefore it was difficult to provide more detailed information. The matter was still under investigation and careful examination would be made before any final conclusion would be reached.

44. The representative of the EEC said that he was concerned with a common feature of all Canadian anti-dumping investigations, namely the lack of information about the complaint and about other evidence which had led the competent authorities to initiate the investigation. There were many complaints from EEC industries to this effect. For example in the specialty steel case no copy of the complaint had been provided to the exporter despite the fact that an appropriate request had been made. A non-confidential summary had been provided only after repeated insistence but it contained only very vague and imprecise allegations, particularly regarding injury. He strongly requested the Canadian delegation to take these problems seriously into account because they concerned some of the most essential requirements of fairness and justice.

45. The representative of Canada said that he had taken note of the EEC statement about the general lack of information and he would carefully examine the matter. He thought, however, that he could assure the Committee that the new Canadian procedures would be consistent with the obligations under the Code and would serve to allay the concerns of other Signatories.

D. Reports on all preliminary or final anti-dumping actions (ADP/W/33, 34, 38, 39 and 40).

46. The Chairman recalled that notifications under these procedures had been received from Australia, Canada, the EEC and the United States.

Australia

47. The representative of India said that his delegation had been on record in this Committee for having pointed out that in an anti-dumping investigation carried out in Australia against imports from India of pigment, files and rasps, power hacksaws and electric motors, his authorities had not been able, despite their best efforts, to find out the basis for initiation of these investigations; nor had they been provided with any details alleged in the petitions from the Australian producers. He wished to stress that Australian procedures not only lacked transparency but also that they were not in conformity with the provisions of Article 6 of the Anti-Dumping Code. He appreciated the efforts made by the representative of Australia in flagging these matters to the Australian authorities. He wished to express the hope that Australia would not only comply with all the provisions of the Code but would specifically make an effort to conform to Articles 6 and 13. He further said that since the last meeting of the Committee he had learnt to his satisfaction that the Australian anti-dumping investigation against Indian pigment had been terminated. He was however extremely concerned that Australia had imposed a final anti-dumping duty on the imports of electric motors. The procedures followed in this case were not in conformity with the requirements of the 1967 Code nor of the present Code. Both Codes clearly stipulated that exporters should be given all information in order to enable them to prepare their presentation. If the local industry claimed confidentiality then a non-confidential summary should be provided. Despite his authorities best efforts and repeated requests, no such information had been supplied. Similarly no information had been given to the Indian authorities until Australian customs officers had arrived for an on-the-spot investigation. Consequently the company in question had not been given a chance to know what were the allegations against it. Furthermore the provisions of Article 6 on exchange of information with exporters had not been complied with. He recalled that it had always been his delegation's position that Article 6 provided for a certain sequential procedure in which an on-the-spot investigation would come at a fairly late stage in order to verify information already provided and to obtain further information. However, in this case the first opportunity to exchange information had occurred when Australian investigators had arrived at the Indian company.

48. The representative of India further said that the margin of dumping had been calculated to be around 36 per cent and injury had been claimed on the basis of losses, reduced profits, depressed prices, low plant capacity utilization, etc. No facts or figures had been given to substantiate these allegations. The Australian authorities had not taken into account the provisions of Article VI of the General Agreement which required that in comparing the export price to the price at which the like product was sold in the exporting country, due allowance should be made for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability. The Dumping Report No. 40 concerning electric motors had not published the details of adjustments of normal value, presumably because these were confidential. In the absence of knowledge whether factors affecting price comparability had been taken into account it was impossible to know whether the calculation of the margin of dumping had been made in an appropriate manner. In particular it was not clear whether the so-called Cash Compensatory Payments (CCP) had been discounted while it had always been a firm Indian Government position that the entire CCP payments should always be discounted for any price comparison.

49. He further said that as the imports of electric motors from India constituted only 3 per cent of the Australian market it was difficult to imagine how this minimal share could cause injury to the domestic industry. He stated that his Government's position was that anti-dumping duties should be imposed on imports from a particular country only if they caused injury to the domestic industry. In the absence of relevant data it was difficult to conclude that such injury had been caused. The same lack of information occurred in anti-dumping procedures concerning pigment, files and rasps and power hacksaws. He reiterated his request that the Australian authorities should make an effort to conform their practices to the requirements of Articles 6 and 13 of the Code.

50. The representative of Australia said that his authorities practised exactly the same procedure towards India as to any other country. The main problem was that of confidentiality. Australia did not have large industries and in many of the commodities there were one or two manufacturers only. The system of statistics was such that it was easy to identify the producer in question. As to the question of cumulative effect of injury, he said that he fully shared the position expressed by the EEC representative earlier at this meeting to the effect that injury could be caused by a small percentage of the total market. As to the particular details that India was complaining about, he said that Australia having become a Party to the Code, this question would be carefully considered in order to see what improvements could be made.

