Chairman: Mr. U. Mohrmann (Federal Republic of Germany)


2. The Committee elected Mr. U. Mohrmann (Germany, F.R.) as Chairman and Mr. L. Bartha (Hungary) as Vice-Chairman.

3. Several representatives expressed their appreciation for the excellent chairmanship of Mr. P. Robertson during his term of office.

4. The Committee adopted the following agenda:

A. Adherence of further countries to the Agreement

B. Examination of national legislation and implementing regulations (ADP/1 and addenda)
   (i) Legislation of the EEC (ADP/1/Add.1/Suppl.3)
   (ii) Legislation of Canada (ADP/1/Add.6/Rev.1)
   (iii) Legislation of the United States (ADP/1/Add.3/Rev.2 and Corr.1)
   (iv) Legislation of Poland (ADP/1/Add.20)
   (v) Other legislation

C. Semi-annual reports of anti-dumping actions taken within the period 1 July 1984-31 December 1984 (ADP/23 and addenda)

D. Reports on all preliminary or final anti-dumping actions (ADP/W/93, 94, 96, 97 and 98)


F. Other business
   - Proposal by Romania
A. Adherence of further countries to the Agreement

5. The Chairman informed the Committee that since the last regular session on 30-31 October 1984, no further country had adhered to the Agreement.

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

(i) Legislation of the EEC (ADP/1/Add.1/Suppl.3)

6. The Chairman recalled that at its previous meeting (30-31 October 1984) the Committee had had a preliminary discussion of the EEC legislation. A number of points were raised regarding, inter alia, the Second Supplementary Note to Article VI:1 of GATT, the nature of the review provisions, the definition of industry and other related matters. The Committee had consequently agreed to revert to the EEC legislation at the present meeting.

7. The representative of Australia referred to "the other reasons" which could serve to establish dumping on the basis of a constructed price (Article 2, paragraph 8(b) in the EEC legislation) and asked for a clarification of this concept.

8. The representative of the EEC explained that up to now his authorities had not been confronted with a concrete case and that the concept had been included solely as a safety net.

9. In the absence of further requests for the floor, the Chairman said that the examination of this EEC legislation was terminated.

(ii) Legislation of Canada (ADP/1/Add.6/Rev.1)

10. The Chairman noted that the question of the Canadian legislation had been before the Committee for some years and members of the Committee were familiar with this issue. He also recalled that the Canadian delegation had already submitted its draft legislation for the Committee's perusal at its drafting stage, a practice which was a commendable example. Now the Committee had before it the final version for its examination.

11. The representative of the EEC asked whether the Canadian legislation, regulations, or administrative guidelines provided for a disclosure conference before a final determination of dumping was made. He noted that the Code did not expressly provide for the holding of such conferences but that both in the EEC and in the United States, this had become customary in order to give the parties concerned a last opportunity to make comments on proposed definitive measures. He further recalled that certain EEC exporters had complained that they did not know on which basis final decisions had been taken by the Canadian authorities.

12. The representative of Canada said that although there was nothing in the legislation or regulations that provided for disclosure conferences, it was the practice of the administering authority to make information available at several stages before preliminary and final determinations. As well, throughout the process lawyers on behalf of parties concerned had access to confidential information. He added that both the final decisions on dumping margins (by the Deputy Minister) and on findings of injury (by the Tribunal) were appealable.
13. The representative of Australia asked for confirmation of his view that there was no provision in the Canadian legislation to cover the case of third country dumping (Article 12 of the Code). If his view was correct, he wondered how the Canadian authorities would handle these cases.

14. The representative of Canada said that unlike in the case of subsidies, there was no such provision for dumping cases. He would take note of this lacuna and if the legislation was revised, the need for the pertinent provision would be reviewed. He finally stated that the Canadian authorities could self-initiate action in these cases.

15. The representative of Finland, speaking on behalf of the Nordic countries, referred to Section 2 in the Canadian legislation on the definition of sale where the concept "irrevocable tender" had been included. The Nordic countries regretted that Canada had made a unilateral interpretation of a question which was controversial and under discussion in the Ad-Hoc Group. The speaker then referred to Section 15 on normal value determination where the Deputy Minister was given wide discretion; hopefully the situation would be different in practice. As to the provision in Section 49 concerning price undertakings being accepted by the Canadian authorities prior to the preliminary dumping findings, he noted that this could be regarded as a self-incrimination move by the concerned firm, particularly since before the preliminary finding had been made, it was impossible to know how the investigating authority judged the question of dumping. He also referred to the appeal procedures in the legislation, which he thought were very complicated; how, for instance, could an exporter receive information about the possibilities and procedures to appeal against a preliminary or final finding of dumping or material injury. The speaker finally referred to certain provisions where dumping and subsidy investigations could be joined with the concomitant effect of cumulative injury assessment. He recalled that cumulative assessment in subsidy and dumping cases was not compatible with Article 3:4 of the Anti-Dumping Code nor with Article 6:4 of the Subsidies Code.

