GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

ADP/M/26
29 June 1989

Special Distribution

Committee on Anti-Dumping Practices

MINUTES OF THE MEETING HELD ON 25 AND 28 APRIL 1989

Chairwoman: Miss Margaret McDonald (Australia)

1. The Committee held a regular meeting on 25 and 28 April 1989.

2. The Committee adopted the following agenda:

A. Election of Officers

B. Adherence to or acceptance of the Agreement[1] by other countrie

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

(i) New Zealand (ADP/1/Add.15/Rev.1, ADP/1/Add.15 and ADP/W/195, 198 and 201)

(ii) Pakistan (ADP/1/Add.24 and ADP/W/117, 120 and 124)

(iii) United States (ADP/1/Add.3/Rev.4 and ADP/W/199)

(iv) EEC (ADP/1/Add.1/Suppl.5, ADP/1/Add.1/Rev.1 and ADP/W/190 and 191)

(v) Australia (ADP/1/Add.18/Rev.1/Suppl.2 and ADP/W/193 and 197)

(vi) Mexico (ADP/1/Add.27 and Corr.1, ADP/1/Add.27/Suppl.1 and ADP/W/192, 200 and 202)

(vii) Anti-dumping laws and/or regulations of other Parties

D. Semi-Annual Report by the EEC of anti-dumping actions taken within the period 1 January - 30 June 1988 (ADP/37/Add.9)

E. Semi-Annual Reports of anti-dumping actions taken within the period 1 July - 31 December 1988 (ADP/41 and Addenda)

[1] The term "Agreement" means Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade.

F. Reports on all preliminary or final anti-dumping actions (ADP/W/193, 203, 205 and 218)

G. Report by the Chairwoman on the work of the Ad-Hoc Group on the implementation of the Anti-Dumping Code

H. Australia - Anti-dumping duties on power transformers from Finland - Request by Finland for conciliation under Article 15:3 of the Agreement (ADP/42)

I. EEC - Anti-dumping duty investigation of imports of urea from various countries (ADP/M/24, paragraphs 101-116)

J. Other business

(i) EEC - Rules of origin applied to certain photocopiers exported from the United States to the EEC

(ii) Future work of the Committee

A. Election of Officers

3. The Committee elected Ms. Margaret McDonald (Australia) as Chairwoman and Ms. Margaret Liang (Singapore) as Vice-Chairwoman.

B. Adherence to or acceptance of the Agreement by other countries

4. The Chairwoman informed the Committee that since the regular meeting held in October 1988 no other country had accepted or adhered to the Agreement.

C. Examination of anti-dumping laws and/or regulations of Parties to the Agreement (ADP/1 and Addenda)

5. Before the Committee began its examination of anti-dumping laws and/or regulations of Parties to the Agreement, the Chairwoman drew the Committee's attention to document ADP/W/217, dated 20 April 1989, which listed written questions and answers received from a number of delegations on laws and regulations of Parties to the Agreement. After document ADP/W/217 had been circulated, the secretariat had received further questions from a number of delegations:

- Questions by Brazil on the anti-dumping legislation of New Zealand (ADP/W/219);
- Questions by Sweden on the anti-dumping legislation of the United States (ADP/W/220);
- Questions by Korea on the anti-dumping legislation of the United States (ADP/W/221);

- Questions by Korea on the anti-dumping legislation of the EEC (ADP/W/222);
- Questions by Korea on the anti-dumping legislation of Australia (ADP/W/223);
- Questions by Hong Kong on the anti-dumping legislation of the EEC (ADP/W/227);
- Questions by Brazil on the anti-dumping legislation of Mexico (ADP/W/228).

All these questions had been submitted in the week preceding the meeting or on the day before the meeting. The Chairwoman urged the Parties to submit questions on the legislation of other Parties well in advance of the Committee's meetings so as to facilitate the work of the Committee. In this respect she reminded the Committee that at the regular meeting held in October 1988 delegations had been invited to submit written questions on anti-dumping laws and/or regulations of Parties to the Agreement not later than 16 January 1989.

6. The representative of the EEC thanked the Chairwoman for recalling that at its meeting in October the Committee had agreed on a time-limit for the submission of written questions on legislation of Parties to the Agreement. His delegation had received questions within this time-limit to which it had replied in writing.[1] However, a few days before this meeting several other delegations had submitted written questions on the anti-dumping legislation of the EEC. He found it curious that certain delegations which complained about the lack of efficiency of the Committee's work had submitted their questions more than three months after the expiry of the period established in October 1988 by the Committee for the submission of written questions. The revised EEC anti-dumping Regulation had entered into force in August 1988 and delegations had therefore had sufficient time to examine its provisions. His delegation was not in a position to reply at this meeting to the questions which it had received recently and would reply at the next meeting. In light of the recently submitted questions his delegation might want to reconsider the replies which it had given to the questions raised by the delegations of Japan and the United States in documents ADP/W/190 and 191.

7. The representative of Hong Kong offered his apologies to the EEC delegation for the late submission by Hong Kong of its questions on the EEC anti-dumping Regulation. He considered that there was a need for some flexibility as regards the deadlines set by the Committee for the submission of questions on the legislation of Parties to the Agreement because many delegations lacked the expertise necessary to prepare their questions on time.

8. The Committee took note of the statements made.

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[1] See documents ADP/W/190, 191, 207 and 208.

(i) New Zealand (Dumping and Countervailing Duties Act 1988, document ADP/1/Add.15/Rev.1)

9. The Committee had before it in document ADP/1/Add.15/Rev.1 the text of the Dumping and Countervailing Duties Act 1988 which had entered into force on 1 December 1988. This Act had replaced Part VA of the Customs Act 1966 (ADP/1/Add.15) which had been discussed by the Committee at its regular meeting held in October 1988 (ADP/M/24, paragraphs 27-32). The Chairwoman said that the delegations of the United States, the EEC and Canada had submitted written questions on Part VA of the Customs Act 1966 (see, respectively, documents ADP/W/195, 198 and 201) and that answers to these questions had recently been received from New Zealand (see, respectively, documents ADP/W/213, 214 and 212). In the week before this meeting the delegation of Brazil had submitted some questions on the legislation of New Zealand, which had been circulated in document ADP/W/219. As the substantive provisions of the Dumping and Countervailing Duties Act 1988 were the same as those of Part VA of the Customs Act of 1966, the questions and answers received with respect to the previously applicable anti-dumping legislation of New Zealand were also relevant to the current legislation.

10. The representative of New Zealand said that, as explained at the meeting held in October 1988, on occasion of the acceptance of the Agreement by New Zealand the New Zealand Customs Act of 1966 had been amended substantially in order to bring the anti-dumping legislation of New Zealand into full conformity with the provisions of the Agreement. These amendments had resulted from a careful consideration of the application of the requirements of the Agreement to the situation of a small economy with a limited industrial base and at a time of significant deregulation and removal of protection. The amendments had been made by the Customs Amendment Act (No. 3) 1987, which had become Part VA of the Customs Act 1966. The provisions of Part VA of the Customs Act 1966 had been administered by the Customs Department. However, in 1988, following a review of the structure of a number of government departments, the Government of New Zealand had decided to rationalise a number of functions and to establish new Ministries with revised roles. One result of this restructuring was the decision to transfer the responsibility for the implementation of the anti-dumping and countervailing duty legislation from the Customs Department to the newly established Ministry of Commerce. This change had made it necessary to amend the anti-dumping and countervailing duty legislation. In order to reflect this transfer of responsibility the Customs Amendment Act (No. 3) 1987 had been substantially re-enacted as the Dumping and Countervailing Duties Act 1988, effective 1 December 1988, with the Ministry of Commerce as the administering authority and with the powers under the Act passing to the Ministry of Commerce and the Secretary of Commerce. In order to administer the Act on a day-to-day basis the Secretary of Commerce had established the Trade Remedies Group, which dealt with all aspects of the legislation relating to anti-dumping and countervailing duties and which was also responsible for the administration of the legislation relating to the application of safeguard measures.

11. With respect to the questions which had been raised by a number of delegations on the anti-dumping legislation of New Zealand, the representative of New Zealand said that most of these questions had been based on the previously applicable legislation, circulated in document ADP/1/Add.15, while the current legislation had been circulated in ADP/1/Add.15/Rev.1. Only a few minor textual amendments had been made in the latter version. His delegation had replied to the questions from the United States (ADP/W/195), the EEC (ADP/W/198) and Canada (ADP/W/201) in documents ADP/W/214, 213 and 212. As indicated in the preamble to each of these responses, it was not the practice of the authorities of New Zealand to provide responses of a hypothetical nature in relation to matters which might be the subject of judicial review. He reiterated that the anti-dumping legislation of his country had been framed and was administered on the basis of the provisions of the Agreement; also relevant to an understanding of the operation of the legislation of New Zealand were the laws relating to the availability of official information[1] and the availability of judicial review of administrative decisions. The representative of New Zealand concluded by saying that his delegation would be happy to reply to any additional questions which delegations might want to raise; his delegation had very recently received written questions from the delegation of Brazil and would reply to these questions in due course.

12. The representative of Brazil regretted that his delegation had submitted its questions on the legislation of New Zealand at a very late stage. He would recommend to his authorities that in the future they should respect the time-limits set by the Committee. While he had noted that some of the questions raised by his delegation had perhaps already been answered by New Zealand in reply to the questions put by other delegations, he would, nevertheless, welcome written replies by New Zealand to all questions raised by his delegation.

13. The representative of New Zealand replied that his delegation would in due course provide answers to the questions raised by Brazil; he also pointed out that some of the questions of Brazil had probably already been answered in reply to the questions put by the delegations of the United States, the EEC and Canada.

