

GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Anti-Dumping Practices

MINUTES OF THE MEETING HELD ON 26-27 APRIL 1983

Chairman: Mr. M.A. Bajwa (Pakistan)

1. The Committee met on 26 and 27 April 1983.
2. The Committee elected Mr. M.A. Bajwa (Pakistan) as Chairman and Mr. R. Lempen (Switzerland) as Vice-Chairman.
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. Semi-annual reports of anti-dumping actions taken within the period 1 July-31 December 1982 (ADP/14 and addenda)
 - D. Reports on all preliminary or final anti-dumping actions (ADP/W/41, 44, 45, 49 and 50)
 - E. Anti-dumping investigation by Canada against certain electric generators exported by Italy
 - F. Annual review and the report to the CONTRACTING PARTIES
 - G. Other business
- A. Adherence of further countries to the Agreement
4. The Chairman informed the Committee that since its last meeting (25 October 1982) no further country had adhered to the Agreement.
 - B. Examination of national legislation and implementing regulations (ADP/1 and addenda)

Australia (ADP/1/Add.18/Suppl.1)

5. The representative of the EEC said that he would like to draw the attention of the Government of Australia to a number of points in the Australian legislation which seemed to be in contradiction with the

Anti-Dumping Code. He noted that Section 15 of the Anti-Dumping Act 1975 implied that any person engaged in an Australian industry could request the opening of an investigation while under the Codes only a "domestic industry" could apply for the opening of anti-dumping proceedings. He further noted that the Australian Act did not specify that a complaint should include sufficient evidence on dumping, injury and causality, as required by Article 3 of the Anti-Dumping Code. Furthermore, the Australian Act did not provide for a notice of opening of an investigation to be published prior to any measures taken. Under Section 5 constructed value was the sum "of such amounts as the Minister determines to be the cost of production or manufacture" and "an amount calculated in accordance with such rate as the Minister determines would be the rate of profit on that sale". No reference was made to the rule of Article 2:4 of the Anti-Dumping Code that the addition for profit should not exceed the profit normally realized in the country of origin and that the amount for general, selling and administrative costs had to be reasonable. Moreover, in cases of third country export price, Section 5 required the highest such export price to be chosen as normal value. This rule did not ensure that such a price was to be representative as was required by Article 2:4 Anti-Dumping Code.

6. The EEC representative further said that the Australian Act was silent on the procedure, on whether and how an investigation was carried out and on the rights of the parties involved in anti-dumping proceedings. In fact Section 15 stated explicitly that "the Minister may refer to the Industries Assistance Commission for enquiry as to the existence of dumping, subsidies and injury", which implied that he might also act without a formal investigation. There were no criteria for injury and causality nor was there a definition of what constitutes an Australian industry. Moreover, notices published in the context of anti-dumping proceedings need not set forth the reasoning of the Australian authorities. He also noted that the Australian Act did not contain any rules with regard to provisional duties, when they could be imposed, their duration and extension, and the release of securities. There was only a short reference to "securities taken under Article 42 of the Customs Act". It appeared that provisional duties could be imposed without a prior investigation and the preliminary determination of dumping and material injury and causality. In fact in 22 cases in 1982 the Australian authorities had imposed provisional duties on the day of the initiation of the procedure and in one case even before that day. Section 13(2) permitted the imposition of duties on goods which had been entered for home consumption already without "securities" actually having been collected. Such retroactive imposition of anti-dumping duties was not in conformity with the very strict rules of the Code concerning retroactivity.

7. He also said that Sections 9 and 11 contained detailed rules on third country dumping. Contrary to Article 12:3 of the Anti-Dumping Code dumping duties might be applied when injury has been caused to "a producer or manufacturer", i.e. not necessarily to the industry concerned as a whole in the third country as stipulated by Article 12 of the Code. Section 14 which, in the previous legislation included a general reference to Australia's obligations under the Codes and recognized the relevance of Australia's international obligations under its domestic law had been repealed. Australian government officials had stated that now the parties concerned would be deprived of the possibility of invoking these obligations before Australian courts of law. He concluded by saying that these were some points

where the Australian law might not be in full conformity with Australia's international obligations. Such a situation would give rise to serious concern as to the way in which Australia carried out its anti-dumping proceedings.

