GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

ADP/M/28
21 September 1990

Special Distribution

Committee on Anti-Dumping Practices

MINUTES OF THE MEETING HELD ON 23 APRIL 1990

Chairman: Mr. Maamoun Abdel-Fattah (Egypt)

1. The Committee on Anti-Dumping Practices ("the Committee") held a regular meeting on 23 April 1990.

2. The Committee adopted the following agenda:

A. Election of Officers

B. Examination of anti-dumping laws and/or regulations of Parties to the Agreement[1] (ADP/1 and addenda):

(i) Korea (ADP/1/Add.13/Rev.1/Suppl.1 and ADP/W/257)

(ii) Brazil (ADP/1/Add.26/Suppl.2 and ADP/W/258)

(iii) United States (ADP/1/Add.3/Rev.4/Suppl.1 and ADP/W/264; ADP/1/Add.3/Rev.4 and ADP/W/199, 220, 221, 230, 233, 241, 242, 243, 244, 251, 253, 263 and 263/Add.1)

(iv) EEC (ADP/1/Add.1/Rev.1 and ADP/W/190, 191, 207, 208, 215, 222, 227, 228, 234, 245, 246, 247, 248, 249, 252, 255 and 260)

(v) Australia (ADP/1/Add.1/Add.18/Rev.1/Suppl.2 and ADP/W/193, 197, 216, 223, 239, 250 and 267)

(vi) Mexico (ADP/1/Add.27 and Corr.1, and ADP/1/Add.27/Suppl.1; ADP/W/192, 200, 202, 206, 226, 229, 235 and 240)

(vii) Laws and/or regulations of other Parties.

C. Semi-annual reports by Australia, the EEC and Mexico of anti-dumping actions taken during the period 1 January-30 June 1989 (ADP/45/Add.9, 8 and 10)

[1] As used hereinafter, the term "Agreement" means Agreement in Implementation of Article VI of the General Agreement.

D. Semi-annual reports of anti-dumping actions taken during the period 1 July-31 December 1989 (ADP/46 and addenda)

E. Reports on all preliminary or final anti-dumping actions (ADP/W/254, 256, 261 and 266)

F. Ad-Hoc Group on the Implementation of the Anti-Dumping Code (ADP/W/W138/Rev.5 - Draft Recommendation on Price Undertakings in Anti-Dumping Investigations involving Imports from Developing Countries)

G. United States - Anti-Dumping Duties on Imports of Anti-Friction Bearings from Sweden (ADP/M/27, paragraphs 128-146)

H. United States - Anti-Dumping Duties on Imports of Urea from Romania (ADP/M/27, paragraphs 147 and 149)

I. United States - Procedures for administrative reviews of anti-dumping duty orders (ADP/M/27, paragraphs 161-163

J. Other business

- EEC - Anti-dumping duties on imports of compact disc players from Japan and Korea.

A. Election of officers

3. The Committee elected Mr. Maamoun Abdel-Fattah (Egypt) as Chairman and elected Mr. Kim Luotonen (Finland) as Vice-Chairman.

B. Examination of anti-dumping laws and/or regulations of Parties to the Agreement

(i) Korea (Amendment of the Presidential Decree of the Korean Customs Act on Anti-Dumping/Countervailing Duty, document ADP/1/Add.13/Rev.1/Suppl.1)

4. The Chairman recalled that at its regular meeting held in October 1989 the Committee had discussed amendments to the Presidential Decree implementing the anti-dumping duty provisions of the Korean Customs Act (ADP/M/27, paragraphs 6-11). Subsequent to that meeting the delegation of the EEC had submitted written questions on these amendments (ADP/W/257). The Committee had recently received responses from Korea to the questions raised by the EEC (ADP/W/268).

5. The representative of Korea introduced the written replies provided by his delegation in document ADP/W/268 to the questions raised by the EEC in document ADP/W/257. He noted that his delegation had also provided a

written response[1] to a question raised orally by the delegation of Canada at the regular meeting in October 1989 regarding the amendment of Article 4:8 of the Presidential Decree (ADP/M/27, paragraph 9).

6. The representatives of Canada and the EEC thanked the delegation of Korea for the written responses which it had provided to the questions raised by their delegations and indicated that they wished to have some time to study these responses and revert to the amendments to the Korean legislation at the next regular meeting of the Committee.

7. The representative of Australia noted that Article 4:7(4) of the Presidential Decree, as amended, provided that in case an administrative review was initiated in a situation where there existed a possibility that domestic industries could be injured if the anti-dumping measure in question was terminated, the anti-dumping measure would continue to be effective during the period of the administrative review even though the application period for such a measure had been terminated. Her delegation wished to know how the Korean authorities ensured that this provision was not used to achieve a de facto extension of an anti-dumping measure by the submission of a request for a review at the last moment of the period of application of such a measure.

8. The representative of Korea said that if, prior to the expiry of the period of validity of an anti-dumping measure, the domestic industry concerned considered that injury would be caused by the termination of that measure, it could request an administrative review. The filing of the request for such a review would then result in the extension of the period of validity of the anti-dumping measure. Pursuant to Article 4:7(7) of the Presidential Decree a request for such an administrative review of an anti-dumping measure had to be made not later than six months prior to the date on which that measure was scheduled to expire.

9. The representatives of Hong Kong and Australia asked whether the Korean legislation provided for deadlines for the completion of administrative reviews undertaken pursuant to Article 4:7(4) of the Presidential Decree, as amended.

10. The representative of Korea noted that under Article 4:5(12) of the Presidential Decree, as amended, a review had to be completed within six months from the date of initiation of such a review.

11. The Committee took note of the statements made and agreed to revert at its next regular meeting to the amendments to the Presidential Decree implementing the anti-dumping duty provisions of the Korean Customs Act. The Chairman invited delegations wishing to raise further questions to do so in writing by 15 June 1990 and requested the delegation of Korea to respond to such questions by 10 September 1990.

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[1]This response has been circulated in document ADP/W/269.

(ii) Brazil (Customs Policy Resolution No. 00-1582, document ADP/1/Add.26/Suppl.2)

12. The Chairman recalled that at its regular meeting in October 1989 the Committee had begun its examination of Customs Policy Resolution No. 00-1582 (document ADP/1/Add.26/Suppl.2) which contained amendments to Customs Policy Resolution No. 00-1227 (document ADP/1/Add.26/Suppl.1). The discussion of these amendments was reflected in document ADP/M/27, paragraphs 12-17. At the meeting in October 1989, the representative of the EEC had asked a number of questions on these amendments which subsequently had been circulated in document ADP/W/258.

13. The representative of Brazil provided oral responses[1] to the questions raised by the EEC in document ADP/W/258.

14. The representative of the EEC thanked the representative of Brazil for the replies given. By way of preliminary comment, he said that it seemed that under the procedures provided for in the Brazilian legislation, provisional measures could be taken rather quickly. He noted in this respect that such measures apparently could be taken even before the relevant authorities had received responses to questionnaires. This was of concern to his delegation as such a procedure did not adequately protect the rights of interested parties. He emphasized that the question of the evidence on the basis of which provisional measures were applied was important, also in the context of the ongoing negotiations in the Uruguay Round. His delegation wished to revert to this matter at the next meeting of the Committee.

15. The representative of Brazil said that the application of provisional measures required affirmative findings of dumping and consequent injury. His authorities considered that, if there was a delay in the submission of responses to questionnaires and the circumstances were such that a domestic industry was being injured, provisional measures could be imposed even before responses to questionnaires had been received.

16. The Committee took note of the statements made and agreed to revert to Customs Policy Resolution No. 00-1582 at its next regular meeting. The Chairman invited delegations wishing to raise further questions on this Resolution to do so in writing by 15 June 1990 and requested the delegation of Brazil to respond in writing to such questions by 10 September 1990.