14. The representative of the EEC thanked the delegation of New Zealand for the written replies which it had provided on the questions raised by the EEC in document ADP/W/198. His delegation had not yet been able to examine these replies in detail and he therefore reserved his delegation's right to revert to these replies at a later stage. Referring to a point raised by his delegation in item 8 of document ADP/W/198, he requested the delegation of New Zealand to explain how his authorities provided for access by interested parties to information used in an investigation, e.g. data on injury.

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[1] See document ADP/W/224.

15. The representative of the United States thanked the delegation of New Zealand for the replies given to the questions raised by the United States in document ADP/W/195; his delegation had prepared some follow-up questions[1] and he requested the representative of New Zealand to give a preliminary reply to the first of these supplementary questions regarding the exclusion in Section 3(1) of the Dumping and Countervailing Duties Act 1988 from the definition of the concept of "domestic industry" of producers who were also importers of the allegedly dumped product.

16. The representative of Canada said that his delegation had studied the replies by New Zealand in document ADP/W/212; his delegation was generally satisfied with these replies but he reserved his delegation's right to revert to the legislation of New Zealand in the light of the experience regarding its implementation.

17. In reply to the question asked by the representative of the EEC, the representative of New Zealand said that, as was the case under the anti-dumping laws of many Parties, the legislation of New Zealand allowed for access by interested parties to information provided to the investigating authorities except where such information was confidential. In response to the supplementary questions raised by the United States on the treatment of domestic producers who were also importers of an allegedly dumped product for the purpose of the definition of the concept of "domestic industry" he said that, as explained in the reply by his delegation to the initial question from the United States on this issue, the definition of "industry" in the anti-dumping legislation of New Zealand excluded from this concept producers who also imported the product subject to investigation. Accordingly, in a situation described by the United States delegation in the first of its supplementary questions, in which a firm which accounted for a majority of the domestic production of the like product also imported that product, his authorities would exclude that firm from the definition of "industry". On the second example given by the United States delegation involving a situation in which a firm which imported the product subject to investigation was the only domestic producer of that product he said that such a situation was unlikely to occur in reality; in such a case that firm, as the sole domestic producer of the like product, would presumably have filed the anti-dumping duty petition which would mean that it had filed a petition against itself as importer. In the third example given by the United States delegation, involving a situation in which the firm which also imported the product subject to investigation expressed opposition against a complaint brought by another domestic producer who accounted for only a minimal proportion of the domestic production of the like product, he said that in such a case the producer who imported the allegedly dumped product would also be excluded from the "industry" definition.

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[1] See document ADP/W/225.

18. The representative of the EEC asked whether under the anti-dumping legislation of New Zealand interested parties who requested that the information which they had supplied be treated as confidential were required to provide non-confidential summaries of such information to which other interested parties could have access.

19. The representative of New Zealand replied that Section 10(5) of the Dumping and Countervailing Duties Act 1988 provided that the Secretary of Commerce could request parties who had provided confidential information to furnish a non-confidential summary of this information, or, if it was claimed that the information was not susceptible of such summary, to give the reasons why such a summary was not possible. Under this provision the Secretary had the authority to disregard any information for which a party submitting it failed to provide either a satisfactory summary or a satisfactory reason why such summary could not be made available. Unlike the anti-dumping legislation of Canada and the United States, the legislation of New Zealand did not provide for the possibility to make available confidential information to counsel for interested parties; however, interested parties enjoyed the right of access to non-confidential information and to summaries of confidential information.

20. The Committee took note of the statements made and agreed to revert to the New Zealand Dumping and Countervailing Duties Act 1988 at its next regular meeting. The Chairwoman requested Parties who wished to make further comments or ask questions on the legislation of New Zealand to do so in writing through the secretary by 7 July 1989 and she invited the delegation of New Zealand to reply in writing to any further questions by 1 September 1989.

(ii) Pakistan (Ordinance No. III of 1983, document ADP/1/Add.24)

21. The Chairwoman recalled that the anti-dumping legislation of Pakistan had been on the agenda of regular meetings of the Committee since April 1986. Written questions on the Pakistani legislation had been received from Australia (ADP/W/120), the EEC (ADP/W/124) and the United States (ADP/W/117). Following a request for written replies to these questions at the regular meeting in October 1988, the delegation of Pakistan had recently provided written replies which had been distributed in, respectively, ADP/W/211, 209 and 210.

22. The representative of the United States thanked the delegation of Pakistan for the replies given to the questions raised by the United States in document ADP/W/117. He reserved his delegation's right to revert to the Pakistani legislation at a later date, after the authorities of Pakistan has adopted implementing regulations.

23. The representative of the EEC thanked the delegation of Pakistan for the written replies to the questions raised by the EEC in document ADP/W/124. His delegation would study these answers carefully.

24. The representative of Pakistan said that his delegation had replied in writing to the questions raised by Australia, the EEC and the United States, following a request for written replies made at the meeting of the Committee in October 1988. In view of the fact that his authorities had not yet adopted regulations to implement the provisions of the Ordinance, he proposed that the Committee conclude its examination of the Pakistani anti-dumping legislation and revert to it when his authorities had issued the regulations provided from Article II of the Ordinance.

25. The representative of Australia said that at this stage his delegation had no further comments to make on the Pakistani anti-dumping legislation; however, he expected that if and when the Government of Pakistan adopted implementing regulations, the Committee would have an opportunity to examine those regulations.

26. The Committee took note of the statements made and agreed to revert to the anti-dumping legislation of Pakistan when the authorities of Pakistan had adopted implementing regulations.

(iii) United States (Tariff Act of 1930, as amended by 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)

27. The Chairwoman drew the Committee's attention to document ADP/1/Add.3/Rev.4/Suppl.1 which contained the text of the recently revised anti-dumping duty regulations of the United States (19 CFR Part 353). These regulations, published in the Federal Register on 28 March 1989, implemented the provisions on anti-dumping duties in the Trade and Tariff Act of 1984. As these regulations had been circulated very recently, she proposed that the Committee begin its discussion of these regulations at its next regular meeting.

28. The Committee had before it in document ADP/1/Add.3/Rev.4 an unofficial consolidated version of the anti-dumping legislation of the United States as amended by the Omnibus Trade and Competitiveness Act of 1988 and the United States - Canada Free-Trade Agreement Implementation Act of 1988. Written questions on the amendments resulting from the enactment of the Omnibus Trade and Competitiveness Act of 1988 had been received from the EEC and had been circulated in document ADP/W/199. The delegation of the United States had recently replied in writing to these questions.[1] The delegations of Sweden and Korea had also submitted questions on the amendments to the anti-dumping legislation of the United States (see, respectively, documents ADP/W/220 and 221).

29. The representative of the United States said that many anti-dumping provisions in the Omnibus Trade and Competitiveness Act of 1988 were of a procedural nature; other provisions were designed to enhance the

[1] See document ADP/W/230.

enforcement of the anti-dumping law. In the final stage of the drafting process of the Act many controversial provisions had been stricken, inter alia, because of concerns regarding the consistency of these provisions with the General Agreement. He apologised for the late submission of replies to the questions raised by the EEC in document ADP/W/199. Regrettably some of the answers to the questions from the EEC on the amendments were necessarily of a tentative nature as the United States authorities were still considering issues of interpretation of these amendments. Regarding the questions raised by the delegations of Sweden and Korea, he said that his delegation had received these questions only very recently and needed some time to study them.

30. The representative of the EEC said that his delegation understood that it was difficult for the United States to give definitive answers to some of the questions raised on the new legislation. His delegation wished to study the replies which it had received from the delegation of the United States and revert to this matter at the next regular meeting of the Committee.

31. The representative of Japan considered that the amendments to the anti-dumping legislation of the United States resulting from the Omnibus Trade and Competitiveness Act of 1988 included some provisions which were questionable from the point of view of their consistency with the provisions of the Agreement. His authorities would follow carefully the manner in which the amendments would be implemented and he reserved his delegation's right to submit detailed written questions on the new anti-dumping legislation of the United States. He requested some clarification on two specific provisions of the Omnibus Trade and Competitiveness Act of 1988. Firstly, he asked what criteria the United States intended to apply to determine under new Section 781(a)(i)(C) of the Tariff Act whether the difference between the value of merchandise sold in the United States and the value of the imported parts and components was "small". Secondly, with respect to new Section 781(d), which listed criteria for the inclusion of later-developed merchandise within the scope of an outstanding anti-dumping or countervailing duty order, he asked whether all the five criteria mentioned in Section 781(d)(i) had to be met for later-developed merchandise to be included within the scope of outstanding orders. In particular, his delegation wished to know whether later-developed merchandise could be included within the scope of existing orders if the later-developed merchandise differed from the merchandise subject to an existing order as regards physical characteristics or the ultimate use of the merchandise.

32. The representative of Canada said that his delegation would in the very near future submit written questions on the amendments to the United States anti-dumping duty legislation made by the Omnibus Trade and Competitiveness Act of 1988. His delegation was in particular interested in the provisions of the Act dealing with downstream product monitoring (Section 1320 of the Omnibus Trade Act), prevention of circumvention of anti-dumping duty orders (Section 1321), material injury (Section 1328),

cumulative injury assessment (Section 1330) and correction of ministerial errors (Section 1333).

33. The representative of Korea said that his authorities were concerned about the fact that some Parties had recently amended their anti-dumping and countervailing duty legislation without reference to the relevant provisions of the Agreement and the General Agreement. The adoption of these unilateral amendments, some of which might be inconsistent with the existing multilateral rules or have a negative impact on the negotiations in the Uruguay Round, could frustrate the motivation of other countries to participate in the Uruguay Round. Any attempts to create protectionist barriers during the Uruguay Round by revising domestic anti-dumping and countervailing duty laws to pursue national interests and strengthen negotiating positions in the Uruguay Round should be strongly discouraged. His authorities considered that at this time the highest priority should be given to a strict observance of existing multilateral rules. In this respect it was regrettable that the United States Omnibus Trade and Competitiveness Act of 1988 contained many provisions which were not consistent with the General Agreement. For example, the Act contained a provision which allowed for the extension of the scope of application of anti-dumping duty orders to merchandise assembled in the United States or in third countries, to merchandise which had undergone minor alterations and to later-developed merchandise, without prior investigations of dumping and injury as required by the Agreement. Other examples of provisions inconsistent with the Agreement were the provisions on the definition of "domestic industry" and "interested parties" in cases involving processed agricultural products (Section 1326 of the Act), fictitious markets (Section 1319), and downstream product monitoring (Section 1320). His delegation had submitted written questions on the recent amendments to the anti-dumping legislation of the United States[1] and he expressed the hope that the delegation of the United States would provide answers to these questions in due course. He concluded by saying that it might be necessary to have a more detailed discussion of the legislation of the United States at the next regular meeting of the Committee.