8. The representative of Japan wondered what the status of the Anti-Dumping Code under Australia's legal system was and whether the Code was enforceable as a part of the national legislation. It seemed to him that the Australian implementing legislation did not fully cover the contents of the Anti-Dumping Code. He noted that under Section 5(2)d of the Customs Tariff Act 1975 as amended by Section 4(b) of the Customs Tariff Act 1981, it was stipulated that the highest price for export to a third country was used as the normal value. He did not think that this method of calculation was consistent with the provision of Article 2:4 of the Anti-Dumping Code. He further asked whether the "security" provided for under Section 8(1)(b)(ii) and 10(1)(b)(ii) of the Customs Tariff Act 1975 corresponded to the "provisional measures" provided for in the Code. He considered the application of provisional measures at the time of the initiation of an investigation as not consistent with the provision of Article 10:1 of the Anti-Dumping Code. He also noted that while the Anti-Dumping Code provided detailed procedures to be followed in anti-dumping investigation, such as the right of the interested parties to present evidence in writing and orally, to meet parties with adverse interests and to present their views, the Australian legislation contained no corresponding provisions. It was therefore not clear how the interested parties could be assured the rights stipulated by the two Codes.

9. The representative of Canada said that he had doubts as to the conformity of various points in the Australian legislation with the Code although he could not exclude that some of these points were covered by implementing regulations. He asked for an explanation of the term "beneficial owner".

10. The representative of the United States said that she shared the concern expressed by the EEC representative. In addition she noted that the Australian legislation made it possible to waive the imposition of duties on a discriminating basis. She also noted the absence of provisions establishing a system for notifying the public and interested parties of administrative decisions and the reasons and bases for such decisions, as well as the absence of provisions for the initiation and conduct of investigations, for the right of participation by interested parties and for periodic review of anti-dumping duties. She was concerned about the absence of standards governing the exercise of Ministerial discretion and the grant of unfettered Ministerial discretion incorporated in various sections of the Anti-Dumping Act 1975 as amended. She was also concerned about the deletion of the original Section 14 of the Act which seemed to imply that Australia might act in disaccordance with its international obligations.

11. The representative of Hungary noted that according to paragraph 3 of Section 5 of the amended Australian legislation, special methods should be used for the determination of the normal value in cases of countries with "a monopoly or substantial monopoly, of the trade", or which "determine or substantially influence the domestic price of goods in that country". He further said that the legal basis for the eventual use of methods different from those described in Article VI:1 of the General Agreement, was the Second Supplementary Note to paragraph 1 of Article VI of the GATT. But this Note

set out quite clearly that these methods might only be used if two preconditions have been made simultaneously, i.e., there was a complete monopoly of trade and all domestic prices were fixed by the state in the exporting country. According to the Australian legislation, and contrary to the Note, it was sufficient for the use of these methods if only one of the two conditions was fulfilled. However, there was no doubt that the Supplementary Note constituted a part of the General Agreement and therefore of the Code, and it could not be changed by a Party. He further said that the choice of methods for the determination of the normal value regarding exports from countries selected on the basis of this legislation was subject to the discretionary decision of the Minister, without any precise legal orientation or limitation of his power. As to the determination of normal value on the basis of third countries' export prices and home market prices or constructed value, the choice of third countries should be made taking into account all relevant circumstances, for example, the economic development of the countries and the competitive situation of the industries concerned. He concluded by saying that for the reasons indicated, he reserved his position on the compatibility of the Australian legislation with the Code and his authorities continued to study the Australian legislation and reserved their right to make further remarks thereon, at subsequent meetings of the Committee.

12. The representative of the United Kingdom speaking on behalf of Hong Kong agreed with the previous speakers. He said that the exercise of Ministerial discretion was one of the unsatisfactory aspects of the Australian legislation. It was not only detrimental to transparency but could result in a discriminatory treatment of imports. He also said that there had been problems with obtaining satisfactory information from the investigating authorities in Australia. Finally he noted that irrespective of its internal law, Australia was bound by the Code as a party to the international treaty.