(iii) United States

A. Revised anti-dumping regulations of the Department of Commerce (document ADP/1/Add.3/Rev.4/Suppl.1)

17. The Chairman recalled that at the regular meeting in October 1989 the Committee had had before it a notification by the United States of revised anti-dumping duty regulations of the Department of Commerce which had been

[1] These replies have been circulated in document ADP/W/277.

published in March 1989 (document ADP/1/Add.3/Rev.4/Suppl.1). Subsequent to that meeting, the Committee had received written questions on these revised Regulations from the delegation of Canada (document ADP/W/264).

18. The representative of the United States regretted that his delegation had not yet been able to provide responses to the questions raised by Canada on the revised Regulations of the Department of Commerce. His delegation would submit responses to these questions well in advance of the next regular meeting.

19. The Committee took note of the statement made by the representative of the United States and agreed to revert to the revised Regulations of the Department of Commerce at its next regular meeting.

B. Amendments to the Tariff Act 1930 resulting from the Omnibus Trade and Competitiveness Act of 1988 and the United States-Canada Free Trade Agreement Implementation Act of 1988 (document ADP/1/Add.3/Rev.4)

20. The Chairman recalled that at its regular meeting held in April 1989 the Committee had begun its examination of the amendments to the anti-dumping duty provisions of the United States Tariff Act of 1930 resulting from the Omnibus Trade and Competitiveness Act of 1988 and from the United States-Canada Free Trade Agreement Implementation Act of 1988 (document ADP/1/Add.3/Rev.4). Prior to the meeting in October 1989 the Committee had received from the United States written replies in documents ADP/W/230, 241, 242 and 243 to questions which had been raised by the delegations of the EEC (ADP/W/199), Sweden (ADP/W/220), Korea (ADP/W/221) and Canada (ADP/W/233). Further questions on the legislation of the United States had been received from Hong Kong (ADP/W/244), Singapore (ADP/W/251), Japan (ADP/W/253) and Canada (ADP/W/263 and Add.1).[1]

21. The representative of the United States informed the Committee that on 9 March 1990 interim-final rules had been published in the Federal Register which implemented certain provisions of the Omnibus Trade and Competitiveness Act of 1988 with respect to anti-dumping and countervailing duty procedures. These rules dealt in particular with downstream product monitoring, procedures for the correction of ministerial errors, submission of factual information, disclosure of proprietary information under administrative protective order and scope determinations under the anti-circumvention provisions of the Omnibus Act.[2]

22. The representative of the United States said that many provisions of the Omnibus Trade and Competitiveness Act concerning anti-dumping duty procedures had not yet been implemented and, as a result, few operational

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[1] Written replies by the United States to these questions were circulated subsequent to the meeting in, respectively, documents ADP/W/272, 273, 271 and 270.

[2] See document ADP/1/Add.3/Rev.4/Suppl.2

standards had been developed. As the administrative experience with the implementation of these provisions developed over the course of time, his authorities would be in a position to reply more definitively to some of the questions raised. Regarding the questions raised by Singapore in document ADP/W/251 on the amendment to sub-section 773(e) of the Tariff Act concerning the valuation of inputs in a constructed value calculation involving transactions between related parties, he said that the principle of verification of transfer prices in transactions between related parties in the context of a constructed value calculation was not a novel concept under the practice of the United States. He pointed out that the market price of the input provided by a related party would normally contain an element for profit. Consequently, in many cases that market price would be higher than the cost of production of the input and the amendment made by the Omnibus Act to sub-section 773(e) was therefore not expected to be used very often. Regarding the questions raised by several delegations on the amendment to sub-section 773(a) concerning fictitious markets, he said that this concept itself was also not new. The amendment merely provided guidance to determine when a fictitious market existed. The amendment had to be seen in conjunction with the pre-existing language which provided that it had to be shown that the exporter in question intended to establish a fictitious market. The mere occurrence of different price movements in the domestic market for different forms of the product under consideration would therefore not by itself be a sufficient ground to find that a fictitious market existed. As had been explained by his delegation in response to questions by the delegations of Korea on this issue, there could be many factors explaining the occurrence of such divergent price movements and his authorities would take due account of such factors.

23. With respect to the provisions of new section 780 of the Tariff Act of 1930 concerning downstream product monitoring, the representative of the United States reiterated that these provisions would not provide the basis for the initiation of anti-dumping investigations. The information obtained under the procedures foreseen in these provisions would be used in conjunction with other information which would be necessary to justify the initiation of investigations. The relevant provisions of the Agreement concerning the evidence required to justify the initiation of an investigation and the existence of special circumstances in case of the initiation of an investigation on the initiative of the authorities would be observed by his authorities in the implementation of these provisions. Moreover, these provisions did not suggest that components and downstream products were necessarily one like product; rather, these provisions were based on a recognition that such products were related and that such relationship needed to be taken into account in a determination whether or not to initiate an investigation. Regarding the provisions on measures to prevent circumvention of anti-dumping duties in new section 781 of the Tariff Act of 1930, the representative of the United States noted that several delegations had asked how the United States would define the term "related" and why under this provision the existence of a relationship between the manufacturer or exporter of parts or components and the person assembling or completing a product from such parts or components was merely

a factor to be considered, rather than a necessary condition for the application of the anti-circumvention provisions. By and large the existence of a relationship would be a very important factor in any determination as to whether circumvention was occurring. However, there were various possible ways to define the existence of a relationship between the parties. Relationship could be defined in terms of control or in terms of financial relationships. The United States considered that relationship should only be a factor to be taken into consideration because there could be situations in which, by reason of association or contractual arrangements, nominally independent parties could carry out assembly or completion operations with the intent of circumvention an anti-dumping duty.

24. In response to the questions raised by Singapore in document ADP/W/251 regarding the amendments to sections 732 and 735 of the Tariff Act of 1930 concerning the determination of the existence of critical circumstances, the representative of the United States said that the new provisions only provided for a finding at an earlier stage of an investigation that such circumstances existed but did not provide for suspension of liquidation prior to the date of an affirmative preliminary determination of dumping. Regarding the questions by Singapore and Hong Kong on the provisions in section 1317 of the Omnibus Act on third country dumping, he said that these questions were somewhat hypothetical. The primary intention of these provisions was to draw the attention to a problem which existed. The United States had no implementing legislation which would allow it to take anti-dumping action on behalf of a third country, but if such a situation arose the United States would explore all available opportunities under its legislation. In response to the question by Hong Kong in document ADP/W/244 whether the United States would apply its normal rules of origin in determining whether assembly or completion operations carried out in a third country constituted circumvention of anti-dumping duties, the representative of the United States said that the concept of substantial transformation was generally applied in all anti-dumping duty investigations of the United States. However, the United States was of the view that this concept was not an appropriate tool to determine whether circumvention of anti-dumping duties occurred and this explained why the Omnibus Act provided specific guidance to determine when assembly or completion operations in a third country constituted circumvention of anti-dumping duties. He noted that in many cases the application of the criteria in the Omnibus Act to determine the existence of circumvention and the application of the substantial transformation criteria would lead to the same result.