34. The representative of Brazil said that his authorities were still examining the provisions of the Omnibus Trade and Competitiveness Act of 1988 and that they would probably submit questions on this Act at a later stage. If it turned out that the Act contained provisions inconsistent with the Agreement, the examination of the Act in the Committee would be a test of the effectiveness of the Committee in ensuring observance by the Parties of the requirements of the Agreement.

35. The representative of Hong Kong recalled that his delegation had on a number of occasions expressed some concerns about provisions in the bills under discussion in the United States Congress. His delegation recognized that the United States administration had made many efforts to delete from these bills provisions which were inconsistent with the Agreement.

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[1] See document ADP/W/221.

Nevertheless, his authorities were still not fully convinced that the Omnibus Trade and Competitiveness Act of 1988 was entirely consistent with the provisions of the Agreement. His authorities were carefully examining the Act and he expected that his delegation would submit written questions in the near future. Referring to the statement made by the representative of the United States on the problem of giving definitive answers at this time to some of the questions raised on the interpretation of the provisions of the Act, he said that Parties should have the opportunity to revert to the Act in the light of its implementation. He concluded his statement by asking whether the Committee would have the opportunity to discuss regulations implementing the provisions of the Act.

36. The Chairwoman said that, as explained in her introductory statement, the Committee had only recently received from the delegation of the United States revised anti-dumping duty regulations implementing the provisions of the Trade and Tariff Act of 1984. These regulations, circulated in document ADP/1/Add.3/Rev.4/Suppl.1, would be discussed by the Committee at its next regular meeting.

37. The representative of Singapore said that her comments on the recent amendments to the anti-dumping duty legislation of the United States were of a preliminary nature as her authorities were still studying these amendments. However, her delegation considered that several of these amendments raised questions concerning their conformity with the Agreement and the General Agreement. She recalled that her delegation had already expressed these concerns in the Committee when the draft legislation was under discussion in the United States Congress. Some of the provisions in the Omnibus Trade and Competitiveness Act of 1988 which were of concern to her delegation included those on the determination of injury and threat thereof, cumulative injury assessment, downstream product monitoring and prevention of circumvention of anti-dumping duty orders. She reserved her delegation's right to present written questions on the Act at a later stage and in this context she echoed the comment made by the representative of Hong Kong on the need for some flexibility regarding the time limits established by the Committee for the submission of questions on laws and/or regulations of Parties to the Agreement.

38. The representative of Egypt said that his authorities were still studying the provisions of the new anti-dumping duty legislation of the United States and he reserved his delegation's right to make comments on this legislation at a later stage.

39. The representative of the United States said that his delegation took the examination of national legislation by the Committee very seriously and was prepared to respond to any questions raised on the recently amended anti-dumping duty legislation of the United States. The anti-dumping duty provisions in the Omnibus Trade and Competitiveness Act of 1988 were fully consistent with the obligations of the United States under the Agreement; in the drafting process of the Act the United States authorities had opposed many proposed provisions on the ground that they were not in

conformity with the Agreement. By way of a preliminary reply to the question asked by the representative of Japan on new Section 781(a)(i)(C) of the Tariff Act of 1930, he said that decisions that the value added in an assembly process in the United States was "small" would have to be made on a case-by-case basis and that his authorities had no specific numerical figure in mind for the implementation of this criterion. On the factors listed in new Section 781(d)(i) he said that the existence or non-existence of one of these factors would not be dispositive; these factors were only elements which had to be taken into consideration and they were not absolute requirements. In reply to the statements made by the representatives of Singapore and Egypt, he said that he was looking forward to any questions which these delegations might have and that these questions would be answered as expeditiously as possible. On the point raised by the representative of Hong Kong he said that his delegation would submit to the Committee regulations implementing the new legislation. The precise interpretation of the amendments would have to be developed through their application in individual cases and he, therefore, agreed that it was somewhat difficult to evaluate the provisions of the new legislation at this time. With respect to the comments made by the representative of Korea he considered as totally unfounded the view that the anti-dumping duty provisions in the Omnibus Trade and Competitiveness Act of 1988 were inconsistent with the Agreement, protectionist and designed to improve the negotiating position of the United States in the Uruguay Round. He emphasized that these provisions were fully in conformity with the Agreement; many proposed amendments had not been included in the Act because of their inconsistency with the Agreement. A number of concerns raised by representatives of Korea in Washington had been taken into consideration. Furthermore, the amendments had not been adopted to improve the negotiating position of the United States in the Uruguay Round; if this had been the intention of the United States, many of the proposed amendments which were inconsistent with the Agreement or made fundamental changes to the law would have been adopted. In fact, however, the anti-dumping duty provisions eventually included in the Act were very limited. If the Korean delegation had specific questions on certain amendments made by the Act, his delegation would respond to such questions in a constructive spirit; he expressed the hope that the Korean delegation would approach this exercise in the same constructive manner.

40. The representative of Korea thanked the representative of the United States for his reassuring remarks.

41. The Committee took note of the statements made and agreed to revert to the anti-dumping duty provisions of the Omnibus Trade and Competitiveness Act of 1988 at its next regular meeting. The Chairwoman invited delegations wishing to make further comments or raise questions on these provisions to do so in writing through the secretariat by 7 July 1989 and she requested the delegation of the United States to reply in writing to any questions raised by 1 September 1989.

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

42. The Committee had before it in document ADP/1/Add.1/Rev.1 the text of Council Regulation (EEC) No. 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community. The Chairwoman recalled that this Regulation had been discussed for the first time by the Committee in October 1988 (ADP/M/24, paragraphs 4-15). Written questions had been received after that meeting from the delegations of Japan and the United States (ADP/W/190 and 191, respectively). The EEC had replied to these questions in documents ADP/W/207 and 208. More recently, the delegations of Singapore and Korea had also submitted questions on the EEC Regulation (ADP/W/215 and 222). Finally, written comments and questions on the Regulation had been received from the delegation of Hong Kong[1], and the delegation of the United States had submitted follow-up questions in response to the explanations given by the EEC in document ADP/W/208.[2] The Chairwoman recalled that Council Regulation (EEC) No. 2423/88 contained in Article 13:10 provisions on the issue of circumvention of definitive anti-dumping duties; these provisions had originally been adopted by Council Regulation (EEC) No. 1761/87 of 22 June 1987 and had been discussed by the Committee at several meetings held in 1987 and 1988.

43. The representative of Japan said that his delegation had received the replies from the EEC in document ADP/W/207 only very recently. His authorities were still studying these replies and he reserved his delegation's right to make further written comments and raise questions on Council Regulation (EEC) No. 2423/88. Regarding the answers by the EEC he made the following preliminary comments. Firstly, he asked whether his understanding was correct that Article 13:11 of the Regulation allowed for the retroactive application of an additional anti-dumping duty without investigation of normal value even in a situation in which an exporter would be able to demonstrate that there had been a decline of the normal value; he considered that the absence of a normal value investigation in the context of proceedings under Article 13:11 was inconsistent with Article 8:3 of the Agreement which required that the amount of the anti-dumping duty must not exceed the margin of dumping as established under Article 2 of the Agreement. In document ADP/W/207 the delegation of the EEC had explained that, if there were changes in the normal value, "the exporter would be free to seek an amendment or repeal of the duty by a request for review under Article 14 of the new EEC regulation and, if need be, consideration would be given to applications for the refund of duties under Article 16". In the view of the Japanese authorities, however, the possibility of a review and refund could not justify the imposition of an additional anti-dumping duty pursuant to Article 13:11 of the Regulation in an amount which exceeded the margin of dumping. In this connection he

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[1] See document ADP/W/227

[2] See document ADP/W/228

asked how the EEC considered that Article 13:11 of the Regulation was compatible with Article 8:3 of the Agreement and on which Article of the Agreement the provision for the imposition of an additional anti-dumping duty under Article 13:11 of the Regulation was based. Secondly, the representative of Japan asked whether additional anti-dumping duties imposed pursuant to Article 13:11 of the Regulation would be treated by the EEC authorities as a cost incurred between importation and resale in the application of the provisions on refund of anti-dumping duties under Article 16 of the Regulation in situations in which exports were made through related parties. Thirdly, with respect to Article 2:9 (a) and 2:10 of Council Regulation (EEC) No. 2423/88, containing rules on the comparison between normal value and export price, he said that the rules laid down in these provisions inevitably resulted in increased dumping margins. His delegation considered that there was no rational basis for these rules and that the replies given by the EEC on this issue were unsatisfactory. According to the Regulation, allowance would be made only for differences in direct selling expenses and not for differences in indirect selling expenses. He wondered how the EEC could reconcile the limitation of adjustments for differences in selling expenses to differences in direct selling expenses with Article 2:6 of the Agreement which provided that "the two prices shall be compared at the same level of trade" and that "due allowance shall be made in each case, on its merits, for the differences in conditions and terms of sale for the differences in taxation, and for the other differences affecting price comparability".

44. The representative of the United States thanked the delegation of the EEC for its replies in document ADP/W/208 to questions put by the United States in document ADP/W/191. His delegation had prepared some follow-up questions[1] and would be grateful if the EEC could answer these additional questions at the next regular meeting of the Committee.

