1. The Working Party was established by the Council at its meeting of 23 May 1977 with the following terms of reference:

"To consider the decision by the United States Customs Court in Zenith Radio Corporation versus the United States and the subsequent United States action in the light of the provisions of paragraph 4 of Article VI of the General Agreement and the note to Article XVI, and to report expeditiously to the Council."

2. The Working Party met on 2 and 3 June 1977 under the Chairmanship of Ambassador E. Farnon (New Zealand). It had available the texts of a communication dated 12 May 1977 submitted by Japan (L/4500) and of a statement made by the representative of Japan at the meeting of the Council on 23 May 1977 (C/W/288).

3. The Working Party took note of the following facts of the case. Under the Japanese Commodity Tax Law (Law No. 48 of 31 March 1962), a consumption tax is levied on an extensive list of consumer goods, including various electronic products. Upon exportation of these products from Japan the consumption tax is either remitted if previously paid, or the products are exempted from the payment of the tax. On 3 April 1970, the Zenith Radio Corporation, a United States producer of electronic products, petitioned the United States Secretary of the Treasury to impose countervailing duties on certain enumerated consumer electronic products exported from Japan,
alleging inter alia that the tax remissions and exemptions amounted to a payment or bestowal of bounties or grants within the purview of Section 303 of the Tariff Act of 1930. On 7 January 1976, a "Final Negative Countervailing Duty Determination" was made by the Secretary of the Treasury. The decision stated that no bounty or grant within the meaning of Section 303 was being paid or bestowed upon the manufacture, production, or exportation of the Japanese electronic products concerned.

4. On 11 March 1976 the Zenith Radio Corporation filed a summons in the United States Customs Court contesting the decision of the Secretary of the Treasury. The action was instituted in accordance with Section 516 of the Tariff Act of 1930, which — since its amendment through the Trade Act of 1974 — enables American companies to obtain a judicial review of negative countervailing duty determinations. The Court decided on 12 April 1977 that the remission and abatement of consumption taxes by the Japanese Government under Commodity Tax Law No. 48 constitute the payment of a bounty or grant within the meaning of the countervailing duty law. It also directed the Secretary of the Treasury to ascertain, determine or estimate the net amounts of the bounties or grants paid or bestowed and to order all appropriate customs officers to assess countervailing duties in amounts equal to the bounties or grants.

5. The United States appealed the case to the Court of Customs and Patent Appeals. Pending the final outcome of the judicial review, the Secretary of the Treasury directed the customs officers to suspend appraisement and liquidation
of the Japanese electronic products and introduced a procedure under which entries and warehouse withdrawals can only be made if bonds in amounts equal to the estimated countervailing duties are submitted.

6. The Working Party then examined the case in the light of the provisions of the General Agreement. It heard a statement by the representative of Japan who made the following four points.

7. First, the Japanese practice of exempting exported products from domestic consumption taxes was in full accord with the Articles of the General Agreement, in particular with Article VI:4 and the note to Article XVI.

8. Second, although the Japanese Government was aware of the fact that the United States Government had appealed the case to a higher court, it would like to stress that if the Customs Court decision were to become final and countervailing duties were imposed on Japanese consumer electronic products by reason of the exemption from commodity taxes or remission of such taxes, the United States would clearly violate the aforementioned provisions of the GATT. Such violation would constitute a prima facie case of nullification or impairment of benefits accruing to Japan under the General Agreement.

9. Third, the court ruling and the subsequent administrative action had serious effects on the Japanese exports of consumer electronic products to the United States which, in 1976, amounted to US$1.89 billion. The measures were giving rise to uncertainty regarding pricing and future export opportunities. Present exports were hampered by the bonding procedure instituted by the United States Treasury. The amounts of the bonds required are estimated to be in the range of
US$200 to US$300 million according to 1976 trade figures. The premium cost for bonding insurance of 0.1 to 1 per cent of the actual bonds is estimated to cost in the range of US$200 thousand to US$3 million. Japanese traders, acting under regulations that fully conform with the General Agreement, had to bear burdens which, under the provisions of GATT, they should not be required to bear. For these reasons, the court ruling and the subsequent administrative action were, in Japan's view, violative of the GATT.

10. Fourth, the court decision and subsequent administrative action had implications not only for Japanese exports of electronic products but for world trade in general. Many contracting parties presently exempted exported products from internal consumption taxes or refunded such taxes. A proliferation of actions in the United States against such tax exemptions or refunds would therefore necessarily have serious repercussions.

11. One member of the Working Party stated if its exports had been affected by the United States action, it would have employed one of the other procedures available under the General Agreement. He further underlined that in his view the costs involved in the bonding procedure were not a significant burden to trade but rather the uncertainty caused by the threat of the imposition of countervailing duties in violation of GATT as a result of the decision by the Customs Court. He cited in this connexion excerpts from the legal brief for the United States Government to the Court of Customs and Patent Appeals. By way of general comment, the member of the Working Party finally referred to the disadvantages, clearly exemplified by the present case, which are inherent in overly complex domestic procedures providing for public hearings and judicial review in the area of trade policy measures.
lla. Other members expressed similar concern as the one expressed by Japan. Some of these members added that in the present situation the interests of third countries could also be adversely affected by the United States action.