25. Regarding a question raised by the delegation of Japan in document ADP/W/253 on what was intended by the term "pattern of trade" in new section 781 of the Tariff Act, the representative of the United States said that this term had not been defined in the Omnibus Act or in the Regulations implementing the anti-circumvention provisions. He noted that

in the recent enquiry under section 781 concerning certain fork lift trucks from Japan[1] the Department of Commerce had interpreted this concept as involving such factors as distribution and marketing patterns and production processes with respect to the parts or components and the finished product. In response to another question raised by Japan in document ADP/W/253 on the treatment of long-standing manufacturing operations under the anti-circumvention provisions, he said that there would be no difference in treatment between such operations and newly established operations insofar as the conditions laid down in section 781 were met. Regarding the questions raised by Japan and other delegations on the provisions in new section 739 on short life cycle products, be pointed out that the intention of these provisions was not to short circuit the investigation process; these provisions only intended to recognize that for certain products it was necessary to introduce relief, when such relief was appropriate, as early as possible. However, even in the most extreme case there would still be a period of at least 100 days for the conduct of a preliminary investigation. In response to the comment of the delegation of Japan that the provisions of the Omnibus Act with respect to downstream product monitoring and short life cycle products might be inconsistent with Article 16:1 of the Agreement, he expressed the view that these provisions did not provide for additional or alternative remedies but merely contained procedures to expedite the provision of the normal anti-dumping duty remedy. Finally, regarding a question raised by the delegation of Canada in document ADP/W/263 on the applicability of the provisions in the Regulations of the Department of Commerce concerning the calculation of export price, fair value and foreign market value in the context of anti-circumvention proceedings, the representative of the United States said that these provisions were not applicable in this context.

26. The representatives of Canada and Japan said that their delegations wished to study, in detail, the responses provided by the delegation of the United States and they reserved the rights of their delegations to revert to this matter at the next regular meeting of the Committee.

27. The representative of Hong Kong said that as the replies by the United States had been made available only at the beginning of the meeting, her delegation would need more time to study these replies. Regarding the issue of the application of rules of origin, she asked whether the United States would apply the rules which it normally applied to imports also in the context of anti-circumvention enquiries. This was an important matter, in particular in view of the fact that, as had been reiterated by the representative of the United States, the existence of a relationship was not a necessary condition under the provisions of new section 781.

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[1] 54 FR 50260 (Preliminary) (5 December 1989) and 55 FR 6028 (Final) (21 February 1990).

28. The representative of Singapore said that it was unfortunate that the replies from the delegation of the United States to the questions raised by her delegation had been made available only at the beginning of the meeting. Her delegation would study these replies very closely and she reserved her delegation's right to revert to the responses at a future meeting of the Committee.

29. The representative of Korea said that his authorities had studied carefully the responses provided by the United States in document ADP/W/242 to the questions raised by his delegation in document ADP/W/221. His authorities would follow closely the implementation of the provisions of the Omnibus Act. Referring to the responses given by the United States in document ADP/W/242 on new section 780 of the Tariff Act of 1930, he asked how the concept of "diversion" in this section differed from the concept of "circumvention" as used in new section 781. In the view of his authorities there was a danger that as a result of the procedures established under section 780, the existence of an anti-dumping duty on a part or component could easily lead to the initiation of an investigation into imports of downstream products incorporating such parts or components. On the other hand, through the concept of "circumvention" the United States was seeking to attempt to expand the scope of application of anti-dumping duties to parts or components imported for assembly or completion in the United States, products assembled or completed in a third country, or slightly altered or later developed products. Thus, the two concepts of "diversion" and "circumvention" both entailed a broadening of the scope of application of existing anti-dumping measures. He asked which specific provisions in the Agreement contained the concepts of "diversion" and "circumvention". He concluded his statement by reserving his delegation's right to revert to the legislation of the United States at the next regular meeting of the Committee.

30. The representative of Australia said that her delegation had a number of questions on the legislation of the United States. As it seemed that many of these questions were addressed in the responses given by the delegation of the United States to the questions raised by other delegations, her delegation would study those replies and, if necessary, revert to the legislation of the United States at the next regular meeting of the Committee.

31. In response to the additional question by the representative of Hong Kong, the representative of the United States reiterated that in virtually all anti-dumping duty investigations the United States would apply its normal rules of origin. Even in the context of anti-circumvention enquires the United States would, to the extent possible, rely on its normal rules of origin on the implementation of the criteria of these provisions. However, the notion of "substantial transformation" was not necessarily adequate to guard against circumvention of anti-dumping duties and this explained why the United States did not rely exclusively on determinations of the origin of an imported product by the Customs Service in determining the scope of an anti-dumping duty. In

cases where parts or components were sourced from completely independent parties, the United States would be very careful in deviating from the substantial transformation concept, in recognition of the fact that such situations differed from situations in which parts or components were sourced from related parties or from parties who, while nominally independent, had some sort of contractual arrangement with the party carrying out the assembly or completion operation. With respect to the question of the representative of Korea on the term "diversion", he referred to the criteria laid down in section 780 and to the replies given by his delegation to questions from other delegations. The concept of "diversion" differed from the concept of "circumvention" in that "diversion" did not always involve assembly operations. Insofar as the legislative provisions on this matter would ever be implemented, this would be done in a manner consistent with the obligations of the United States under the Agreement and under the General Agreement. He reiterated the position of his delegation that the provisions on anti-circumvention measures were not intended to expand the scope of application of anti-dumping duties but to clarify whether certain products were already covered by an existing anti-dumping duty. Finally, he recognized that there was no specific language in the Agreement on diversion and circumvention; these were areas where the United States was interested in seeing meaningful progress in the Uruguay Round. Meanwhile, there was, however, nothing in the existing provisions of the Agreement which prevented Parties from exploring possible procedural remedies to address these problems if such remedies were consistent with the obligations of the Parties under the Agreement.

32. The Committee took note of the statements made and agreed to revert to the legislation of the United States (including the interim-final rules published on 9 March 1990) at its next regular meeting. The Chairman invited delegations wishing to raise further questions to do so in writing by 15 June and requested the delegation of the United States to respond to any additional questions by 10 September 1990.

(iv) EEC (Council Regulation (EEC) No. 2423/88 of 11 July 1988, document ADP/1/Add.1/Rev.1)

33. The Chairman recalled that at its regular meeting held in October 1989 the Committee had continued its examination of Council Regulation (EEC) No. 2423/88 of 11 July 1988 contained in document ADP/1/Add.1/Rev.1 (ADP/M/27, paragraphs 46-70). Following that meeting, the Committee had received further questions on this Regulation from the delegations of Japan, Singapore and Hong Kong (documents ADP/W/252, 255 and 260, respectively). The Committee had not yet received responses from the EEC to these questions.

34. The representative of the EEC said that his delegation had not provided written responses because of lack of time and because the submissions by the delegations of Japan, Singapore and Hong Kong were more comments than questions. Regarding the treatment of discounts and rebates

in the determination of the normal value, he agreed with the delegation of Singapore that it was reasonable to assign deferred quantity discounts and multi-product discounts to the sales under consideration. With respect to the determination of the amount for selling, general and administrative expenses in a constructed value calculation pursuant to Article 2:3(b)(ii) of the Regulation, he pointed out that, while the Report of the Group of Experts adopted in 1959 used the term "a notional f.o.b. price" in the context of its discussion of the determination of the export price, the second Report of the Group of Experts, adopted in 1960 confirmed in paragraphs 12 and 13 that the purpose of a constructed value calculation was "to construct what might be regarded as a national ex-factory sales price on the domestic market of the exporting country ...". Thus, this Report supported the view that a constructed value was a surrogate for a domestic sales price. The relevant question was therefore was what the sales price would have been if the exporter had made sales on the domestic market. It followed that the amount for selling, general and administrative expenses in a constructed value calculation had to be determined on the basis of the selling, general and administrative expenses which would have been incurred if domestic sales had taken place.