45. The representative of Singapore said that her delegation had made some comments and raised questions on Council Regulation (EEC) No. 2423/88 in document ADP/W/215 and Corr.1. Her delegation was concerned about certain provisions of the Regulation which raised questions regarding their consistency with the provisions of the Agreement and with the provisions of the General Agreement. In this connection she mentioned in particular the following points. Firstly, she expressed concern about the manner in which the EEC constructed the value of a product as if the product were sold in the domestic market of the exporter when there were no sales of the like product in that domestic market (Article 2:3 (b)(ii) of the Regulation). She believed that there was an inherent bias in the constructed value methodology used by the EEC in that this methodology provided much leeway for the inclusion in the constructed value of hypothetical amounts for administrative selling and other costs incurred and for profit realised in the domestic market of the exporter. This was against the spirit of the Agreement. The EEC's calculation of a constructed value of the product as if it were sold in the domestic market was inherently prejudicial to

[1] See document ADP/W/228.

exporters and amounted de facto to a construction of a fictitious domestic price. This methodology was capable of overestimating the domestic value. In the view of her delegation, if data on domestic expenses and profits were not available or unreliable or unsuitable for use, it would be fairer to determine a constructed value for the product as sold for export. Secondly, the representative of Singapore pointed out that Article 2:3 (b)(ii) laid down in a hierarchical order four methods for calculating the amounts for selling, general and administrative expenses and for profits. She considered these methods arbitrary and believed that instead of using these methods the EEC should act in accordance with Article 2:4 of the Agreement and base the determination of normal value on the comparable price of the like product when exported to a third country. Thirdly, she said that, while Article 2:8(b) of Council Regulation (EEC) No. 2423/88 provided that in the case of the use of reconstructed export price "allowance shall be made for all costs incurred between importation and resale and for a reasonable profit margin", the rules in Article 2:10 on the comparison between normal value and export price provided for adjustments to the normal value only in respect of directly related selling expenses. These provisions led to an asymmetrical treatment of selling expenses in the determination of export price and normal value; if both direct and indirect selling expenses were deducted from the resale price to the first independent buyer in the EEC, they should also be deducted from the normal value in order to effect a fair comparison. The methodology used by the EEC was not in accordance with the objective of making fair comparisons. It had an inbuilt bias against exporters because the methodology was capable of overestimating the dumping margin by a large amount or detecting dumping when no dumping occurred. In document ADP/W/215 her delegation had raised other questions regarding the treatment of discounts and rebates in the determination of the normal value (Article 2:3(a)), the treatment of discounts and rebates in the determination of the export price (Article 2:8(a)), averaging and sampling techniques (Article 2:13) and the imposition of an additional anti-dumping duty in cases where exporters absorbed the initial anti-dumping duty (Article 13:11). She reiterated her delegation's concerns with a number of the provisions of the Regulation which were questionable in the light of the rules of the Agreement and the General Agreement. She requested the delegation of the EEC to provide written replies to the questions asked by her delegation in document ADP/W/215 and reserved her delegation's right to make further comments on Council Regulation (EEC) No. 2423/88 at a future meeting of the Committee.

46. The representative of Korea said that his delegation had prepared some questions on Council Regulation (EEC) No. 2423/88; these questions had been circulated in document ADP/W/222. He hoped that the EEC delegation would respond to these questions in due course.

47. The representative of Brazil said that the questions submitted by the delegations of Singapore and Korea related to some very important aspects of the anti-dumping practice of the EEC and provided the Committee with an occasion to examine the conformity of these aspects with the Agreement. For example, one controversial aspect of the EEC anti-dumping practice was the manner in which the EEC authorities determined a reasonable amount for profit in the context of the calculation of constructed values. Prior to

the electronic typewriters case, it had been the practice of the EEC to calculate a single profit rate for all exporters subject to investigation for whom normal value was based on constructed value; this single profit rate had been determined on the basis of the average profitability in the business sector concerned in the exporting country. The profit rates calculated in this manner had generally not exceeded 10 per cent. However, Council Regulation (EEC) No. 2423/88 codified in Article 2:3(b)(ii) the recent practice of the EEC regarding the determination of the reasonable amount for profit; the new approach provided in hierarchical order for three methods to calculate the amount for profit: use of the profit realized by the producer or exporter on the profitable sales of the like products on the domestic market, use of the profit realized by other producers or exporters in the country of origin or export on profitable sales of the like product and use of the profit realized on sales made by the exporter or other producers or exporters in the same business sector. Under this new approach the profit rates used by the EEC in constructed value calculations had generally been higher than under the previous approach. This illustrated the arbitrary nature of the methodology used by the EEC.

48. The representative of Australia said that his delegation had a number of questions on the revised EEC anti-dumping legislation which it would submit before the next meeting of the Committee.

49. The representative of Hong Kong said that the questions formulated by his delegation on the EEC anti-dumping Regulation[1] involved matters of great interest to his authorities in the context of a number of recent anti-dumping duty investigations carried out by the EEC and he therefore hoped that the EEC would be in a position to provide replies to these questions in the near future.

50. The representative of Canada said that it seemed to his delegation that the written replies given by the EEC to questions raised by other delegations were satisfactory but he reserved his delegation's right to present comments and questions on the EEC anti-dumping Regulation at a later date.

51. The representative of the EEC answered some of the questions raised by other delegations as follows. Regarding the comments made by the representative of Brazil on the methodology laid down in Article 2:3(b)(ii) of the Regulation for the determination of the amount for profit in constructed value calculations, he said that while it was true that the EEC had in certain cases used a single profit rate for all exporters for whom normal value was based on a constructed value, this approach had several disadvantages and was sometimes opposed by the exporters concerned. The major disadvantage of this approach was that it was inconsistent with the principle of individual justice. The purpose of the new rules formulated in Article 2:3(b)(ii) was to establish guidelines for the calculation of

[1] See document ADP/W/227.

the amount for profit on an individual basis. The establishment of clear guidelines in this area would enhance legal certainty. In response to the comments made by the representative of Singapore he contested the allegation that Council Regulation (EEC) No. 2423/88 was inconsistent with the provisions of the Agreement; his delegation considered that the Regulation was in full conformity with the requirements of the Agreement. He expressed his surprise about some of the comments made by the representative of Singapore. For example, the representative of Singapore had suggested that, when using the constructed value method, one should calculate a price for the product as sold for export. This view was in contradiction with the spirit of the Agreement and of Article VI of the General Agreement; in past discussions in GATT on anti-dumping issues it had never been contested that a constructed value was a surrogate for a domestic price and that, consequently, the constructed value of a product should be calculated as if that product were sold in the domestic market. Another point raised by Singapore was the question of whether there was a hierarchy between the two alternative methods provided for in the Agreement (use of export prices to a third country and the constructed value method) in cases where the normal value could not be established on the basis of domestic prices. This question had already been the subject of discussions in the Kennedy Round; as a result of these discussions the Anti-Dumping Code concluded at the end of the Kennedy Round had confirmed the principle that Article VI of the General Agreement did not provide for an order of preference between export prices to a third country and constructed value as alternative methods for the determination of normal value. This principle also applied under the current Agreement. On the comments made by the representatives of Japan and Singapore on the rules on the reconstruction of export prices and on the rules on price comparisons, he said that this comparison rested upon a confusion between two issues which in the Agreement were clearly treated as separate issues. His delegation would study carefully the questions submitted by the delegations of Hong Kong and Singapore and reply in writing. On the point made by the representative of Hong Kong on the urgency of the matters raised in document ADP/W/227 he said that any decisions taken by the EEC in the pending investigations involving imports from Hong Kong would be published and explained in detail in the Official Journal of the European Communities. Referring to the comments made by the delegation of Japan, he said that it seemed to him that many of the issues raised by Japan had already been answered by his delegation in the replies to the written questions submitted by Japan in document ADP/W/190 and he, therefore, suggested that the Japanese authorities study these replies carefully. With respect to the question of the treatment of anti-dumping duties as costs incurred between importation and resale in the context of the refund procedure, he said that, as this matter was at present before the European Court of Justice, his delegation would not be in a position to provide detailed answers on this issue. The representative of the EEC concluded his statement by saying that his delegation would reflect carefully upon all the points raised at this meeting by various delegations and that in the meantime the Committee should consider the written replies given by his delegation in documents ADP/W/207 and 208 to the questions formulated by Japan and the United States as provisional.

52. The representative of Hong Kong, referring to the statement by the representative of the EEC on the absence of an order of preference between the use of export prices to a third country and the constructed value method, said that while it was true that the text of Article VI of the General Agreement did not provide for an order of preference between these two methods, in practice the EEC had established such a hierarchy. He asked in which circumstances the EEC would prefer the use of export prices to a third country to the constructed value approach.

53. The representative of Singapore said she was looking forward to receiving written replies from the EEC to the questions raised by her delegation in ADP/W/215 as soon as possible.

54. The representative of Brazil said that in two cases involving electronic typewriters and matrix printers the EEC authorities had used very high profit margins in their constructed value calculations.

55. The representative of the EEC expressed his surprise about the remark made by the representative of Brazil. In order to consider whether a profit margin used in a particular investigation was high, one had to take into account the characteristics of the sector concerned; in high technology sectors involving very large research and development expenses and in which products had a short life-cycle it was quite normal for producers to realize high profit margins. Moreover, the profit rates used by the EEC in the cases mentioned by the representative of Brazil had been based on information found in the records of the firms concerned. In any event, these cases did not involve products imports from Brazil.

56. The representative of Japan said that his delegation would shortly submit additional comments and questions on Council Regulation (EEC) No. 2423/88. He requested the EEC delegation to reply in due course to these additional questions.

57. The representative of the EEC said that it might be useful if the Chairwoman set a definitive deadline for the submission of further questions on the EEC anti-dumping Regulation.