51. The representative of Japan said that he wished to raise three points concerning Australian anti-dumping procedures. Firstly the period of investigation was, in many cases, longer than one year. He hoped that as Australia had accepted the Code it would follow the time-periods provided for therein. The second point concerned the calculation of normal value. In the case of transformers from Japan the investigating authorities had included an 8 per cent profit rate in the calculated normal value instead of using the profit normally realized in Japan. According to Article 2:4 of the Code the addition for profit should not exceed the profit normally realized on sales of products of the same general category in the domestic market of the country of origin. The third point related to provisional measures imposed by the Australians in the case of outboard motors. The provisional measures had been imposed shortly after the initiation of the investigation without sufficient evidence of dumping. He considered that procedures followed in this case were in conflict with Article 10:1 of the Code. He requested the Australian authorities to withdraw the provisional measures without delay.

52. The representative of Australia said that it was often difficult to get information from Japanese producers and this was an important factor delaying some investigations. Furthermore the information, when finally available, was sometimes irreconcilable with that which was otherwise known from other sources. In such cases the procedure of making necessary adjustments was very time-consuming. However some steps had been recently taken to facilitate the task of the investigating authorities and shorten the period of investigation. As far as the transformers were concerned he said that it was particularly difficult because of the nature of the product and the openness of the Australian market. The percentage profit used in calculating the normal value was established on the basis of necessary adjustments because similar transformers sold in the Japanese market corresponded to different requirements than those for export to Australia. Consequently the profit percentage used was the average profit that had been obtained in the

electrical goods industry in Japan which he believed was in conformity with the notion of "products of the same general category". Referring to the case of outboard motors he said that there was no doubt that the Australian industry was facing a great threat of injury and the provisional margin of dumping had been calculated on the basis of the best information available at the time (for example price lists in Japan). This information coupled with the doubtless threat of injury seemed to be a sufficient justification for the prompt imposition of provisional measures.

53. The representative of Romania said that he had requested the Australian authorities to re-examine the need of maintaining anti-dumping duties on electric motors, imposed three years ago. He added that since that time there had been no exports from Romania to Australia of this product.

54. The representative of India said that he had listened with great interest to explanations given by the representative of Australia to his questions. These questions concerned the fundamental problems for the functioning of the Code but some of the responses were not sufficiently clear or convincing. He was however reassured by the fact of Australia's acceptance of the Code and the promise that further attention would be given to these questions.

EEC

55. The representative of Romania referred to an EEC action concerning sodium carbonate and said that the exporter had fully respected the undertaking given in accordance with the EEC suggestion. Subsequently the Romanian exporter himself had proposed a revision of this undertaking and had invited the Commission to make a new suggestion on the minimum price. On the basis of the new suggestion the exporter had submitted a proposal for a new undertaking. He had not received any reply but some time later he had learned from the Official Journal that the EEC Commission had imposed provisional anti-dumping duties on his product. It was evident that there was no obligation to accept price undertakings but one should bear in mind that undertakings constituted a constructive solution provided by the Code, in particular in cases covered by Article 13. This Article clearly foresaw that the possibilities of constructive remedies should be explored before applying anti-dumping duties on products imported from developing countries. Taking this into account he requested that the Commission and the member States consider the undertaking offered by Romania with a view to accepting it and thus removing the anti-dumping duty on sodium carbonate.

56. The representative of the EEC said that the reopening of an investigation did not imply that there had been a violation of existing undertakings. When a country accepted an undertaking based on a fixed minimum price there was a need to revise this from time to time so as to take into account inflationary changes of prices. The purpose of reopening an investigation was to revise minimum prices. In this context he wished to recall that the EEC anti-dumping policy with regard to state trading countries was one of the most liberal of all Parties to the Code. Very few Parties accepted price undertakings, instead of imposing anti-dumping duties, on conditions as liberal as the EEC. However from time to time it was indispensable to revise these undertakings if they became out-dated because of inflation. In the case of reopening of an investigation there would be a new examination of dumping and of injury and consequently exporting countries would be informed about the outcome of the investigation. If at that point in time exporters proposed an undertaking the

Commission would be ready to discuss such a possibility. He stressed, however, that the final outcome of such discussions would also depend on the agreement of the EEC in its totality.

E. Questionnaires used in anti-dumping investigations

57. The Chairman recalled that a number of questions and comments had been raised at previous meetings with respect to questionnaires and on how they should be completed.