35. In this respect, the representative of the EEC denied that, as alleged by the delegation of Singapore in document ADP/W/255, there had been a change in the EEC's approach to the question of the determination of the amount for selling, general and administrative expenses in a constructed value calculation since the investigation referred to by Singapore involving cotton yarns from Turkey. That case was unique insofar as none of the exporters concerned had made sales of the like product on the domestic market; consequently, it had been impossible to determine the amounts for selling, general and administrative expenses and for profits for individual exporters by using data on other exporters. The constructed value had therefore been established by using the "any other reasonable basis" criterion. The EEC would not rule out the use of this methodology in future cases if similar circumstances arose.

36. Regarding the comments made by the delegation of Singapore in document ADP/W/255 on the methodology provided for in Council Regulation (EEC) 2423/88 for the determination of the amount for profit in a constructed value, the representative of the EEC said that the term "profitable sales" as used in Article 2:3(b)(ii) should not be misconstrued. Sales made at a loss were not disregarded in determining profitable sales, except where such sales at a loss were made in substantial quantities. Accordingly, the method followed by the EEC allowed for the fact that it might be in the ordinary course of trade for an exporter to make a certain quantity of sales at a loss in his domestic market. The approach of the EEC regarding the determination of profit in a constructed value was fully in accordance with Article 2:4 of the Agreement. The amount for profit was based on the profit actually realized by domestic producers selling the like product in the domestic market of the exporting country. Exporters for whom the constructed value was determined by the use of the actual data on selling, general and administrative expenses and profits for other exporters could verify whether the constructed value determined on that basis was in line with actual sales prices prevailing in the domestic market.

37. With respect to the question raised by the delegation of Singapore in document ADP/W/255 concerning the term "any other reasonable basis" in Article 2:3(b)(ii) of Council Regulation (EEC) No. 2423/88, the representative of the EEC pointed out that this term was only used because the information necessary to calculate the amounts for selling, general and administrative expenses and for profit was not always available. Where such information was not available, the EEC would be prepared to consider any method which would seem reasonable in light of the conditions prevailing in the domestic market. Regarding the possible use of export prices to a third country as a basis for the determination of the normal value, he said that the EEC would be prepared to use that method where it was clear that the sales to third countries were not dumped. In the experience of the EEC, this was, however, seldom the case. He disagreed with the comment by the delegation of Singapore regarding the arbitrariness of the methodology used by the EEC in constructing normal values. The amounts for selling, general and administrative expenses and for profits were based on actual data regarding sales of the like product in the domestic market.

38. On the comments by Singapore regarding the treatment in Article 2:4 of the Council Regulation (EEC) No. 2423/88 of domestic sales at prices less than the cost of production, the representative of the EEC said that the methodology provided for in this provision did not exclude that such sales could be taken into account in the determination of the normal value. However, the EEC could not accept the view that sales a loss made in substantial quantities over a considerable period of time should be used as a basis for the determination of normal value. Regarding the question of the calculation and allocation of costs of production, he noted that the EEC used Generally Accepted Accounting Principles. Most firms used these Principles and it was rare for the EEC to use a method of allocation of costs different from the method normally applied by a company for its internal purposes. Research and developments costs and start-up costs would, consequently, in most cases automatically be allocated over a certain number of years.

39. Regarding the questions raised by the delegation of Hong Kong in document ADP/W/260 concerning the criteria used by the EEC in making a choice between a constructed value and export prices to third countries and concerning the determination of the amounts for selling, general and administrative expenses and for profits, the representative of the EEC referred to the replies given to the comments by the delegation of Singapore on these issues. On the question by Hong Kong on Article 13:11 of Council Regulation (EEC) No. 2423/88, he said that this provision had so far not been used by the EEC. This provision only implied that the imposition of an anti-dumping duty entailed an increase in the cost of importation of the product subject to such duty, an increase which normally should be reflected in an increase of the resale price of that product within the EEC. He failed to see any inconsistency between this provision and the provisions of the Agreement. Where an exporter bore the cost of the anti-dumping duty, the margin of dumping automatically increased and measures to take into account this increase of the margin of dumping were fully in accordance with the Agreement.

40. Referring to the questions raised by Japan in document ADP/W/252 on Article 13:11 of Council Regulation (EEC) No. 2423/88, the representative of the EEC reiterated that if it had been shown that a dumping duty had been born by the exporter, the margin of dumping must have increased. Consequently, there was no inconsistency between this provision and the provisions of the Agreement, in particular Article 8:3 thereof. If an anti-dumping duty was imposed, such a duty could only result in a removal of injury to the relevant domestic industry if the duty resulted in an increase of the price at which the imported product was sold in the importing country. The position of Japan that it was necessary to carry out a new investigation of dumping would further lengthen the period of time during which an industry was suffering injury without there being any effective relief. On the comments by the delegation of Japan on review and refund procedures in the context of additional duties provided for in Article 13:11, the representative of the EEC said that the purpose of Article 13:11 was only to investigate whether an exporter had absorbed the cost of an anti-dumping duty and thereby increased the margin of dumping. Any subsequent review and refund procedure with respect to such anti-dumping duty would be carried out in accordance with the normal criteria to determine whether the margin of dumping had changed. For the purpose of such review and refund procedures, any additional duty imposed pursuant to Article 13:11 would be treated in the same manner as normal anti-dumping duties.

41. Regarding the comments by the delegation of Japan in document ADP/W/252 on Article 2:9(a) and 2:10 of Council Regulation (EEC) No. 2423/88, the representative of the EEC denied that the methodology for the comparison of the export price and the normal value provided for in these provisions led to an artificial increase of margins of dumping. This methodology had a firmer basis in economic theory than the assumptions underlying the comments made by Japan. Article VI of the General Agreement provided that allowance should be made only for factors "affecting price comparability". The EEC considered in this respect that in a competitive market individual sellers could not control sales prices, which were dictated by market forces. Consequently, the amount of indirect selling expenses incurred had no impact on the market price of a product and it would, therefore, be absurd to adjust prices for such indirect expenses. On the other hand, direct selling expenses affected market prices in that customers were prepared to pay different prices for a product depending upon factors such as credit terms, physical characteristics, etc. However, an expensive distribution system did not fall in this category and was often a factor which made dumping possible in the first place.

42. The representative of Hong Kong requested the delegation of the EEC to provide in writing the replies given by the EEC to the additional questions raised by her delegation. She was pleased to hear that the EEC did not exclude the use of export prices to third countries but noted that in a number of recent cases involving imports from Hong Kong the EEC had proceeded to use the constructed value. In response to the argument of

the EEC that it was inappropriate to use export prices to third countries in a situation where sales to third countries might be dumped, she said that this argument did not apply in a situation of a country with an open, unprotected domestic market where no market isolation existed. In such a situation it was not rational for an exporter to be dumping in all markets. This underlined that the choice between a constructed value approach and the use of sales to third countries had to be based on the particular market situation in the exporting country in question and she asked which criteria the EEC would use in determining whether in light of the market situation in the exporting country the use of third country export prices was or was not appropriate. She also asked whether exporters would have an opportunity to provide data on export prices on sales to third countries and whether the EEC would actually investigate whether such sales were dumped before rejecting the use of third country export prices as a basis for the determination of the normal value. Regarding the methodology used by the EEC for the calculation of a constructed value, she disagreed with the contention that constructed values in the EEC were always based on actual data and also noted that there was a certain contradiction between the description by the EEC of constructed value as a surrogate for a domestic price and the claim that a constructed value was always based on actual data. With respect to the provisions of Article 13:11 on the imposition of additional anti-dumping duties, she noted that under the Agreement dumping was defined as the existence of a difference between the normal value and export price of a product. Consequently, dumping could be eliminated not only by an increase of the export price but also by a decrease of the normal value.