58. The representative of Hong Kong said that the practice of implementation of anti-dumping laws could make it necessary to have a further discussion in the Committee of these laws. He noted that the representative of the United States had explained that the precise interpretation of many of the recent amendments to the anti-dumping law of the United States would have to be developed in practice. His delegation was, therefore, opposed to the establishment of a definitive and absolute deadline for the submission of questions on legislation of Parties to the Agreement.

59. The representative of Japan said that his delegation was prepared to submit its additional questions within one month; he suggested that the delegation of the EEC respond within one month to these additional questions.

60. The representatives of Brazil and Singapore echoed the comment of the representative of Hong Kong that no definitive deadline should be established for the presentation of questions on legislation of Parties to the Agreement.

61. The representative of the EEC said that some delegations did not seem to understand the purpose of the Committee's examination of national legislation; the Committee had already examined the legislation of many Parties but it was clear that if, after the conclusion of the examination of the legislation, problems arose in particular cases any Party could raise such problems in the Committee. In response to the statement made by the representative of Japan, he said that his delegation would reply to any additional questions submitted by Japan in time for the next regular meeting of the Committee.

62. The representative of Hong Kong said that as long as there was no attempt to change the customary rules of the Committee, his delegation would not oppose the establishment of indicative deadlines for the submission of written questions on the legislation of Parties to the Agreement.

63. 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 Chairwoman requested delegations wishing to submit further written questions or comments on this Regulation to do so in writing through the secretariat by 7 July 1989 and she requested the delegation of the EEC to provide answers to such questions by 1 September 1989. She emphasized that these dates were intended to facilitate the Committee's discussion at its next regular meeting and she also drew the Committee's attention to the fact that at each regular meeting of the Committee Parties could raise under the item "laws and/or regulations of other Parties" issues relating to anti-dumping laws and regulations which were not explicitly mentioned in the airgram convening the meeting.

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

64. The Chairwoman recalled that at its regular meeting in October 1988 the Committee had discussed amendments to the anti-dumping legislation of Australia resulting from three laws which had been circulated in document ADP/1/Add.18/Rev.1/Suppl.2: the Anti-Dumping Authority Act 1988, the Customs Legislation (Anti-Dumping Amendments) Act 1988 and the Customs Tariff (Anti-Dumping) Amendment Act 1988. Subsequent to that meeting questions on the amended legislation of Australia had been received from the delegations of the United States (ADP/W/193) and the EEC (ADP/W/197). Replies to these questions had been received from the delegation of Australia (ADP/W/216). Further questions on the Australian legislation had recently been received from the delegation of Korea (ADP/W/223).

65. The representative of the United States thanked the delegation of Australia for the replies given in document ADP/W/216; his delegation was still studying these replies and he reserved his delegation's right to revert to the Australian legislation at the next regular meeting of the Committee.

66. The representative of the EEC said that his delegation had not had sufficient time to study the replies given by Australia in document ADP/W/216 and he therefore reserved his delegation's right to revert to the Australian legislation at the next regular meeting of the Committee.

67. The representative of Singapore said that the amended legislation of Australia was being examined by her authorities and that her delegation would submit some written questions in the near future. She made a number of preliminary comments on the provisions in the amended Australian legislation concerning the initiation of anti-dumping duty investigations. Firstly, she noted that the amended Australian legislation permitted the authorities to initiate anti-dumping duty investigations where evidence was submitted by interests indirectly concerned with the dumping issue in question. She sought clarification on the term "interests indirectly concerned with a dumping issue". She asked how this provision could be reconciled with the requirements of the Agreement that initiation of investigations on the initiative of the authorities take place only in special circumstances and that normally investigations be initiated only upon a written request by the affected domestic industry which had to provide sufficient evidence of the existence of dumping and of material injury. With respect to section 269 TB of the Customs Act 1901, as amended by the Customs Legislation (Anti-Dumping Amendments) Act 1988, she noted that this section provided that an application for the imposition of an anti-dumping duty could be filed by any person on behalf of the Australian industry affected, or likely to be affected. This implied that the Australian authorities might accept petitions without verification of whether the petitions were supported by a majority of the domestic producers. Finally, she said that section 269 TB of the Customs Act 1901 allowed for the filing of petitions before goods were actually imported. While the Australian delegation had explained at a previous meeting that this provision only permitted the initiation of an investigation and not the imposition of an anti-dumping duty before the actual importation of the goods, her delegation considered that the opening of an investigation before imports had taken place was already a form of harassment.

68. The representative of Korea said that his delegation had a number of questions on the amended anti-dumping legislation of Australia; these questions had been circulated in document ADP/W/223. He hoped that Australia would answer these questions in the near future.

69. The representative of Australia said that she was looking forward to receiving the questions raised by the representative of Singapore in written form. She suggested that some of the points raised by the delegation of Singapore had perhaps already been dealt with by her delegation in the replies given in document ADP/W/216. With respect to the questions presented by Korea in document ADP/W/223 she said that her delegation would respond to these questions as soon as possible.

70. The Committee took note of the statements made and agreed to revert to the amended anti-dumping legislation of Australia at its next regular meeting. The Chairwoman requested Parties who wished to make further comments or raise questions on the legislation of Australia to do so in writing through the secretariat by 7 July 1989; she requested the delegation of Australia to respond to such questions by 1 September 1989.

(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)

71. The Chairwoman recalled that the Committee had begun its examination of the anti-dumping law and regulations of Mexico at its regular meeting held in October 1988 (ADP/M/24, paragraphs 33-40). Written questions on the Mexican legislation had been submitted after that meeting by the delegations of the United States (ADP/W/192), the EEC (ADP/W/200) and Canada (ADP/W/202). Replies from Mexico to these questions had been circulated in document ADP/W/206. Recently the secretariat had received questions on the Mexican legislation from the delegation of Brazil[1] and additional questions from the delegation of the United States.[2]

72. The representative of the EEC said that his delegation had not yet had sufficient time to study the replies given by the delegation of Mexico and he therefore wished to have the opportunity to revert to the Mexican legislation at the next regular meeting of the Committee. He recalled that at the meeting of the Committee in October 1988 his delegation had expressed its serious concerns regarding certain aspects of the Mexican anti-dumping legislation. His delegation would have bilateral consultations with the Mexican delegation and he hoped that these consultations would lead to a better mutual understanding. However, it was necessary to keep the Mexican legislation on the agenda of the next meeting of the Committee.

73. The representative of the United States thanked the delegation of Mexico for the replies given in document ADP/W/206; his authorities had studied these replies carefully and prepared some follow-up questions.[2] His delegation shared the concerns expressed by the EEC regarding certain aspects of the Mexican anti-dumping legislation. Not all of these concerns had been resolved but his authorities were encouraged by the willingness of the Mexican authorities to continue to discuss the Mexican legislation; he hoped that the Mexican authorities would take the concerns

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[1] See document ADP/W/226.

[2] See document ADP/W/229.

and suggestions of the United States into account in any future amendments to the Mexican anti-dumping legislation.

74. The representative of Brazil said that his delegation had submitted a number of questions on the Mexican anti-dumping legislation.[1] His authorities were concerned about certain aspects of this legislation and he requested the delegation of Mexico to answer the questions of his delegation in their entirety.

75. The representative of Canada said that his delegation had carefully studied the replies given by Mexico in document ADP/W/206. However, the answers given by Mexico raised further questions. His delegation would seek clarification through bilateral consultations with Mexico but he reserved his delegation's right to submit further questions on the Mexican anti-dumping legislation.

76. The representative of Hong Kong said that like many other delegations his delegation was concerned about certain aspects of the Mexican anti-dumping legislation. Referring to the answers given by Mexico in document ADP/W/206 he made the following comments on two aspects of the Mexican anti-dumping legislation. Firstly, he asked how the Mexican authorities reconciled Article 8:III of the Regulatory Act with Article VI:5 of the General Agreement: Secondly, he pointed to Article 11 of the Regulatory Act which provided for the possible application of a provisional anti-dumping duty within five working days after the date on which a petitioner had been notified that his complaint was admissible. He wondered how this provision was consistent with Article 10 of the Agreement which provided that provisional measures could be taken only after preliminary affirmative findings of dumping and injury. In this respect he noted that in document ADP/W/206 the Mexican authorities had explained that Article 11 of the Act constituted an emergency provision which so far had not been used. He considered, however, that emergency situations could be dealt with under the provisions of Article 11 of the Agreement. Furthermore, the mere existence of the possibility for immediate application of provisional duties under Article 11 of the Act already affected the balance of rights and obligations of Parties to the Agreement.

77. The representative of Singapore reserved her delegation's right to submit written questions on the Mexican anti-dumping legislation.

78. The representative of Australia said that his authorities had examined the replies provided by Mexico in document ADP/W/206 to the questions raised by the delegations of Canada, the EEC and the United States. His authorities had some concerns regarding the consistency of certain aspects of the Mexican anti-dumping legislation with the Agreement and his delegation would present some questions in the near future. In order to

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[1] See document ADP/W/226.

illustrate the nature of the concerns of his delegation, he pointed to the following aspects of the Mexican legislation. Regarding the issue of the time periods mentioned in various provisions in the Mexican legislation, his delegation concluded from the semi-annual reports submitted by Mexico that these time periods were actually used and were not limited to emergency situations. He wondered how the Mexican authorities could possibly carry out preliminary investigation within five working days. With respect to Article 7 of the Act he requested an explanation of the meaning of the expression "identical or similar". On Article 10 of the Act he asked whether the Mexican authorities considered that producers accounting for at least 25 per cent of the domestic production of a product constituted a "major proportion" of the domestic producers within the meaning of Article 4 of the Agreement. A closely related issue concerned Article 1:VIII of the Regulations under which "injury" was defined not in relation to the domestic industry as a whole but in relation to one or several domestic producers. With respect to Article 15 of the Regulations he asked whether the Mexican authorities considered that the period of fifteen working days provided for in this Article was in conformity with the requirements of the Agreement.