13. The representative of Czechoslovakia associated himself with the remarks made by the Hungarian representative and said that the normal value in the case of a state-trading country had to be ascertained in strict accordance with the Anti-Dumping Code. Unfortunately the Australian legislation, and in particular Section 3(c), was not in conformity with the Code.

14. The representative of Romania said that he shared the concern expressed by other speakers on the conformity of the Australian legislation with the Code. He had some problems with the provisions concerning the determination of normal value. He noted that Section 5:3 was, in its first part, not consistent with the Second Supplementary Note to Article VI:1 as it did not provide for substitute criteria. As to the second part of 5:3 he considered it inappropriate to establish, in a preconceived way, and limit criteria which could be used in the case of imports from countries covered by the Second Supplementary Note to Article VI:1. Section 5:4 contained a provision of a discretionary nature, leaving complete "carte blanche" to the Minister. In order to make this provision acceptable and limit this discretion it should be complemented by adding, at the end: "taking into account all the relevant information as provided for in the Anti-Dumping Code". He further said that the Australian legislation did not contain any provisions on price undertakings (Article 7 of the Code). The new Code substantially modified and improved these provisions as compared with the old Code and those changes should be reflected in the Australian legislation. He hoped that the representative of Australia would inform the Committee what measures would be

taken to comply with the provisions of the Code. He also said that the Australian legislation should take into account the provisions of Article 13 concerning developing countries. He concluded by saying that pending the Australian answers on various points raised at this meeting he reserved his position on the compatibility of the Australian legislation with the Code.

15. The representative of Australia said that in order to give a complete response to the questions raised it would be very helpful to have them in writing. He recalled that Australia had introduced its anti-dumping legislation in 1975 and that this legislation had been examined and considered by the former Anti-Dumping Committee as fully consistent with the 196/ Anti-Dumping Code. Since that time only some minor changes had been introduced to make this legislation compatible with the new Code. In order to fully apprehend the Australian anti-dumping legislation one should look at the complete legal environment in Australia. The starting point should be that Australia has the obligation to fulfill all requirements of the Code and that it considers itself bound by its provisions. Obligations resulting from the Code can be enforced in the courts. Furthermore, the Australian legal system contains a number of provisions of general application which are applicable to anti-dumping actions and which fulfill various obligations resulting from the Code. As these provisions are of a general application, there is no need to repeat them in a specific legislation. For example, the Administrative Decisions Judicial Review Act contains provisions applicable to anti-dumping proceedings, the Freedom of Information Act allows access to all information and to all documents held by the Government, and the common law provides natural justice to all persons in Australia. All of these laws are more than enough to satisfy any of the obligations which Australia has under the GATT. The accessibility and accountability of the administration before Australian courts can be clearly demonstrated from actual court cases. Since there is such free access to appeals on questions of procedure and questions of fact the administration has to be extremely careful in observing legal requirements including requirements of the Code. Referring to Section 14 of the Act dealing with Australian obligations under the Code which had been deleted, he said that this provision was redundant because the Australian legal system required the rules of the Code to be followed. As to the other provisions he wished to assure the Committee that the Code criteria on injury, definition of industry, investigation procedures, etc., were followed scrupulously. The Code constituted not only a basis for Australian legislation but to the extent this legislation did not cover certain provisions of the Code, parties concerned had the right of recourse to the courts if they felt that administrative action was not in conformity with the code.

16. The Chairman said that given the complexity of the matter, interested delegations should submit, by the end of May, written questions on the Australian legislation. These questions and subsequent answers by Australia would be circulated to all members of the Committee.

17. The representative of the EEC said that despite preliminary explanations given by Australia he was not totally convinced of the conformity of the Australian legislation with the Code. He regretted the approach required to scrutinize various Acts to obtain a picture of the Australian anti-dumping system. He considered that the Australian legislation needed further detailed examination by the Committee in the light of written comments.