43. The representative of Singapore requested the delegation of the EEC to provide its replies in writing. With respect to the comment by the representative of the EEC that in most cases third country export prices were not an appropriate basis upon which to determine the normal value, she said that this broad statement was not economically sound. It was difficult to see how a company which did not benefit from a protected domestic market could dump in all markets and still recover all its costs. The determination as to whether or not third country export prices were appropriate as a basis for the calculation of the normal value had to be made on a case-by-case basis and she requested the EEC to further explain which criteria it would use in determining whether in a particular case third country export prices could be used. Regarding the comments made by the EEC on the calculation of constructed values, she said that the essential point was that the Agreement required the use of actual data for the individual exporter of investigation. If the exporter did not sell on his domestic market, account should be taken of this fact in the calculation of the constructed value. She noted in this respect that some Parties to the Agreement used the selling, general and administrative expenses incurred with respect to export sales.

44. Referring to the comments by the representative of the EEC on the treatment of sales at a loss in the domestic market, the representative of Singapore said that there were many possible factors explaining why a firm

could sell at prices below cost of production. She mentioned in this respect as an example a firm selling a product at a price below cost in a start-up situation. She asked the EEC to explain how it would treat such a situation and to clarify how it interpreted the notions of "substantial quantities" and "extended period of time".

45. The representative of Japan recalled that his delegation had in October 1989 submitted additional questions on the EEC anti-dumping Regulation. The answers provided by the EEC at the present meeting were not satisfactory. He requested that these answers be submitted in writing as soon as possible. Regarding the comments by the EEC on the issues raised by his delegation on the methodology for the comparison of the normal value and the export price, he contested that this methodology was consistent with the requirement in Article 2:6 of the Agreement of a comparison at the same level of trade. When constructing an export price, the EEC deducted all the costs incurred between importation and resale, including indirect selling expenses, from the resale price to the first independent buyer in the EEC; on the other hand an adjustment to the normal value would be made only for direct selling expenses incurred in the domestic market. This methodology inherently led to the creation of an artificial margin of dumping and was not justifiable under the Agreement. Regarding the explanation given by the EEC of the rationale of the provisions in Article 13:11 of Council Regulation (EEC) No. 2423/88, he said that a fundamental principle of the Agreement was that the margin of dumping should be determined on the basis of a comparison between the real export price and the real normal value. However, Article 13:11 allowed the EEC to find an increase of the dumping margin and impose an additional duty without any investigation of the normal value. While the EEC had previously argued that in case of a change of the normal value there was always the possibility to request a review of the anti-dumping duty, this was a time consuming procedure during which there could easily be changes of the normal value. He reserved his delegation's right to revert to Council Regulation (EEC) No. 2423/88.

46. The representative of the EEC said that he had taken note of the request for the submission of written replies; his delegation would see what could be done in this respect. It seemed to him that certain delegations almost automatically qualified as unsatisfactory responses and explanations provided by Parties applying anti-dumping measures without reflecting on such responses and explanations. With respect to the issue of the use of third country export prices as the basis for the establishment of the normal value he said that, while it was true that the EEC had not often used this method, it was not excluded. More in general he disagreed with the view which seemed to underlie the comments by other delegations that a constructed value calculation was an arbitrary exercise; he referred in this respect to a recent investigation in the EEC in which exporters had urged the EEC authorities to base the normal value on the constructed value rather than on domestic prices. He further reiterated that it was unlikely that if an exporter dumped in one market he would not be dumping in another market as any price differential would be quickly

eliminated through arbitrage. It was not correct to argue that a company could not dump in all markets. Worldwide dumping was in particular possible in case of multi-product firms which could dump one product and cross-subsidize such dumped sales on the basis of sales of other products.

47. On the methodology for the calculation of the constructed value, the representative of the EEC reiterated that the components of such a constructed value were always based on actual data concerning the production and sale of the like product in the domestic market of the exporting country. Regarding the question of the treatment of sales below cost, he said that the "extended period of time" was normally the investigation period. No fixed percentage existed under the EEC legislation for determining when quantities of sales at a loss were substantial but this percentage would be significant. In response to the question by the delegation of Singapore on research and development costs and start-up expenses, he reiterated that the EEC generally relied on the cost accounting method normally used by the company in question which implied that such costs would be spread over time. He added that, given the time which it took a domestic industry to prepare a complaint, it was highly unlikely that an exporter in a situation of start-up production could ever be subject to an anti-dumping investigation.

48. With respect to the comments made by the representative of Japan on the treatment of indirect selling expenses in the comparison of export price and the normal value, the representative of the EEC reiterated that differences in such expenses were not differences affecting price comparability because they did not affect the prices consumers were willing to pay. Moreover, to make an adjustment for such expenses would be incompatible with the rationale of anti-dumping actions as the high costs of a domestic distribution system, which was reflected in large indirect domestic selling expenses, was often a factor which made dumping possible. It would also be unfair to exporters selling to unrelated importers if, in case where exports were made through related importers, all indirect selling expenses were deducted from the domestic price. With respect to the provisions of Article 13:11, the representative of the EEC noted that these provisions would not preclude an exporter from arguing that the absence of an increase of the resale price in the EEC was due to a reduction of the costs of production of the imported product.

49. The Committee took note of the statements made and agreed to revert to Council Regulation (EEC) No. 2423/88 at its next regular meeting. The Chairman requested those delegations wishing to raise further questions on this Regulation to do so in writing by 15 June and he requested the delegation of the EEC to respond to such questions by 10 September 1990.

(v) Australia (Anti-Dumping Authority Act of 1988, Customs Legislation (Anti-Dumping Amendments) Act 1988, Customs Tariff (Anti-Dumping) Amendment Act 1988, document ADP/1/Add.18/Rev.1/Suppl.2)

50. The Chairman recalled that at its meeting in October 1989 the Committee had continued its discussion of amendments to the Australian anti-dumping legislation introduced in 1988 (ADP/M/27, paragraphs 71-81).

At that meeting the Committee had had before it in documents ADP/W/216 and 250 responses from the delegation of Australia to questions submitted by the United States, the EEC and Korea. More recently the Committee had received in document ADP/W/267 responses by the delegation of Australia to additicnal questions raised by the delegation of the EEC in document ADP/W/239. The Chairman noted that in these responses mention was made of recent amendments to the Australian Customs Act of 1901 and he expected that these amendments would be circulated in due course to the members of the Committee.[1]

51. The representative of Korea, referring to the terms "is likely to be imported" and "may be imported" in section 269 TB of the Customs Legislation (Anti-Dumping Amendments) Act 1988, said that to allow a petition to be filed prior to the actual importation of the product in question was inconsistent with the term "introduced into the commerce of another country" in Article VI of the General Agreement.

52. The representative of the EEC said that his delegation needed more time to study the replies given by Australia to the questions raised by his delegation and he therefore reserved his delegation's right to revert to the Australian legislation at the next regular meeting of the Committee.

53. The representative of Singapore said that her delegation had not yet had the time to formulate written questions on the Australian legislation. She asked if the delegation of Australia could provide some information on guidelines adopted in September 1989 regarding the determination of material injury, the notion of "extended period of time" and the calculation of the normal value.

54. The representative of Brazil reserved his delegation's right to submit questions on the Australian legislation at a future date. He requested the representative of Australia what was meant by the provision in section 22(1)(b) of the Anti-Dumping Authority Act 1988 that the Authority "is not bound to act in a formal manner".