79. The representative of Mexico said that in the light of the questions raised by the delegations of Canada, the EEC and the United States, his authorities had considered it necessary to provide a general explanation of the legal instruments which constituted the Mexican anti-dumping legislation and, in particular, of the status of the Agreement under domestic Mexican law. He believed that much confusion had resulted from the fact that delegations had referred only to the provisions of the Regulatory Act and of the Regulations. However, as explained at a previous meeting of the Committee, the Agreement as such was an integral part of the Mexican anti-dumping legislation. The introductory section in document ADP/W/206 explained the scope of application of the three instruments which constituted the Mexican anti-dumping legislation (the Regulatory Act, the Regulations and the Agreement). His delegation attached great importance to this section and he requested that all interested delegations study it carefully. Bilateral consultations would take place between his delegation and other delegations; he hoped that these consultations would lead to clarification of points of misunderstanding and would enable the Committee to close its examination of the Mexican legislation efficiently and expeditiously. Finally, he stated that it was not suitable for any delegation to prejudge the results of this exercise by suggesting that amendments to the Mexican anti-dumping legislation might be necessary.

80. The representative of Mexico replied as follows to some of the points raised at this meeting by some delegations. On the issue raised by the representative of Australia regarding the time-limits in the Mexican anti-dumping legislation, and in particular the period of five working days in Article 11 of the Act, he said that a footnote in the most recent semi-annual report submitted by his delegation (document ADP/41/Add.6) explained that on average the period between the date of the filing of a

complaint and the acceptance of a complaint was approximately three months. The dates mentioned in this report in the column "initiation of investigations" were the dates on which the Mexican authorities had accepted complaints; however, in each case the acceptance of the complaint had been the result of a prior investigation. Another issue raised by the delegation of Australia concerned the definition of injury in Article 1:VIII of the Regulations. In this respect he pointed out that this Article defined injury in relation to one or several domestic producers, provided that they were representative of a significant proportion of the national production of a product. This requirement had been added when the Regulations had been amended in May 1988.

81. The representative of Hong Kong requested the delegation of Mexico to provide more detailed answers to the questions which he had posed earlier at the meeting. Referring to the statements by the delegation of Mexico and other delegations that they would hold bilateral consultations on the Mexican legislation, he said that, while bilateral efforts to resolve differences were to be welcomed, Parties had to bear in mind that the fundamental objective of the Committee's examination of national legislation was the multilateral surveillance of the implementation of the Agreement; this multilateral surveillance required transparency.

82. The Committee took note of the statements made on the Mexican anti-dumping legislation and agreed to revert to this legislation at its next regular meeting. The Chairwoman requested delegations wishing to make comments or ask questions to do so in writing through the secretariat by 7 July 1989; she requested the delegation of Mexico to reply to such questions by 1 September 1989.

83. The representative of Egypt reserved his delegation's right to make comments or raise questions on any of the laws and regulations discussed by the Committee under item C of its agenda.

84. The Committee took note of the statement made by the representative of Egypt.

(vii) Anti-dumping laws and/or regulations of other Parties

85. The representative of Korea informed the Committee that at the end of 1988 certain amendments had been made to the anti-dumping legislation of his country; these amendments had entered into force on 1 January 1989. The amendments were intended to make the legislation more consistent with the Agreement and to clarify certain technical and procedural aspects. The amendments provided, inter alia, for a more restrictive definition of the category of persons who could file anti-dumping duty petitions; in particular, this new definition provided that only domestic producers of like products or associations of domestic producers of like products could lodge a complaint. This implied that wholesalers and labour unions could no longer act as petitioners. The amendments also included the introduction of a "sunset clause" as a result of which the duration of anti-dumping duties would in principle be limited to three years.

Furthermore, the amendments provided that decisions on the admissibility of petitions should be taken within three months from the date of receipt of petitions and that, in principle, investigations should be concluded within six months from the date of initiation. His delegation would in the near future submit to the Committee a consolidated version of the Korean anti-dumping legislation which would reflect the recent amendments.

86. The representative of the United States welcomed the fact that Korea had taken steps to make its anti-dumping legislation more consistent with the provisions of the Agreement and he hoped that the Korean delegation would notify the amended legislation expeditiously.

87. The representative of the EEC said his delegation also welcomed the fact that Korea had introduced amendments in order to ensure greater conformity of its legislation with the Agreement. His delegation would carefully study these amendments and, if necessary, submit questions.

88. The Committee took note of the statements made. The Chairwoman said that the Committee would keep on its agenda the item "laws and/or regulations of other Parties" in order to allow Parties to revert to aspects of the anti-dumping laws and/or regulations of other Parties.

D. Semi-annual report by the EEC of anti-dumping actions taken within the period 1 January-30 June 1988 (ADP/37/Add.9)

89. The Chairwoman recalled that at its last regular meeting the Committee had decided, in view of the late receipt of this report, to revert to it at its next regular meeting.

90. No comments were made on this report.

E. Semi-annual reports of anti-dumping actions taken within the period 1 July-31 December 1988 (ADP/41 and addenda)

91. The Chairwoman said that the following Parties had informed the secretariat that they had not taken any anti-dumping actions during the period 1 July-31 December 1988: Brazil, Czechoslovakia, Egypt, Hungary, India, Japan, Norway, Pakistan, Poland, Romania, Singapore, Sweden, Switzerland and Yugoslavia. Anti-dumping actions taken during this period had been notified by Australia, Canada, the EEC, Finland, Korea, Mexico, New Zealand and the United States (ADP/41/Add.1). No report had been received from the delegation of Austria. The Chairwoman noted that the reports of New Zealand and the United States had been received very late and that some of the semi-annual reports submitted by the Parties did not contain lists of outstanding measures.

92. The Committee examined the semi-annual reports from the Parties who had taken anti-dumping measures during this period in the order in which these reports had been circulated:

Korea (ADP/41/Add.2)

93. No comments were made on this report.

Finland (ADP/41/Add.3)

94. No comments were made on this report.

EEC (ADP/41/Add.4)

95. No comments were made on this report.

Australia (ADP/41/Add.5)

96. No comments were made on this report.

Mexico (ADP/41/Add.6)

97. The representative of Brazil, referring to the information on page 8 of the report on measures taken by Mexico on imports of steel bars from Brazil, said that imports of these products from Brazil accounted for a very small percentage of domestic consumption in Mexico of like products; for example, imports of carbon steel bars from Brazil represented only 0.21 per cent of domestic consumption. Given these low percentages he wondered how the Mexican authorities had determined that the allegedly dumped imports were causing injury to a domestic industry and whether there had been sufficient justification to apply provisional measures.

98. The representative of Mexico said that the report only covered the period from 1 July to 31 December 1988; recently, some new developments had occurred in the case mentioned by the representative of Brazil. In April 1989 the Mexican authorities had published a decision revising the provisional resolution which had been adopted in September 1988. This revision was based, inter alia, on information provided by the Brazilian exporter. This revision had resulted in significant reductions of the provisional duties on imports of the products covered by the investigation. With regard to the information on injury used in the provisional resolution, he said that in the resolution adopted in September 1988 his authorities had explained that there was a threat of injury caused by allegedly dumped imports from Brazil as a result of a significant recent increase of the volume of imports from Brazil. He would provide the representative of Brazil with a copy of the resolution adopted in April 1989 to revise the provisional resolution and he expressed his willingness to provide further explanations of this case in bilateral consultations with the delegation of Brazil.

99. The representative of Brazil thanked the representative of Mexico for the useful information which he had provided; he considered that it would be appropriate to revert to this case in the context of the Committee's discussion of the Mexican anti-dumping legislation.

100. The Committee took note of the statements made and agreed to revert to the semi-annual report of Mexico at its next regular meeting.

Canada (ADP/41/Add.7)

101. The representative of Brazil reserved his delegation's right to make comments at a later stage on the anti-dumping duty investigation involving polyphase induction motors from Brazil (ADP/41/Add.7, page 2).

102. The Committee took note of the statement made by the representative of Brazil and agreed to revert to this report at its next regular meeting.

United States (ADP/41/Add.8)

103. No comments were made on this report.

New Zealand (ADP/41/Add.9)

104. No comments were made on this report.

F. Reports on all preliminary or final anti-dumping duty actions (ADP/W/194, 203, 205 and 218)

105. The Chairwoman said that reports under these procedures had been received from the delegations of Australia, Canada, the EEC, Finland and the United States.

106. No comments were made on these reports.

G. Report by the Chairwoman on the work of the Ad-Hoc Group on the Implementation of the Anti-Dumping Code

107. The Chairwoman informed the Committee that the Ad-Hoc Group had met on 24 April 1989. The Group had discussed three working papers dealing with various aspects of price undertakings in anti-dumping duty proceedings; it had also discussed a communication from Finland on language and translation problems in anti-dumping duty investigations. Finally, some suggestions had been made regarding the future work of the Ad-Hoc Group.

108. The Chairwoman said that the Ad-Hoc Group had concluded its discussion of a Working Paper on the use of price undertakings in anti-dumping proceedings involving imports from developing countries and had agreed to submit a draft recommendation on this matter to the Committee.[1] The Committee agreed to consider the possible adoption of this draft recommendation at its next regular meeting.

109. Regarding the other subjects discussed by the Ad-Hoc Group the Chairwoman informed the Committee that the Group had made no progress on

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[1]This draft recommendation has been circulated in document ADP/W/138/Rev.5, dated 25 April 1989.

two Working Papers dealing with procedures for the revision and termination of price undertakings. With respect to the communication from the delegation of Finland on language and translation problems the Group had heard a suggestion on how the problem raised in this communication could be resolved and the Group had agreed that this suggestion could be the basis for a working paper on this matter. Finally, some proposals had been made regarding the future work of the Ad-Hoc Group. The delegation of Japan had announced its intention to submit a working paper on the question of constructed value methodology and the delegation of Hong Kong had presented a proposal for a compilation by the secretariat of factual information on technical aspects of anti-dumping practices of Parties to the Agreement. Some delegations had expressed the view that more frequent meetings of the Ad-Hoc Group were necessary.