16. The representative of Canada said that the problem relating to the question of irrevocable tenders was well known. Regarding the discretionary powers of the Deputy Minister, he said that the complexity of the legislation required a certain degree of discretion; this was also true for the legislation of other Parties such as the United States and the EEC. Discretionary power was also necessary in situations of insufficient information to allow the Deputy Minister to make a judgement on the amount of subsidy, normal value, export price, etc. However, if later on it was felt that decisions were incorrect, the complainant and the other parties could avail themselves of the appeal provisions. As to the point concerning undertakings, it was true that they could only be accepted prior to the preliminary determination, the reason being that undertakings were designed to eliminate the injury caused by dumped or subsidized imports. The Canadian approach reduced time and expenses imposed on both sides; once the Tribunal's process was started and lawyers hired, this objective was defeated. He further recalled that at the initiation stage the Canadian legislation permitted appeals against the decision of the Deputy Minister on the initiation of an investigation. In addition, margins of dumping and subsidy were disclosed to interested parties prior to the preliminary determination so that undertakings could be entered at that stage. Moreover,
the legislation forbade the Deputy Minister to accept undertakings if the prices would rise by more than the amount of the dumping or subsidy. The Canadian delegate further stated that it was not necessary for an exporter to give an undertaking in order to avoid the payment of dumping duties established in a preliminary determination; he had simply to price above normal value and the exporter could go before the Import Tribunal without paying duties and still continue shipments. Should he decide to pay the duties and subsequently the decision resulted in a finding of no dumping or no injury, the duties would be reimbursed with interest. The representative of Canada then referred to the rules concerning appeal, which he agreed were rather complex, but it was also true that the Code and the Canadian legislation as a whole were complex. As to the question of joining investigations, the purpose of this was administrative convenience; although the procedure could lead to cumulative injury findings, this was not compulsory in the Canadian legislation as was the case in the legislation of other Parties.

17. The representative of Japan noted that his delegation would expect the Canadian authorities to take the existing international obligations into account, i.e. the Code, when administering the anti-dumping procedures. He also noted the absence of a reference to the definition of industry contained in the Code.

18. The representative of Canada stated that Articles 9 and 11 referred to the concept of industry and that although his authorities had not adopted the Code as such, there was a cross reference to it, and it was their intention to fully respect the obligations of the Code.

19. The representative of Czechoslovakia said that his reading of Section 20(c) of the Canadian Special Imports Measures Act and of Section 14 of the Regulations lead him to conclude that in the case of non-market economies, the first criterion used for normal value determinations would be the export prices to third countries. If this were so, he would be fully satisfied because of the compatibility of this provision with the Code. He required confirmation that legal counsel representing parties before the Tribunal must be resident in Canada; if this information was correct, he would express his concern. On the question of cumulation of injury, he said that in the cases involving his country, there had been no cumulation.

20. The representative of Canada stated that the Canadian legislation did not permit a comparison with sales to third countries when determining normal value for non-market economies, but that this point could be clarified bilaterally with interested delegations. On the second question he noted that there was no restriction on the admissibility of legal counsel or interested parties to the Tribunal. It was common for lawyers and non-credited trade experts to make representations on behalf of both parties to an investigation. However, access to confidential information was restricted to Canadians as there must be a possibility for sanction.

21. The representative of Finland said he was not very clear on the explanation offered by Canada that the purpose of the price undertaking was to eliminate injury. It seemed unfair to him to deny the importer or the exporter the possibility to eliminate the injury at the stage when the proper injury assessment by the Tribunal was being made. The injury assessment at
the moment of deciding whether or not to initiate an investigation did not
give sufficient information to judge whether a price undertaking should be
offered. The view of the Nordic countries was that this provision was very
strict.

22. The representative of Canada agreed that the first examination on appeal
was somewhat superficial but that it nevertheless gave a fairly good
idea of margins so that the exporter could offer an undertaking. He
reiterated that the main protection in his country's legislation was that the
exporter did not have to pay duties in order for the Tribunal to carry on the
investigation. If normal value was for instance 100, he could give an
undertaking to price up to 100 and not have the investigation go forward.
Alternatively, he could price at the normal value and have the investigation
go forward. This amounted to giving an undertaking - pricing above the
normal value and keeping the price differential to himself.

23. The representative of India reserved his rights on the question of
definition of sale and cumulation of injury and on actions which might be­taken under these provisions. He requested that any useful information
resulting from the bilateral talks with Czechoslovakia be made available to
the Committee at a subsequent meeting.

24. The representative of Hungary echoed the remarks of the Nordic countries
on the discretion of the Deputy Minister in determining normal value. He was
also of the view that normal value had to be established taking into account
the aggregate costs in third countries, i.e. comparative levels of
development. In this regard nothing was contained in the Canadian
legislation.