55. The representative of Australia, referring to the comment made by the representative of Korea, said that the interpretation of the term "introduced into the commerce of another country" was a controversial issue. In any event, under the Agreement Australia was entitled to take anti-dumping action in case of a threat of material injury. In response to the question by the delegation of Singapore, he explained that in March 1989 a report had been issued by the Anti-Dumping Authority which dealt with the determination of material injury and the interpretation of the notion of "extended period of time". His delegation had provided information on the substance of this report in document ADP/W/267. At this stage the Australian authorities had not taken a decision on how to respond to the conclusions of the report. The report had also dealt with

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[1]See document ADP/1/Add.18/Rev.1/Suppl.3

the determination of the profit element in a constructed value calculation. In December 1989 a legislative amendment had been enacted providing that no amount for profit should be included in a constructed value calculation in a case where sales in the domestic market were made in substantial quantities over an extended period of time. In response to the question by the representative of Brazil, he emphasized that the Anti-Dumping Authority acted in full accordance with the provisions of the Agreement and took into account the views of all interested parties. He requested the representative of Brazil to further explain his concerns in this respect.

56. The Committee took note of the comments made and agreed to revert to the amendments to the Australian anti-dumping legislation at its next regular meeting. The Chairman invited delegations wishing to raise further questions to do so in writing by 15 June 1990 and requested the delegation of Australia to respond to such possible questions by 10 September 1990.

(vi) Mexico (Foreign Trade Regulatory Act implementing Article 131 of the Constitution of the United Mexican States, document ADP/1/Add.27 and Corr.1, pp. 2-13; Regulations against unfair International Trade Practices, document ADP/1/Add.27 and Corr.1, pp. 14-26, and Decree Amending and Supplementing the Regulations against Unfair International Trade Practices, document ADP/1/Add.27/Suppl.1)

57. The Chairman recalled that at the regular meeting held in October 1989 the Committee had continued its examination of the Mexican anti-dumping law and regulations (ADP/M/27, paragraphs 82-95). At that meeting the Committee had had before it in documents ADP/W/206 and 240 responses from the delegation of Mexico to questions raised by the United States, Canada, the EEC, Brazil and Australia.

58. The representative of Brazil, referring to the last sentence of paragraph 92 in document ADP/M/27, requested the representative of Mexico to explain what was meant by the term "intended to be imported" in Article 10 of the Foreign Trade Regulatory Act.

59. The representative of Mexico said that the provision referred to by the representative of Brazil had never been used in practice. It was therefore difficult to clarify how this term would be interpreted in particular cases. This question was closely related to the issue of the interpretation of the term "introduced into the commerce of another country" in Article 2:1 of the Agreement. His authorities were following closely the discussions on this matter in the Uruguay Round and the results of these discussions would be duly taken into account in the implementation of this provision.

60. The Committee took note of the statements made. The Chairman said that the Committee had concluded its examination of the Mexican anti-dumping legislation.

(vii) Laws and/or regulations of other Parties

61. No comments were made under this item. The Committee agreed to keep on the agenda for its next regular meeting the item "laws and/or regulations of other Parties.

C. Semi-annual reports by Australia, the EEC and Mexico of anti-dumping actions taken during the period 1 January-30 June 1989 (ADP/45/Add.9, 8 and 10)

62. The Chairman recalled that at its meeting in October 1989 the Committee had agreed to postpone its consideration of the semi-annual reports by Australia (ADP/45/Add.9) and the EEC (ADP/45/Add.8) in view of the fact that these reports had been received very late. Moreover, the semi-annual report by Mexico for the first half of 1989 had not yet been submitted to the Committee at that time.

63. No comments were made on the semi-annual reports by Australia and Mexico.

64. The representative of Hong Kong said that on page 2 of the semi-annual report by the EEC (ADP/45/Add.8) Hong Kong was mentioned as a country which had been subject to initiation of an anti-dumping investigation involving exports of fertilizer. However Hong Kong did not export that product. She also noted that the report failed to make mention of an investigation initiated in May 1989 concerning imports of denim from Hong Kong.

65. The Committee took note of the statement made by the representative of Hong Kong.

D. Semi-annual reports of anti-dumping actions taken during the period 1 July-31 December 1989 (ADP/46 and addenda)

66. The Chairman informed the Committee that the following Parties had not taken any anti-dumping actions during the period 1 July-31 December 1989: Austria, Brazil, Egypt, Finland, Hong Kong, Hungary, India, Norway, Pakistan, Poland, Romania, Singapore, Switzerland and Yugoslavia. Semi-annual reports by Parties who had taken anti-dumping actions during this period had been received from Canada (ADP/46/Add.2), New Zealand (ADP/46/Add.3), the EEC (ADP/46/Add.4), Australia (ADP/46/Add.5), Korea (ADP/46/Add.6) and Sweden (ADP/46/Add.7). No semi-annual reports covering the second half of 1989 had been received from Czechoslovakia, Japan, Mexico and the United States. The Chairman urged the delegations of these Parties to submit their semi-annual reports without any further delay.[1]

[1]The semi-annual report by the United States was circulated subsequent to the meeting in document ADP/46/Add.8.

67. The Committee examined the semi-annual reports by the Parties who had notified anti-dumping measures taken during the second half of 1989 in the order in which these reports had been circulated:

Canada (ADP 46/Add.2)

68. The representative of Yugoslavia noted that on 25 August 1989 Canada had opened an anti-dumping investigation of imports of women's leather boots from six countries, including Yugoslavia. Exports from Yugoslavia of this product represented 0.46 per cent of the total volume of imports from the countries concerned. Three countries together accounted for 97 per cent of these imports. She wondered how under these circumstances the imports from Yugoslavia could be regarded as causing injury to the domestic industry in Canada, the total production of which was approximately 12 million pairs in 1988. She urged the Canadian authorities to take account of the small volume of imports from Yugoslavia when making an injury determination. This case once again illustrated the need for the exemption from anti-dumping measures of imports from countries with de minimis market shares.

69. The representative of Hong Kong, referring to administrative reviews of two outstanding measures on imports of photo-albums (ADP/46/Add.2, page 4) requested the delegation of Canada to explain who had requested these reviews and on what information these reviews had been based. She noted in this respect that according to the report the findings made in this review had been based on the best information available. She also asked what would be the duration of the definitive anti-dumping duty which had been renewed on 30 November 1989.

70. The representative of Canada said that a review had been carried out of the normal values in the cases concerning photo-albums from Hong Kong. This review of normal values should not be confused with the current review of injury by the CITT. With respect to the reviews of the normal values, he explained that there had been no requests for these reviews. Under the Canadian procedures such reviews were normally undertaken once a year, depending on the circumstances, at the initiative of the Canadian authorities. Regarding the review of injury by the Canadian International Trade Tribunal, he said that this review had not yet been completed. He hoped to be able to provide information on the results of this review at a future date. In response to the comments by the representative of Yugoslavia, he stated that the footwear case was now being investigated by the Canadian International Trade Tribunal. In Canada the cumulative assessment of the effects of imports from various sources was not mandatory. It was possible for the Tribunal to find that, in view of the small volume or low market penetration of imports from a particular country, such imports were not contributing to the injury to the domestic industry and to exempt such imports from the injury determination.

71. The representative of Singapore, referring to administrative reviews of anti-dumping measures on photo-albums from Singapore (ADP/46/Add.2, page 9) asked whether the response given to the representative of Hong Kong

also applied to these cases. She also asked the representative of Canada to clarify the status of the proceeding concerning drywall screws (ADP/46/Add.2, page 8).

72. The representative of Canada replied that with respect to the administrative reviews of the measures on photo-albums from Singapore the situation was the same as with respect to the administrative reviews of the measures on photo-albums from Hong Kong. Regarding the outstanding measure on imports of drywall screws from Singapore, he said that in this case a review of the normal value had been carried out.