110. The representative of Hong Kong said that his delegation had circulated the text of his statement made at the meeting of the Group on 24 April 1989 in which he had made his request for a compilation of information by the secretariat. Annexed to the text of this statement was a list of topics which might be included in such a compilation. The Group's discussion of this proposal had been frank and useful and he believed that it was recognized by all participants in this discussion that this proposal was interesting and merited further consideration. He requested the Chairwoman to organize informal consultations on his delegation's proposal in the very near future and, in any event, before the next meeting of the Committee.

111. The representative of the EEC said that he had listened carefully to the Chairwoman's report on the work of the Ad-Hoc Group. Regarding the proposals for future work in the Group he said that there had been a number of delegations which had expressed reservations on these proposals. These proposals were perhaps interesting but required very careful examination. He expressed his doubts about the possibility that the GATT secretariat could carry out a technical study of anti-dumping practices of Parties to the Agreement. Such a study presupposed comparability of the anti-dumping practices of all Parties to the Agreement and required that there be transparency on the practices of all Parties. If the secretariat had to carry out a study of the type proposed by Hong Kong it would find itself in the difficult situation of having to compare the precise methods used to determine dumping and injury in the EEC and the United States as well as in other countries which were now also using anti-dumping measures such as Finland, Japan, Mexico and Brazil. In his view the secretariat could not carry out such a study on the basis of the available information. His delegation would reflect carefully upon the statement made by Hong Kong in the Ad-Hoc Group and, if the delegation of Hong Kong presented a more concrete proposal, his delegation was prepared to revert to this matter at the next meeting of the Committee.

112. The representative of Australia said that his delegation had already expressed its reservations in the Ad-Hoc Group on the proposal made by Hong Kong. While his delegation was prepared to give further consideration to

this proposal, he expressed scepticism on its utility, inter alia, because of the implications of the proposal by Hong Kong for work in other forums. He had particular problems with the suggestion that the Ad-Hoc Group should meet more often. The Ad-Hoc Group had been established to draft recommendations on issues on which there existed no major divergencies of views between the Parties. Its purpose was to allow experts from capitals to meet to discuss technical issues. The Group had usually met twice per year in conjunction with the regular meetings of the Committee so as to allow experts from capitals to be present at the meetings of the Group. The question raised by the suggestion that the Group should meet more often was whether the Ad-Hoc Group should be a group of experts or a group of delegates. The Ad-Hoc Group should not become a negotiating body. If delegations wanted to discuss specific problems they should do this in the Committee.

113. The representative of the United States appreciated the objective of increased transparency underlying the proposal made by Hong Kong. However, his delegation also had a number of concerns regarding the proposal and needed to reflect further upon it. The proposal would involve a major transformation of the rôle of the Ad-Hoc Group. He made the following specific comments on the proposal. Firstly, the proposed study and discussions to which that study would give rise would duplicate the existing procedures in the Committee for the review of national legislation and of semi-annual reports on anti-dumping measures. These procedures already provided an opportunity to learn how Parties implemented their legislation; he wondered what the study proposed by Hong Kong would add to these existing procedures. Secondly, he was also concerned about the possibility that the study and subsequent discussions in the Ad-Hoc Group would undercut the work in the Uruguay Round Negotiating Group on MTN Agreements and Arrangements. Thirdly, the rôle of the Ad-Hoc Group was limited; it had been established to discuss technical issues on which there was a prospect of reaching a consensus. To the extent that the proposed study included some of the more complicated and controversial issues in the anti-dumping area, it would be inconsistent with this limited mandate of the Ad-Hoc Group. In addition, it would not be productive to discuss in the Ad-Hoc Group issues which could not be resolved within the framework of the existing Agreement. Finally, it would be very difficult for the experts in his delegation to attend meetings of the Ad-Hoc Group if the Group met more than twice per year. His delegation would give further consideration to the proposal by Hong Kong if Hong Kong submitted its proposal in writing and with greater detail.

114. The representative of Singapore expressed her support of the proposal made by the delegation of Hong Kong. This proposal had been supported in the Ad-Hoc Group by a number of Parties, both developed and developing countries. She hoped that informal consultations would lead to a consensus on this matter.

115. The representative of the EEC said that he fully agreed with the views expressed by the representative of the United States. The work in the

Ad-Hoc Group should not duplicate the work of the Negotiating Group on MTN Agreements and Arrangements. In this respect he noted that Japan had announced in the Ad-Hoc Group that it would circulate a paper on constructed value, an issue which had also been proposed for discussion in the Negotiating Group. He also agreed with the delegations of the United States that more frequent meetings of the Ad-Hoc Group would create serious practical difficulties for experts. Regarding the mandate of the Ad-Hoc Group, he said that the Group had been established to prepare recommendations on issues where agreement seemed possible. He wondered whether the representative of Hong Kong really believed that it was possible to reach agreement within the Ad-Hoc Group on the five subjects mentioned in the annex to his statement. Finally, he recalled that some time ago the Negotiating Group on MTN Agreements and Arrangements had agreed to request the secretariat to carry out two studies, a first study based on information provided by participants on their anti-dumping measures and a second study which would focus on conditions in exporting countries which made dumping possible. While the first study had more or less been completed, no work had so far been done on the second study. Before undertaking a new study in the framework of the Ad-Hoc Group, all attention should now be given to a completion of the work on the second study in the context of the Uruguay Round Negotiating Group.

116. The representative of New Zealand said that she shared many of the concerns about the proposal by Hong Kong expressed by the delegations of Australia, the EEC and United States.

117. The Committee took note of the statements made. The Chairwoman suggested that, after consultations had taken place between the delegation of Hong Kong and other interested delegations, she would hold informal consultations on this matter before the next regular meeting of the Committee.

118. The representative of Hong Kong reiterated his request that the Chairwoman hold informal consultations on this matter.

H. Anti-dumping duties on Power Transformers from Finland - Request by Finland for conciliation under Article 15:3 of the Agreement (ADP/42)

119. The Committee had before it in document ADP/42 a communication in which the delegation of Finland requested conciliation under Article 15:3 of the Agreement in a dispute between Finland and Australia concerning anti-dumping duties applied by Australia on power transformers imported from Finland. The Chairwoman recalled that this matter had already been the subject of discussions in the Committee at the regular meetings held in May 1988 (ADP/M/22, paragraphs 95-99)) and October 1988 (ADP/M/24, paragraphs 117-124).

120. The representative of Finland said that the background of this dispute and the views and arguments of his delegation had been explained in document ADP/42. There were two fundamental questions in this case.

Firstly, the dispute involved the application of the definition of the term "like product" in Article 2:2 of the Agreement to large power transformers built in accordance with specifications provided by the customer. Secondly, the case raised the question of the correct manner to determine the normal value of the power transformers. The question of whether large power transformers sold in the domestic market of Finland and large power transformers sold for export to Australia were like products had to be answered first; the question of the correct method to determine the normal value of the transformers could only be decided after the "like product" issue had been resolved. Consultations on these questions had taken place between the delegations of Finland and Australia since 16 January 1989 but in these consultations the two delegations had continued to express divergent views. For the reasons given in paragraphs 11-15 of document ADP/42 his authorities believed that the power transformers sold in Finland and the power transformers exported from Finland to Australia were not "like products" within the meaning of Article 2:2 of the Agreement. The Australian delegation had maintained that these products could be considered to be "like products". Since bilateral consultations had thus failed to resolve the difference in views and since definitive anti-dumping duties had been imposed by Australia, his authorities had decided to refer this matter to the Committee for conciliation under Article 15:3 of the Agreement.

121. The representative of Australia noted that in document ADP/42 Finland had explained that its primary objective in this dispute was to obtain a ruling that power transformers sold in the domestic market and power transformers sold for export to Australia were not "like products". Her authorities considered that the normal value determinations made in this case by Australia were in full conformity with the provisions of Articles 2:2 and 2:6 of the Agreement. While there had been an exchange of views in writing, oral consultations between her delegation and the delegation of Finland on this matter had only taken place a few days before this meeting. Her delegation was prepared to have further consultations with Finland. On the background of this dispute she provided the following information. In the initial anti-dumping duties investigation carried out by the Australian authorities in 1981 of imports of large power transformers from Finland and Sweden normal values had been established on the basis of the constructed value approach. This approach had been chosen for various practical reasons relating to the difficulties of making adjustments for technical differences between what were essentially custom-built products. In 1981 the Australian legislation had been amended to incorporate explicitly the conditions stipulated in Article 2:4 of the Agreement for the use of the constructed value methodology as an alternative manner to determine the normal value of a product. The adoption of these conditions in the Australian legislation, together with the insertion in 1984 of requirements for ascertaining whether goods were sold "in the ordinary course of trade" made it imperative for the Australian authorities to fully explore market-based options for the determination of normal value before resorting to the use of the constructed value approach. Under the current legislation the constructed

value method could be used only if there were no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or if the particular market situation in the exporting country did not permit a proper comparison with prices in the domestic market of sales of the like product. It was evident that neither of these two conditions was satisfied in the case of the large power transformers from Finland: there were sales of a like product in Finland and there was no evidence to suggest that the particular market situation in Finland would preclude the use of domestic prices in Finland to determine the normal value. Furthermore, nothing suggested that the transformers sold in Finland were not sold "in the ordinary course of trade". The Australian authorities were therefore obliged to base their normal value determination on domestic prices in Finland. While recognizing that it was usually difficult to find sales in the domestic market of exactly identical products, her authorities had felt bound to consider whether there were sales of other power transformers in Finland which could serve as a basis for the normal value determination. Her authorities considered that the power transformers sold in Finland were prima facie sufficiently like the exported power transformers to be treated as "like products". The Westinghouse Price Rules had been used by her authorities as a method to make a fair comparison between export prices and domestic prices. She explained that this method was consistent with the practice of the United States authorities who considered that the custom-built nature of power transformers did not preclude a determination that the products were "like products". Australia had explained to representatives of the Finnish exporter that it was prepared to consider possible alternative methods to determine the normal value of the power transformers imported from Finland provided that such alternative methods were consistent with Articles 2:1 and 2:2 of the Agreement; this offer remained valid. In the process of the assessment of the normal value of the Finnish power transformers the Australian authorities had first identified the most appropriate power transformers sold in Finland by selecting those power transformers which most closely resembled the physical characteristics of the power transformers sold for export to Australia. The exporter had been involved in this process of identification of the most appropriate domestic sales. By way of summary of her delegation's views on this matter, she said that Australia believed that, although power transformers sold in Finland and those sold for export to Australia were not alike in all respects, these products were sufficiently alike to be regarded as "like products" within the meaning of Article 2:2 of the Agreement. With respect to Article 2:6 of the Agreement she said that the correct application of the Westinghouse Price Rules had allowed the Australian authorities to meet the requirement of a fair comparison between the export prices and domestic prices. She reiterated that her delegation was prepared to hold further consultations with Finland on this matter.