18. The representative of Switzerland noted that the Australian anti-dumping system was extremely complex. Judging from the explanations given by the representative of Australia this system should work in a manner consistent with the Code. However, the text submitted to the Committee did not confirm this impression. References to other legal acts might, in some cases, be insufficient. He wondered whether his understanding was correct that the Code constituted a part of the domestic legislation and therefore it constituted a basis for any anti-dumping proceedings.

Canada

19. The representative of the United States asked about the present status of the new Canadian anti-dumping legislation. She also noted that the Parliamentary Sub-Committee report contained several recommendations. One was that the basic price system should not be implemented. Another provided for greater disclosure of information collected by the Department of Revenue and of the reasoning underlying its decisions. There was also a recommendation that provisions for greater public disclosure should be complemented by improved provisions on treatment of confidential information. She wished to know to what extent these recommendations had been taken into account in the current version of the Canadian legislation.

20. The representative of Canada said that a Cabinet document recommending a policy position had been submitted to Ministers before Easter and was probably being examined by them now. It would be difficult to predict, at this stage, when the new legislation would be submitted to Parliament but it should be done in the near future. As to its contents, members of the Committee could expect to be satisfied with the response to the various recommendations mentioned by the US representative.

21. The Chairman said that this item would remain on the agenda of the Committee in order to allow the Parties to revert to particular aspects of some legislations at a later stage. He also urged Parties who had not, as yet, formally notified the Committee of their actions under Article 16:6 of the Agreement to do so without further delay.

C. Semi-annual reports of anti-dumping actions taken within the period 1 July 1982-31 December 1982 (ADP/14 and addenda)

22. The Chairman recalled that an invitation to submit semi-annual reports under Article 14:4 of the Agreement had been circulated in ADP/14 on 7 February 1983. Responses to this request had been issued in addenda to this document. The following Parties had notified the Committee that they had not taken any anti-dumping action during the period 1 July-31 December 1982: Austria, Brazil, Czechoslovakia, Egypt, Finland, Hong Kong, Hungary, India, Japan, Norway, Pakistan, Poland, Romania, Spain, Sweden, Switzerland and Yugoslavia (ADP/14/Add.1). Anti-dumping actions had been notified by the European Communities (ADP/14/Add.2), Canada (ADP/14/Add.3), the United States (ADP/14/Add.4) and Australia (ADP/14/Add.5).

Australia (ADP/14/Add.5)

23. The representative of the EEC said that according to the Australian report in twenty-three cases provisional duties had been imposed on the date

of the opening of an investigation. In two other cases provisional duties had been imposed even prior to the formal opening of an investigation. It was therefore clear that no preliminary determinations, as required by the Code, had been made and therefore the measures had been imposed contrary to the Code. In addition public notices concerning these cases were very incomplete and did not give any information on reasons which had led to those decisions. The representative of Canada fully shared the concern expressed by the representative of the EEC.

24. The representative of Australia said that the problem had arisen because of different understandings of what was meant by initiation of an investigation. In Australia a complaint had to pass through a preliminary examination and only when the investigating authorities were satisfied that there was sufficient evidence of dumping and of injury did they decide to formally open an investigation. At that moment the investigating authority had already made a preliminary determination of the margin of dumping and therefore would be in a position to take provisional measures. One of the advantages of this approach was that it speeded up the whole procedure. A decision to impose provisional duties was of course open to challenge before Australian courts.

25. The representative of the EEC agreed that there should be strong evidence before the decision to open an investigation could be taken. However, he did not agree that it would be possible to confirm this evidence and arrive at a preliminary determination without having heard the parties concerned. Preliminary actions taken on the day of the opening of an investigation on the basis of a complaint were certainly contrary to the Code.

26. The representative of Canada said that although administrative decisions in Australia might be open to challenge before the courts the damage had already been done. Furthermore complaints could hardly constitute a basis for any determination because of their contentious nature. For example, Canada had been accused of having a favourable exchange rate, of exempting exports from certain taxes even if it was done in conformity with Article VI of the General Agreement and of export subsidies although it should not be related to dumping. In some cases the basis for establishing export prices had been price lists and the export price list submitted by the Australian industry. This sort of evidence could hardly be recognized as being in conformity with the Code.