73. The Committee took note of the statements made.

New Zealand (ADP/46/Add.3)

74. No comments were made on this report.

EEC (ADP/46/Add.4)

75. No comments were made on this report.

Australia (ADP/46/Add.5)

76. No comments were made on this report.

Korea (ADP/46/Add.6)

77. No comments were made on this report.

Sweden (ADP/46/Add.7)

78. No comments were made on this report.

79. The Chairman concluded the discussion of this agenda item by saying that at its next regular meeting the Committee would revert to the semi-annual reports which had not been submitted in time for the present meeting.

E. Reports on all preliminary or final anti-dumping actions (ADP/W/254, 256, 261 and 266)

80. The Chairman noted that notifications of preliminary and final anti-dumping measures had been received from the delegations of Australia, Canada, the EEC, New Zealand and the United States.

81. No comments were made on these notifications.

F. Ad-Hoc Group on the Implementation of the Anti-Dumping Code (ADP/W/138/Rev.5 - Draft Recommendation on Price Undertakings in Anti-Dumping Investigations involving Imports from Developing Countries

82. The Committee had before it in document ADP/W/138/Rev.5 a draft recommendation on the use of price undertakings in anti-dumping investigations involving imports from developing countries, which had been submitted to the Committee by the Ad-Hoc Group in April 1989. At its meeting in October 1989 the Committee had heard statements on this draft recommendation by the delegations of the United States, Yugoslavia and Canada and had agreed to revert to this matter at its next regular meeting (ADP/M/27, paragraphs 152-156).

83. The Chairman asked whether the Committee was in a position to adopt the draft recommendation.

84. The representative of the United States said that his authorities were still reviewing the draft recommendation and could therefore not agree to its adoption at this time.

85. The Committee took note of the statement by the representative of the United States and agreed to revert to the draft recommendation at its next regular meeting.

86. The Chairman informed the Committee that, as a result of the intensity of the work in the negotiations in the Uruguay Round, it had not been possible to schedule a meeting of the Ad-Hoc Group in conjunction with the present meeting of the Committee. He recalled that at the meeting of the Ad-Hoc Group in October 1989 the Group had continued its discussion of a number of working papers and had discussed possible future activities of the Group. It was his intention to consult with delegations later this year on these issues.

87. The Committee took note of the statement by the Chairman.

G. United States - Anti-dumping duties on imports of anti-friction bearings from Sweden

88. The Chairman recalled that at its meeting in October 1989 the Committee had taken note of statements made by the representatives of Sweden and the United States on the matter of the imposition by the United States of anti-dumping duties on anti-friction bearings from Sweden and had agreed to revert to this matter at its next regular meeting (ADP/M/27, paragraphs 128-146).

89. The representative of Sweden asked whether the delegation of the United States could provide further information on the issues raised by his delegation at the meeting of the Committee in October 1989. He referred in this respect in particular to the methodology used by the Department of Commerce to determine the existence of a viable home market (ADP/M/27, paragraph 130).

90. The representative of the United States said that at the last meeting his delegation had provided detailed responses to the questions raised by the delegation of Sweden. Regarding the question of the home market viability test, he explained that in order to determine whether sufficient sales are made in the home market to serve as the basis for calculating the normal value, it was the practice and preference of the United States to compare the volume of the home market sales with the volumes of sales of the product in question to third countries. This was typically done within each of the categories of "such or similar merchandise" which were the categories established for the purpose of making price comparisons. However, in the case of anti-friction bearings from Sweden, given the numerous products sold and the large number of physical permutations among the various types of ball bearings, the Department of Commerce had determined that the only feasible method was to determine home market viability for each "class or kind of merchandise" as a whole, which meant that ball bearings and components of ball bearings were considered together for the purpose of determining home market viability. The Department had, however, included parts or components in the "class or kind of merchandise" for all companies subject to investigation. Six months after the investigations in question had been initiated, various respondents raised the issue that the results of the home market viability test were perhaps biased as a result of the inclusion of parts and components in the calculations. In response to this concern, the Department of Commerce had again performed the home market viability test but this time without including parts and components. In the case of spherical roller bearings of SKF Sweden the Department had found that the ratio of home market to third country sales was less than 5 per cent whether or not parts were included and thus third country sales had formed the basis for the determination of the normal value. In another case, involving an exporter from Singapore, there were deficiencies in the submission by the exporter which had made it difficult to determine home market viability. However, in this case the Department also found that the ratio of home market to third country sales did not increase significantly when parts and components were excluded from the calculation.

91. The representative of the United States further explained that with respect to ball bearings, the Department had found for FAG Germany, SKF Sweden and SKF Italy that the elimination of parts from the home market viability test led to a substantial increase in the ratio of home market to third country sales. For each of these companies the Department had examined whether it would obtain more identical matches to products sold in the United States if it used home market or third country sales. This was done on the basis that the Department's sampling methodology, under which the Department limited comparisons to sales of identical merchandise, excepting cases in which the percentage of identical matches was less than 33 per cent, should be the guiding principle for determining viable markets. With respect to ball bearings from SKF Sweden and SKF Italy, the Department had found that there was a higher percentage of identical products sold in a third country market than in the respective home markets. Therefore, in these cases third country sales had been used as a basis for establishing the normal value. Only in the case of FAG Germany

had the Department found that there was a viable home market. This determination was based on the fact that the home market was substantially larger than any third country market and that the percentage of identical matches using the home market was so great that it was unlikely that any third country market would provide a greater percentage of identical matches to products sold in the United States. Thus, the United States considered that, on the basis of the principle of the most identical matches for product-to-product comparisons, each company under investigation had been treated in the same manner. He concluded by saying that the methodology applied by the Department of Commerce in this case was consistent with the provisions of Article 2:4 of the Agreement.

92. The representative of Sweden said that his delegation needed some time to reflect on the explanations provided by the representative of the United States.

93. The Committee took note of the statements made and agreed to revert to this matter at its next regular meeting.

H. United States - Anti-dumping duties on Imports of Urea from Romania

94. The Chairman recalled that at its meeting in October 1989 the Committee had agreed to revert to this matter in view of comments made by the representative of Romania (ADP/M/27, paragraphs 147 and 149).

95. The representative of Romania said that while he had no questions on this matter at this time, he wished to reserve the right to revert to this matter at the next regular meeting of the Committee.

96. The Committee took note of the statement made by the representative of Romania and agreed to revert to this matter at its next regular meeting.

I. United States - Procedures for administrative reviews of anti-dumping duty orders

97. The Chairman said that at the regular meeting of the Committee in October 1989 the representative of Canada had made a statement regarding problems resulting from delays in the completion of administrative reviews of anti-dumping duty orders and that the Committee had agreed to revert to this matter at its next regular meeting (ADP/M/27, paragraphs 161-162).

98. The representative of Canada briefly recapitulated some of the points made by his delegation on this matter at the last regular meeting of the Committee. Each year during the anniversary month of the publication of an anti-dumping duty order in the United States an administrative review was required to be undertaken by the Department of Commerce upon request by an affected exporter, importer or member of the relevant domestic industry. The purpose of such a review was to determine the actual margin of dumping, if any, for entries of the product subject to the order in the preceding year and the amount of anti-dumping duties to be collected in the following

year. The actual margin of dumping determined for one period would be the basis for the collection of cash deposits in the next period. If the deposits collected during the period covered by the administrative review were greater than the actual margins of dumping, the excess payment would be refunded with interest, and vice versa. In theory the final results of an administrative review had to be published not later than 365 days after the anniversary month in which a review was requested. However, in practice Canadian exporters seeking administrative reviews because of anticipated refunds of overpayments or because they had ceased dumping were confronting a system which failed to conduct reviews within the twelve-month period required under the legislation of the United States. This resulted in heavy financing costs for Canadian exporters who were required to pay duty deposits even though the actual margin of dumping might be lower or non-existent. This failure on the part of the Department of Commerce to carry out reviews expeditiously in accordance with its Regulations had implications for the obligations of the United States under the Agreement. In this respect, the representative of Canada referred in particular to the preamble and the provisions of Article 8:3 of the Agreement. Canadian exporters had a number of administrative reviews outstanding, some of which since 1986. Canada had on a number of occasions raised this matter bilaterally with the United States but this had so far not produced any results. The Department of Commerce had cited heavy workload as one of the causes of the delay. However, it seemed that the problem was systemic and there was no evidence available indicating that this problem would be avoided in the future. He requested the United States to indicate how it intended to resolve this problem, which was of interest to all Parties to the Agreement.