122. The representative of New Zealand said that the arguments put forward by Finland in document ADP/42, in particular as regards the "like product" issue, had implications of principle which were a cause of concern to her authorities. If the strict definition of "like product" advocated by the

delegation of Finland would be upheld, it would be very difficult to levy anti-dumping duties on the importation of capital goods. This strict definition not only had consequences for the method of determining the normal value of a product, by compromising the choice of a particular method to determine that normal value, but also had consequences for the determination of what might constitute the "domestic industry". She noted that under Article 2:2 of the Agreement the term "like products" encompassed not only identical products but also products with characteristics "closely resembling those of the product under consideration". In cases such as the one referred to the Committee by Finland it was this second part of the "like product" definition in Article 2:2 which was relevant; qualitative differences alone were not sufficient to conclude that products were not "like products" within the meaning of Article 2:2. The technical differences mentioned by the delegation of Finland in its request for conciliation were only relevant in the context of the rules on price comparisons under Article 2:6 of the Agreement. Her delegation would follow the conciliation process with great interest.

123. The Committee took note of the statements made and the Chairwoman encouraged the delegations of Finland and Australia to develop a mutually acceptable solution of this dispute. In this respect she drew the Committee's attention to Article 15:4 of the Agreement which provided that "Parties shall make their best efforts to reach a mutually satisfactory solution throughout the period of conciliation".

I. Anti-dumping duty investigations of imports of Urea from various countries (ADP/M/24, paragraphs 101-116)

124. The Chairwoman recalled that the Committee had discussed this matter at its regular meetings in May and October 1988 (ADP/M/22, paragraphs 73-81 and ADP/M/24, paragraphs 101-116). Following the meeting in May 1988 the representative of Romania had submitted written questions and comments on this case (ADP/W/182); replies from the EEC had been circulated in document ADP/W/189. In the discussions of this case in the Committee an important question had been whether quantitative undertakings in anti-dumping duty investigations were consistent with the provisions of the Agreement.

125. The representative of Romania recalled that at previous meetings of the Committee he had explained that his authorities were concerned that the acceptance by the EEC of quantitative undertakings from several exporters of urea might reduce the possibility for the Romanian exporter, whose exports were still subject to investigation, to offer a price undertaking, which was the only type of undertaking provided for in the Agreement. Subsequent developments in this case had proved that these concerns had been justified. At the end of 1988 the Romanian exporter had offered a price undertaking but this offer had not been accepted by the EEC. His authorities believed that an important reason for the rejection of this offer was that exporters from other countries had already given quantitative undertakings. While he did not want to continue the

discussion in the Committee of this specific case he considered that, if quantitative undertakings were accepted more frequently, the general problem of the conformity of such undertakings with the provisions of the Agreement should perhaps be discussed in the context of the Uruguay Round.

126. The representative of Czechoslovakia reiterated the view of his authorities that quantitative undertakings were not in conformity with Article 7 of the Agreement which provided exclusively for price undertakings.

127. The representative of the EEC said that his delegation had already expressed its views on several occasions on the question of whether quantitative undertakings were permitted under the Agreement. The specific case referred to the Committee by the delegation of Romania had been settled and the Committee should, therefore, close its discussions of this case.

128. The Committee took note of the statements made.

J. Other business

(i) EEC - Rules of origin applied to certain photocopiers exported from the United States to the EEC

129. The representative of Japan brought to the Committee's attention a recent decision taken by the EEC regarding the definition of origin of certain photocopiers made by Ricoh Co. in the United States and exported to the EEC. His authorities were concerned about this case because they believed that it reflected a more general tendency of the EEC to use its rules of origin to justify the extension of anti-dumping duties to imports of products assembled in third countries. Ricoh of Japan had established a subsidiary in the United States in 1976. This subsidiary produced finished photocopiers some of which were exported to the EEC. In 1985 the EEC had opened an anti-dumping duty investigation of imports of photocopiers from Japan. This investigation had resulted in the importation of definitive anti-dumping duties in February 1987. The subsidiary of Ricoh in the United States had not been subject to this investigation and, consequently, the duties imposed in February 1987 did not apply to products exported by this subsidiary to the EEC. However, the EEC had recently proposed new rules of origin for photocopiers and it intended to levy anti-dumping duties on products exported by Ricoh in the United States since 1987 on the grounds that under the new origin rules these products had to be considered of Japanese origin. The representative of Japan considered that Article 2:3 of the Agreement required that a comparison be made between the export price of the subsidiary Ricoh in the United States with a comparable price in the United States and not with domestic prices in Japan. Consequently, the results of the investigation of imports of photocopiers from Japan could not be a basis for the imposition of anti-dumping duties on the photocopiers exported from the United States to the EEC by the subsidiary

of Ricoh. In addition, there was no justification for a retroactive application of the proposed anti-dumping duties. His authorities were seriously concerned about this case and questioned the consistency with the Agreement of the duties which the EEC intended to apply. His authorities would closely follow any further developments in this case.

130. The representative of the EEC said that in March 1987, only a few days after the EEC had imposed anti-dumping duties on photocopiers imported from Japan, an article had appeared in the Wall Street Journal. In this article the chairman of the subsidiary of Ricoh in the United States had explained that his company shipped each month about 2,000 photocopiers from the United States to the EEC. Although more than 90 per cent of the parts used in the production of these photocopiers originated in Japan, the fact that these products were treated by the EEC as made in the United States could help Ricoh to avoid liability for payment of anti-dumping duties in the EEC. Furthermore, the chairman of the subsidiary of Ricoh had stated in this article that, if the EEC authorities investigated carefully the photocopiers exported from the United States they might decide that these products did not originate in the United States. The representative of the EEC said that in the light of this statement it was logical that the customs authorities of the EEC had begun an investigation to determine the origin of the photocopiers imported from the Ricoh subsidiary in the United States. The EEC customs authorities had concluded, on the basis of general rules of origin applied to trade with third countries which had been adopted in 1968, that these products should be considered to be of Japanese origin. Consequently, these products had become subject to anti-dumping duties. Recently, however, representatives of Ricoh in the United States had consulted with the responsible customs authorities in the EEC. These discussions had led to a change of sourcing of the components used by the Ricoh subsidiary in the United States as a result of which the photocopiers exported by this subsidiary from the United States to the EEC were not regarded as originating in the United States.

131. The representative of Japan said that the Committee was a forum for discussions between representatives of governments; statements by private parties were irrelevant to the discussions in the Committee. The fundamental issue raised by this case was the legal system established by the EEC with respect to the use of rules of origin to extend the application of anti-dumping duties to imports from third countries. He reserved his delegation's right to revert to the this matter at the next meeting of the Committee.

132. The representative of the EEC emphasized that the EEC customs authorities had simply applied the general EEC rules of origin to a particular case and that no changes were envisaged in these rules.

133. The representative of Japan reiterated that his authorities would closely follow further developments in this matter.

134. The Committee took note of the statements made.

(ii) Future work of the Committee

135. In addressing the question of the future work of the Committee, the representative of Singapore said that an additional meeting of the Committee before the summer recess was necessary. The discussion at the present meeting of anti-dumping legislations had been useful but in many cases this discussion had been of a preliminary nature. Given the large number of issues on the Committee's agenda and the large number of questions raised on national legislation, it would not do justice to the importance attached by many delegations to the work of the Committee if the next meeting would take place in October of this year. Many delegations had not been in a position to respond at this meeting to questions asked on their anti-dumping legislation or to react to the replies provided by other delegations. The examination of national legislation was a very important and complicated aspect of the work of the Committee, and the Committee should not wait until October to continue this examination. In addition, a meeting before the summer recess would allow the Committee to discuss questions relating to future work of the Committee. She noted that it had been recognized by all delegations that it was useful if the Committee met in conjunction with the Uruguay Round Negotiating Group on MTN Agreements and Arrangements. She understood that this Group would hold a meeting in the first half of July and proposed that a meeting of the Committee be held in conjunction with that meeting. The additional meeting of the Committee could also be held in conjunction with the next meeting of the Uruguay Round Negotiating Group on Subsidies and Countervailing Measures, which had agreed to hold its next meeting at the end of June.

136. The Committee exchanged views on the proposal made by the delegation of Singapore. A number of delegations spoke in favour of this proposal while other delegations expressed serious reservations on this suggestion. At the end of the discussion the Chairwoman proposed to hold informal consultations to see whether a consensus was possible to hold an additional meeting of the Committee and to examine the necessary practical arrangmeents for such a meeting. It was so agreed.

Date of the next regular meeting

137. The Chairwoman said that, in accordance with the decision taken at the meeting of the Committee in April 1981, the next regular meeting of the Committee would take place in the week of 23 October 1989.