58. The representative of Japan said that a general problem had arisen in the context of replies to the US questionnaires, namely that the exporters were required to submit all the required information on magnetic tape. It caused serious problems and costs to the respondents, in particular to those who did not use the same computer system as the US authorities. He also referred to the EEC practice to request replies to a questionnaire within thirty days from the date on which the notice of the opening of an investigation had been published. He considered that, given the unavoidable postal delays, this time-period should be thirty days from the reception of the questionnaire.

59. The representative of the United States said that the request for information on magnetic tape resulted from a desire to handle large amounts of data in the most efficient fashion. However this request was not mandatory and any firm that thought it had valid reasons not to submit data on magnetic tape should contact the investigating authorities which would find an appropriate solution.

60. The representative of the EEC said that whenever a respondent asked for an extension of the time-period for replies such extension was generally granted.

F. Annual review and the report to the CONTRACTING PARTIES

61. The Chairman said that the discussion of items A-E of the agenda might constitute a basis for the annual review of the implementation and operation of the Agreement. The secretariat had prepared a draft of the report to the CONTRACTING PARTIES (ADP/W/43) for examination by the Committee. He also recalled that it had been agreed at the special meeting of 14 June 1982 that the Committee would revert, during its annual review, to the issues raised by several Parties in the context of the contribution to the Ministerial Meeting.

62. The representative of Switzerland said that as far as the discussion in the Committee was concerned one could distinguish two general areas. In the first area several problems had been presented and the discussion had shown that there was no divergence of opinion but difficulties had nevertheless arisen in practice. In the other area there were divergencies of views and no agreement had emerged as to how to resolve them. He thought that in this first area, where there were no real divergencies it should be possible to agree on a common approach and, for example, issue some guidelines. One such problem was the on-the-spot investigations. There had been many discussions of that issue but after a close scrutiny one could conclude that there was no divergence of views, only some practical problems which could easily be overcome or avoided if there had been appropriate guidelines adopted by the Committee. It seemed that nobody objected that the questionnaires should be sent not only to the exporters but also to the governments if the

latter so wished, that on-the-spot investigations should be notified by a separate note and not mixed up with other communications, that on-the-spot investigation should be carried out at a later stage of the investigation procedure and that it should supplement, or verify, the available information, that on-the-spot investigations should be arranged - not only as a matter of legal requirement of the Code but of courtesy and for practical reasons - with the importing country, etc. This list was not exhaustive but illustrated a possibility of drafting an understanding which would facilitate work in this field. There were other fields where positions were so close that formalizing them through an appropriate understanding was feasible.

63. The representative of the EEC supported the representative of Switzerland and agreed that there were certain subjects that had been discussed many times and on which there was no disagreement. He was ready to contribute to an exercise aiming at elaborating appropriate guidelines. One of the issues was certainly the on-the-spot investigations. Another such issue was the information about the complaint to be given at the initiation of an investigation, and there were several others where such guidelines could easily be elaborated.

64. The representative of the United States concurred with the two previous speakers. He suggested that prior to the next meeting of the Committee a special group be established to examine the possiblity of working out some guidelines.

65. The representative of Japan supported the proposal made by the representative of Switzerland. He added that in cases where a number of countries were facing the same problems it should be possible to work out some understandings in the Committee to ensure better implementation of the Code.

66. The representative of Czechoslovakia agreed with the Swiss proposal. He further said that, on many occasions, a number of delegations had expressed their preoccupations with regard to the implementation of the Code. These preoccupations were not abstract but concerned concrete problems. The Committee had agreed to discuss implementation problems and this could be done in the special group proposed by the representative of Switzerland.

67. The representative of India recalled that his delegation had flagged implementation problems on several occasions in the past. Some of these problems had already been discussed but it was necessary to work out appropriate solutions in order to ensure better implementation of the Code and better functioning of the Committee. For this reason he wished to associate himself with the proposals made by the representative of Switzerland and Czechoslovakia.

68. The representative of Hungary supported the Swiss proposal. He also suggested that delegations should propose, in time for the meeting of the Group, items they considered should be included in the agenda of such a meeting.

69. The representative of Romania said that although the Committee had functioned in a satisfactory manner there had been an increased number of anti-dumping actions and some problems had arisen in this context. The Committee should, therefore, play a more important role in ensuring that disciplines imposed by the Code were fully observed. It could be done through

appropriate recommendations of the Committee. He agreed that the Working Group proposed by the representative of Switzerland could prepare such recommendations.

70. The Chairman said that there was general support for the Swiss proposal. The Committee would therefore establish an ad hoc group to prepare recommendations on issues where agreement seemed possible and report to the Committee. The secretariat, on the basis of existing records and proposals from delegations, should prepare a list of issues that had been raised and where there were some points of agreement. It was so decided.