27. The representative of the United States said that he too shared the concern expressed by the representatives of the EEC and Canada. He wanted to add another example of practices inconsistent with the Code. Some time ago the US Embassy had been advised that the Australian authorities would open an investigation in order to determine the normal value of a product imported from the United States. However, a cash deposit concerning the same product had already been required ten days earlier. This implied that there had been no information other than that contained in the complaint.

28. The representative of Australia said that when talking about anti-dumping proceedings in Australia, one should bear in mind the special vulnerability of Australia as a small country to dumping, which would cause damage which might be difficult, if not impossible, to repair. For this reason Australia paid particular regard to the injury aspect. If it was considered that there was a

reasonable indication of injury and sufficient indication of dumping, provisional duties were imposed to prevent further injury from being caused during the period of investigation.

29. The representative of Canada said that the anti-dumping proceedings under the Code followed a certain logic should be observed by the Parties in their anti-dumping investigations.

30. The representative of the United States referred to the investigation involving PVC and said that he was concerned with many aspects of this case. One of the major problems was the lack of transparency and inappropriate order of proceedings. For example, provisional measures had been imposed on 11 January 1982 and the exporter had been informed about this fact and presented with a questionnaire only on 19 January 1982. Also, the questionnaire did not resemble the one notified to the Committee in 1978. The normal value had been established on a country-wide weighted average basis, i.e. establishing one figure for all US producers. This procedure, in a case involving several producers, was inconsistent with the Code. Furthermore, the information supplied in response to the questionnaire had been rejected by the Australian authorities without giving the reasons. Despite the fact that there had been sales of PVC in the United States, the investigating authorities had resorted to constructed value. Again no convincing reasons for this procedure had been given and it was totally unclear how this constructed value had been calculated. It seemed that the Australian authorities had used a model which had been designed by the complainant in this case and which was based on the cost of production in Australia. This procedure was in clear contravention of Article 2:4 of the Code. While calculating the costs, the Australian authorities had taken into account the allegation that certain components in the PVC had been subsidized. In this relation he wanted to stress that the question of subsidization was conceptually and legally distinct from the question of dumping.

31. He noted that the Government of Australia had refused the request by the US Government as well as by the exporter for full explanation of the basis of the constructed value calculations. Furthermore, the information with regard to the injury had neither been provided to the US Government nor to the exporter. It was therefore impossible to analyze the conclusions by the Australian Government that indeed the injury had occurred in terms consistent with Article 3:2 and 3:3.

32. He wanted to know how this case which had involved exporters from other countries had been resolved, especially as far as exporters from Singapore were concerned, because no reference to this country had been made in the semi-annual report. Finally, he wished to register his concern with respect to time-limits which ranged from the date of initiation, namely 12 August 1980, until the final determination on 3 November 1982.

33. The representative of Australia said that the case referred to by the US delegate was a very complicated one. The number of actual and potential exporters from the United States was such that it was practically impossible to identify each one and therefore only the supplying country was named. The product in question was one of those which Australia had mentioned as an example of secondary dumping. However, only actual costs had been taken into account and there had been no attempt to address the question of secondary

dumping. The calculation of the normal value was further complicated by the fact that costs of production varied frequently and the market price was violently fluctuating. Furthermore, the product had been sold in the domestic market and for export to other countries at a loss. It was, therefore, impossible to establish the representative price in terms of Article 2:4 of the Code. In this situation the investigating authorities considered that the weighted average would be the best and fairest solution. As to the costs used for the purpose of constructed value he said that these were not Australian costs but were based on the information given by one major US producer. Furthermore, the method of calculating the normal value had been discussed with the parties concerned during special meetings organized for this purpose. As far as exporters from Singapore were concerned no dumping had been found and the case had been terminated.

34. The representative of the United States said that the case under consideration provided a very good example of communication difficulties caused by lack of transparency. The US Government had requested information on this case in October 1982 and in April 1983 and it had received a reply to the effect that the normal value calculation had been based on confidential information and therefore could not be made available. He considered this situation as very unsatisfactory and reserved his right to revert to the matter at the next meeting.