99. The representative of the United States said that the delegation had raised a serious problem but that steps had been taken to address this matter. Following the last regular meeting of the Committee his authorities had informed the Canadian Government of the status of the proceedings in the pending administrative reviews involving imports from Canada. While it was true that these reviews had perhaps not advanced to a stage which would be satisfactory to Canada, it was unfair to suggest that these reviews had not progressed at all. Certain steps had been taken to reorganize the workload with respect to these and other cases and his authorities were seriously interested in removing the backlog of pending reviews. He noted in this respect that since the implementation of the most recent Regulations the track record of the Department of Commerce regarding current cases had been fairly good but recognized that a problem existed with respect to outstanding reviews from previous periods. His authorities were prepared to hold further consultations with Canada on this matter and were also willing to explore possible solutions of a systematic nature on the Uruguay Round to correct this problem.

100. The representative of Canada thanked the representative of the United States for his recognition of the concerns expressed by Canada on this matter. In order to further explain how the delay in the completion of administrative reviews was relevant to the obligations of the

United States under the Agreement, he pointed out, that before an anti-dumping duty order could be rescinded with respect to a particular exporter the United States authorities required a finding that there had been no dumping during three consecutive administrative reviews. Thus, there could be a situation in which a firm which had ceased dumping would nevertheless, as a result of the delay in the completion of administrative reviews, continue to have to pay anti-dumping duties for quite some time. He welcomed the willingness of the United States to examine alternative solutions to this problem. In the view of his delegation various solutions were possible. One solution would be for the United States to adopt a prospective system of duty assessment; another solution would be the introduction of a sunset provision, which would greatly reduce the burden of the conduct of administrative reviews. His delegation wished to pursue this matter further in the Committee and he requested the United States to respond to his suggestions at the next regular meeting of the Committee.

101. The representative of the United States said that his delegation would reflect upon the suggestions made by the representative of Canada. He pointed out that the United States had a procedure under which the Department of Commerce could revoke an anti-dumping duty order if during five years no interest had been expressed by any interested party. This procedure accounted for three of the four revocations mentioned in the semi-annual report by the United States for the second half of 1989. Thus, the United States had a procedure which was akin to a sunset clause and which had in practice effectively resulted in the termination of anti-dumping duty orders. Regarding the suggestions made by the representative of Canada, he said that his delegation was prepared to consider the first suggestion in the context of the Uruguay Round. His delegation was also prepared to consider a possible sunset provision, as long as such provision did not result in the automatic and arbitrary termination of anti-dumping measures without ensuring that dumping and injury were no longer found to exist.

102. The Committee took note of the statements made and agreed to revert to this matter at its next regular meeting.

J. Other business

- EEC - Anti-dumping duties on imports of compact disc players from Japan and Korea

103. The representative of Japan drew the attention of the Committee to the fact that in July 1987 the EEC had initiated an anti-dumping investigation with respect to imports of compact disc players from Japan and Korea. Provisional duties had been applied in July 1989 and definitive duties in January 1990. The methodology used by the EEC in this case raised three major issues which were of concern to his delegation. Firstly, the EEC had not made a fair comparison between the normal value and the export price. This was an issue which had often been raised by his delegation.

His authorities considered that the approach of the EEC to the question of the comparison between the normal value and export price was inconsistent with Article 2:6 of the Agreement. Secondly, his authorities objected to the application of a residual duty to imports from companies which had not been investigated. This duty corresponded to the highest dumping margin established for the exporters found to have dumped. The application of this duty was inconsistent with Article 8:1 of the Agreement, which provided that it was desirable that the amount of the duty be less than the full margin of dumping if such lesser duty was adequate to remove injury. Thirdly, by comparing weighted average domestic prices with individual prices of export sales at or below the normal value the EEC had ignored negative dumping margins and acted in a manner inconsistent with Article 2:6. He recalled that on several occasions his delegation had expressed its concerns regarding these aspects of the EEC anti-dumping practice. His authorities were disappointed about the recent imposition of anti-dumping duties on compact disc players and he urged the EEC to reconsider his decision. He reserved his authorities' right to take the appropriate steps with respect to this matter.

104. The representative of Korea said that his delegation shared the views expressed by Japan on this matter, in particular with respect to the imposition of the residual duty. He reserved his delegation's right to revert to this matter at a later date.

105. The representative of the EEC said that the compact disc players case was a very important case which illustrated the negative effects which dumping could have in the present trading system. Exporters who had been dumping compact disc players in the EEC had obtained a market share of approximately 70 per cent and created a dramatic situation for the domestic industry. If importing countries had no possibility to act against this type of import competition the very principle of free trade would be endangered. Regarding the comment made by the representative of Japan on the question of the comparison between the normal value and the export price, he said that the Regulations containing the preliminary and final findings provided a very detailed explanation of how the EEC authorities had ensured a fair comparison, in particular with respect to levels of trade. He referred in this respect to recitals 22-29 of Council Regulation (EEC) No. 112/90 which explained how the EEC had established selective normal values to take account of the fact that home market sales were made at different levels of trade. He further emphasized that all factors affecting price comparability had been taken into consideration, as was also explained in the Regulation. However, as he had stated earlier at the meeting, differences in indirect selling expenses were not differences which affected price comparability. Regarding the nature of the duties imposed, he said that individual duties had been calculated for all known exporters or producers who had co-operated in the investigation. However, other exporters or producers, who had not made themselves known or had not co-operated had been subject to the highest duty established for the investigated exporters or producers. To do otherwise would be to give a premium to exporters or producers who did not want to co-operate.

Regarding new exporters, he referred to recital 54 of Council Regulation (EEC) No. 112/90 in which the EEC Council had noted that the Commission was ready to initiate a review of any such new exporter who could show that it was not related to any of the exporters or producers subject to the definitive anti-dumping duty. Where appropriate, such a review might lead to the imposition of an individual duty for a new exporter or the exemption of such an exporter from the application of any anti-dumping duties. Regarding the comment by the representative of Japan on the comparison of weighted average domestic prices and individual export prices, he said that this method was absolutely necessary in order to avoid selective dumping.

106. The representative of Japan said that he would convey the comments made by the representative of the EEC to his authorities. If necessary, his delegation would revert to this matter in the Committee.

107. The Committee took note of the statements made.

Date of the next meeting of the Committee

108. The representative of Singapore said that in view of the late circulation of many answers to questions on anti-dumping laws and regulations of Parties it had not been possible for the Committee at this meeting to engage in an in-depth discussion of these laws and regulations. She therefore proposed that an additional meeting be held prior to the regular meeting scheduled to take place in October 1990. At such an additional meeting the Committee could concentrate on the examination of national legislation, in particular the legislation of the United States. Such a meeting could perhaps be held in conjunction with a meeting of the Negotiating Group on MTN Agreements and Arrangements.

109. The Committee exchanged views on this proposal. The Chairman concluded by saying that he would consult with delegations regarding the possibility of an additional meeting of the Committee before the regular meeting to be held in October 1990. He informed the Committee that this regular meeting would take place in the week of 22 October 1990.