71. The Committee examined and adopted the annual report to the CONTRACTING PARTIES (L/5405).

G. Other business

72. The representative of Australia said that he would like to put for general discussion a problem which had been of concern to important sectors of Australia's industry, namely "secondary dumping". He hoped to present a more detailed paper, which would be circulated to Parties, for discussion at the next meeting. For the moment Australia had not yet formed a firm view on all aspects of this matter, and would benefit from other Parties' opinions. Industries which could be affected by secondary dumping had several distinct manufacturing stages where manufacture could be accomplished in an integrated plant or in separate plants for each stage. An example, which should not be taken to indicate an actual case, was the chemical industry, say PVC of which the manufacturing steps were: ethylene, chlorine, vinyl chloride monomer (VCM), polyvinyl chloride (PVC), PVC tubes, PVC sheeting, etc. If the product of any manufacturing stage, say VCM was dumped into a country which then manufactured one or all of the following stages and exported the product to a third country which had a manufacturing industry for that product thereby causing injury, then the cause and effects of the injury was the same as if the final product had been dumped. For instance, if VCM was dumped into a country and PVC was exported to a country with a PVC industry, the effect was the same as if PVC were dumped.

73. He gave examples of actual cases Australia had experienced: (i) input material was dumped into a country which then exported the next stage product to Australia at exceedingly low prices; (ii) a ship was chartered at a rate below the normal ruling rate and the charterer shipped goods to Australia at a rate which enabled his goods to be landed at a very low c.i.f. price; (iii) using PVC as an example, the intermediate product VCM was available at below cost price in the exporting country and the final product PVC was exported at a very low price. The last example illustrated that secondary dumping may be regarded as of two types: (i) on-shore, where below cost (internally dumped) products were bought from a stand-alone manufacturer, and a final product was exported at low prices, which might be termed dumped prices; (ii) off-shore, where the intermediate product was dumped into another country which then manufactured and exported the final product. The question then arose as to whether manufacturing and trading involving secondary dumping could be regarded as occurring "in the ordinary course of trade". Australian industry was inclined to the view that it could not be so regarded. The GATT recognized dumping as an unfair practice, and there would seem to be a logical inconsistency if trade involving dumping were considered to be in the ordinary course of trade. Trade would not ordinarily be carried out without profit or

at a loss. He again stressed that his authorities had not come to a final view, but would welcome the views of other Parties, before putting up a formal paper for their consideration.

74. The representative of the United States said that Australia had raised a very important issue. He would like to see a detailed written submission. His initial reaction was of deep concern, because some of the remarks made could lead to the conclusion that the fact that something was priced at a low level was, in itself, an unfair practice. Furthermore he thought that using the term "dumping" was not appropriate in this context. The very concept of up-stream or down-stream dumping had raised many questions, going to the very heart of what dumping meant. The matter needed further reflection and the paper promised by the representative of Australia would certainly be very helpful.

75. The representative of the EEC agreed with the United States' views. Although he had some sympathy with the Australian problem he thought that it was more a question for the industry than for the GATT. The General Agreement was clear that there was no such thing as "secondary dumping". If one applied the normal GATT test, namely the domestic price in the country of exportation, then the conclusion in all the examples given by the Australian representative was that there was no dumping. The fact that certain inputs had been dumped would not lead to the conclusion that, as far as the final product was concerned, there had not been normal conditions of trade. The test of cost of production would also lead to a no dumping conclusion because there was nothing abnormal in the fact that producers used imports they could buy in the normal market under normal market conditions even if these normal conditions implied dumping. The investigating authority had to calculate production costs on the basis of the real costs for the producer. In these circumstances the reply to the Australian problem was clear - at least under the General Agreement and the Code - there was no dumping and nothing could be done about it.

76. The representative of the United Kingdom speaking on behalf of Hong Kong said that the problem raised by Australia was a new subject in relation to the Code. The Code did not cover it and its concepts were quite different. He drew the attention of the members of the Committee to the proliferation of anti-dumping measures under the existing concepts and said that if the Code was to also include secondary dumping it would lead to even further proliferation of anti-dumping actions. He thought that the investigation of sources of inputs into a particular product would question the rights of a producer to take advantage of the opportunities in that particular market situation. This could have very dangerous consequences.

77. The representative of Australia thanked the representatives who had reacted to the question he had raised and said that he was aware of difficulties inherent in putting into practice any possible remedy for what was a real problem. He considered that this problem was sufficiently important to deserve further examination. He wished to assure the Committee that Australia was not considering how to react to low price imports but to imports which were manufactured from inputs which at one stage or another had been dumped. He said that he would shortly submit a more detailed paper on the matter.

Date of the next meeting of the Committee

78. The Chairman said 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 25 April 1983.