Canada (ADP/14/Add.5)

35. The representative of Finland referred to the anti-dumping investigation of stainless steel sheets by Canada and said that although the case had been terminated by a negative finding on injury, the procedure used raised serious questions of conformity with the Code. Firstly, Canada had imposed provisional measures on the basis of preliminary finding of dumping but before the existence of injury had been determined. This was clearly inconsistent with Article 5:2 which provided that dumping and injury had to be considered simultaneously. Secondly, the Canadian investigators had arrived in Finland for the on-the-spot investigation without informing the Finnish Government.

36. The representative of Canada said that in December 1982 the Department of Finance had made a preliminary finding of dumping and, at the same time, it had indicated that there had been sufficient evidence of injury. Consequently provisional duties had been imposed and the matter had been referred to the Anti-Dumping Tribunal. As the Tribunal had found that there was no injury the case had been terminated. As to the question of an on-the-spot investigation, he said that the anti-dumping notice mentioned that a visit would take place.

37. The representative of Sweden wondered whether the use of Japanese prices as a basis for opening an investigation concerning certain steel plates, dated 15 December 1982, was in conformity with the understanding on basic prices. The representative of Canada said that this understanding was not relevant to this case because there had been no use of basic prices.

EEC (ADP/14/Add.2)

38. The observer for Argentina referred to an anti-dumping investigation which included certain steel products exported by Argentina, namely iron or

steel coils. In examining the question of injury the EEC had combined market shares of all exporters. Consequently Argentine exports representing only 0.5 per cent of the EEC market, had been found as causing injury. In addition, the margin of dumping for Argentina was only 9 per cent - much lower than in the case of other exporters whose share in the EEC market was around 7 per cent. He considered that a share of 0.5 per cent and the margin of dumping of 9 per cent could hardly cause injury. He also said that the real problem seemed to be that the EEC wanted to act against exporters who had not accepted a price undertaking, which meant that the EEC had exerted an inadmissible pressure. This situation was of great concern to his authorities and the Committee should consider what criteria should be used in such cases in order to avoid anti-dumping measures being taken against exporters whose share was so minimal that they could not be causing any injury.

39. The representative of Poland said that in the case of light sodium carbonate, anti-dumping duties had been taken against Poland despite the fact that its market share in all EEC countries except the Federal Republic of Germany had been around 0.5 per cent and that the prices were in conformity with the terms of a 1979 price undertaking. Furthermore, the production costs had been compared to those of a West European producer who, because of certain restrictive practices on his home market, could not constitute the appropriate source of reference. The investigating authorities had also disregarded the fact that the main reason why the price of the Polish product was slightly lower than that of the EEC producers had been that the Polish production was based on coal while the EEC producers used petroleum. She concluded by expressing her concern that in this case the provisions of Article 3 of the Code had not been observed.

40. The representative of the EEC said that as the Community had no obligations under the Code to consult with Argentina within the Committee he would prefer to discuss this matter bilaterally. As to details of this case he was handicapped by the fact that he had been advised rather late that it would be raised and therefore did not have the necessary information to hand. The same handicap applied to the Polish question, nevertheless he could make some preliminary comments. The fact that prices corresponded to normal values established in the 1979 undertaking was not sufficient because these values had been changed by inflation. Consequently, although the undertaking had not been violated, a new investigation had to be opened in order to readjust the normal value. He further said that the normal value was established on the basis of a third country market, namely Austria. The margin of dumping had been found to be 20.32 per cent but the anti-dumping duty had been imposed at a much lower level, i.e. 9.8 per cent. It showed that the amount of duty was related to the injury.

41. The representative of Czechoslovakia expressed his concern about the lack of transparency in certain proceedings and the problem of normal value. In the notice initiating an anti-dumping investigation there had always been an indication as to which third country prices would be used as the basis for normal value. Normally Czechoslovakia would have one month to find out what these prices really were and to react. In some cases, where the third country was very distant, it was extremely difficult to get sufficient information on its prices. But even when it was possible it often happened that in the meantime the EEC changed its method and, without any warning, chose another country. He thought that certain steps should be taken in order to simplify

this procedure. Export prices from Czechoslovakia to third countries should be used whenever possible. More bilateral contacts would also be helpful to work out an appropriate method.

42. The observer for Argentina said that the EEC delegate's reply to his question clearly demonstrated that the concern expressed at the Ministerial Meeting about the participation of developing countries was not in vain. The reply was not in terms of the Code because it did not address the Argentine concern that its small market share could not cause injury. Taking this fact into account he wished to ask whether an observer would not have any explanation about the functioning of the Code and about the application of national legislation. If it was so it would lead to an absurd result, i.e. that a Party could apply its domestic legislation to a non-Party in any way it wished. His delegation was seriously concerned about this situation and would consider whether it should be brought to the attention of the Council.

43. The representative of the EEC said that there was a real problem with establishing normal value in the case of a non-market economy country. Such values were established on the basis of prices in a third country but the information about price formation was quite often confidential and could not be released. As to the selection of the third country the first choice was normally that suggested by the complainant. This suggestion had always been published and was open to objections by the exporters concerned. In more than 50 per cent of cases the country had been changed because of objections raised. However, if the objection was accepted and a new choice was made the exporting country could not be given another four week period. In order to have as much time as possible the exporting country wishing to make a counter-proposal should make it immediately after having been informed about the suggestion and not to wait until the later stage of the investigation. However, even if a preliminary determination had already been made, the basis for normal values could still be revised until the final determination had been made.

44. The observer for Columbia said that he was surprised by the reply given by the EEC representative to the question raised by the observer for Argentina. He was concerned that the GATT seemed to be splitting into different categories, i.e. those who were members of some committees and those who were not.

United States (ADP/14/Add.4)

45. The representative of Canada referred to the case of potato granules imported from Canada where the USITC had found that there had been a reasonable indication of injury. In his view the ITC decision was unclear and potentially inconsistent with US international obligations. He did not believe that the ITC had given sufficient consideration to the question of regional industry or to the question of interchangeability of products. The ITC had itself admitted that in reaching its finding it had to rely on many estimates and that the data at its disposal were not sufficient. No connexion had been established between imports and the injury to the domestic industry but nevertheless the determination was affirmative.

46. The representative of Japan referred to the case of certain lightweight polyester filament fabrics and said that the investigation had been initiated and provisional duties imposed despite the fact that the importation of the product in question had been covered by the US-Japan Agreement concluded under the MFA. He requested that this fact be fully taken into account in further proceedings on this matter.

47. The representative of the United States said that in the Canadian case only a reasonable indication of injury had to be shown and that the full examination would take place before the final decision had been made. All representations made to the ITC in this respect would be considered seriously and in a transparent manner. As to the Japanese question he noted that Article 1:6 of the MFA provided that its provisions should not affect the rights and obligations of the participating country under the General Agreement, and Article 3:1 specifically permitted other legal action under the GATT. Consequently, the MFA and Article VI of the General Agreement dealt with two separate problems. He agreed, however, that the existence of the agreement referred to by the Japanese delegation was a relevant factor in the injury determination and would be considered by the ITC if the case returned to it for final determination.

New Zealand

48. The representative of Finland said that New Zealand had initiated an anti-dumping investigation concerning two electric power transformers delivered by a Finnish firm. These transformers were specially made to fit a precise order and no similar units had been marketed either in Finland or elsewhere. New Zealand had therefore applied the cost of production method and found that the sale had been made at a loss. However, in GATT practice the sale at a loss is considered to constitute dumping only when it takes place in large quantities or over a long period of time. This was not the case. Moreover, the transformers had not been sold at a loss. As regards injury he found it highly improbable that one single order could cause material injury in the sense of Article VI of the General Agreement. Regarding the provisional measures the importer had been requested to deposit a guarantee of 10 per cent of the import price. However, at that time the transformers had already been installed and no further injury, if any, could have been caused. Therefore there had been no reason to impose provisional measures.

49. The representative of New Zealand said that he had been advised too late that this case would be raised and therefore he had not received all the necessary details from his authorities. He further noted that if members of the Committee had no obligation to respond to questions from observers the opposite was also true and the observers did not need to respond to enquiries from members. He would, however, transmit the problem to his authorities and a response would be given to the Finnish representative though not in the Committee but bilaterally.

Other matters

50. The representative of the United States proposed that in the semi-annual reports of preliminary and final duties, the actual margins of dumping should also be indicated, a practice which the United States had always followed. The Committee agreed with this proposal.

E. Anti-dumping investigation by Canada against certain electric generators by Italy

51. The representative of the EEC said that an Italian firm had participated in a public tender in Canada concerning the supply of electric generators. When the sealed offers had been opened it had been found that prices of Canadian producers had been 4 per cent lower than those of the Italian firm and consequently they were awarded the contract. Nevertheless, an anti-dumping investigation had been opened against the Italian firm and a preliminary determination of dumping had been made. The matter had subsequently been transmitted to the Anti-Dumping Tribunal for injury determination. This case raised a number of important questions. Firstly, the product in question had never been exported to Canada. There had only been an offer which had not been accepted. Article 2:1 of the Code refers clearly to a product which has been exported. In cases where the goods were not exported, even the Canadian concept of introduction into commerce could not apply. The Code did not take into account hypothetical cases in which the condition of trade might be influenced. The preliminary determination of dumping had therefore been made in contravention of the Code on the basis of a unilateral interpretation inconsistent with the present language of the Code. As to the question of injury, the preliminary determination referred to the price depressing effect of the Italian offer. However, there had been no importation and according to the Code injury had to be caused by the dumped imports. Secondly, the Italian offer could not possibly have had this effect since it had been submitted in a sealed envelope, the content of which was supposed to be confidential until it was opened together with the other bids. These queries could not be satisfactorily explained and the fact remained that the preliminary determination of injury had not been made in accordance with Article 3 of the Code. Finally the Canadian authorities themselves admitted that the generators had been products meeting specific requirements. Such products could not cause injury to the domestic industry. The whole action was therefore based on hypothetical findings and considerations; in the absence of an actual importation, the basis for this action was unclear.

52. The representative of Canada said that according to his interpretation once a bona fide or irrevocable offer was made, the product in question was introduced into the commerce and therefore the action was in conformity with Article 2:1. As to the price-depressing effect he explained that the Italian firm had already made offers in previous tenders and therefore there had been a strong anticipation that it would offer low prices. The Canadian industry, aware of this fact, had deliberately bid at lower prices. As there was no importation the duties would not be applicable but the Anti-Dumping Tribunal would determine whether such an action might cause injury in possible future tenders involving similar or like products.

53. The representative of the United Kingdom speaking on behalf of Hong Kong said that he was in complete agreement with the EEC as to the inappropriateness of the Canadian action. He could not accept an interpretation of the Code according to which dumping could exist in the absence of an exportation, a sale and a contract. He also could not accept that in such a situation injury might be found. He said that as the matter was of interest to the operation of the Code, members of the Committee should be informed about further developments in this case.

F. Annual review and the report to the CONTRACTING PARTIES

54. The Chairman referred to a decision taken by the GATT Council at its meeting of 20 April 1983 (C/M/167, page 8) inviting the MTN Committees "to take account of the Ministerial decision in their annual reports and to transmit these reports to the Council, so that the Council can assist the CONTRACTING PARTIES in their review called for in that decision, in the light of these reports and of observations by delegations". He further said that the Committee should submit its report not later than 10 October 1983. As the regular autumn session of the Committee would take place in the last week of October, the report requested by the Council had to be prepared at this meeting.

55. The Committee discussed this matter on the basis of a draft report prepared by the secretariat (ADP/W/55). The Committee adopted the report, the full text of which has been circulated in document L/5486.

56. The representative of Australia stated, with respect to paragraph 6, that his delegation had, at no time, accepted that the Australian anti-dumping legislation was inconsistent with the Code. He therefore considered that the views expressed in the second sentence of this paragraph were without prejudice to the rights of those Parties to which they were directed.

Date of the next meeting of the Committee

57. 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 will take place in the week of 24 October 1983.