25. The representative of Canada said that to the extent possible, countries
of comparable levels of development were taken into consideration in order to
find a surrogate price. As there were great difficulties in obtaining
co-operation from those countries, it was often necessary to use the best
information available. Every attempt was made to do what the Hungarian
delegate had suggested.

26. The representative of Brazil stated that he reserved his position on the
questions of definition of sale and cumulative injury. Regarding the latter,
he wondered whether the Canadian authorities were compelled to use the
cumulative approach or whether they had some discretion. On the question of
price undertakings he requested a clarification on the idea that once a duty
was imposed, there was no room for price undertakings.

27. The representative of Canada reiterated that neither the legislation nor
the regulations contained any reference to cumulative injury. The use of the
concept of cumulative injury was not compulsory and it was in the discretion
of the Tribunal to use it or not. It was not unusual that even when injury
had been found, the Tribunal would exclude some countries from the scope of
injury determination. There were, therefore, no fixed rules for the Tribunal
to operate on, and its findings were based on the particular facts in an
individual case. As to the question of price undertakings he made it clear
that there was only one chance for an undertaking - it must be given and
accepted prior to the preliminary determination. If the undertaking was
accepted, the procedure was suspended at that point in time. If it was not
accepted or if subsequently the undertaking was violated or rejected, the procedure would be taken up again where it had left off. He emphasized that the duty was applicable to the extent that the export price was lower than the normal value. In the Canadian system, a normal value was established and the export price was then compared to the normal value for each entry. So long as the export price of a particular shipment was above the normal value, no duty was collected on that shipment. The exporter could still have the benefit of a price undertaking by shipping above the known normal value while the Tribunal conducted its investigation.

28. The representative of Romania indicated that his delegation was not satisfied with the idea of limiting price undertakings to the period before the preliminary determination. During this period it was very difficult to assess objectively the margins of dumping, normal value, causality and injury, and consequently the exporter did not have sufficient knowledge to be able to offer and accept a price undertaking. He further recalled his proposal to study the possibility of using constructive remedies such as price undertakings before applying anti-dumping duties as this would be beneficial to all parties to the Code (ADP/M/14, paragraph 6). He finally said that the secretariat could study this matter in detail (see Other Business).

29. The Chairman invited the Committee to take note of the questions asked and the replies offered by Canada. It was decided to include the legislation of Canada on the agenda of the next meeting to allow delegations to revert to certain points and to ask further questions.

(iii) Legislation of the United States (ADP/1/Add.3/Rev.2/Corr.1)

30. The Chairman recalled that as members of the Committee were aware, the US Trade and Tariff Act of 1984 had introduced a number of amendments which were specific to the operation of the US Anti-Dumping law. The US delegation had prepared a consolidated version of the anti-dumping law in its revised form. In this text, circulated to the Committee as ADP/1/Add.3/Rev.2, the new provisions were underlined to facilitate the discussion.

31. The representative of the EEC drew the Committee's attention to the fact that according to Article 4:1 of the Code, "industry" was defined as the "domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products". The US legislation (Section 612(a)(1)) had introduced a special definition of industry for purposes of anti-dumping procedures carried out in respect of wine which was not in conformity with the provisions of the Code. The US legislation of 1979 had been in conformity with the Code but the US Congress, in passing Section 612(a)(1) of the Trade and Tariff Act of 1984, had completely changed this definition to give grape growers the opportunity to complain against imports of EEC wine. An anti-dumping case had been brought by US grape growers against EEC wine, which the ITC had rejected on the grounds that grape growers were not an industry concerned by wine imports. The new legislation was aimed at rectifying this result by giving grape growers the right to complain against imports of wine.
32. The representative of the EEC further referred to Section 609(a)(2) of the US Trade and Tariff Act of 1984. This provision authorized the US Administration to monitor imports of merchandise into the US market from any "additional supplier country" different from those under investigation. The concern of his delegation was that such a monitoring might have a serious trade-distorting effect. Similarly, he was interested to know how the US Government saw the relation between this provision and the 1981 understanding of the Committee concerning monitoring schemes (ADP/M/6, Annex I). His final concern was that this provision allowed self-initiation of anti-dumping investigations; although the Code did not prohibit self-initiation, it restricted it to special circumstances and there were certain circumstances in the US legislation which could not all be considered as special.

33. The representative of the United States said that the question of definition of industry was a very complex matter and that at the present time the pertinent provision in the US legislation had not been interpreted nor applied. It was unclear whether a case would be filed under this provision and whether any future circumstances would give reason for concern on the part of any other delegation. The views of his authorities on this subject were well known and consequently he had nothing substantial to add for the time being. As to the second question on "monitoring schemes", his first reaction was to note that there was no requirement in the legislation to establish a monitoring programme; there was only an authority to do so. The conditions mentioned in the legislation referred to special circumstances such as good reasons to suspect an "extraordinary pattern of persistent injurious dumping" and consequential "serious commercial problem for the domestic industry". Therefore, even if a monitoring programme was implemented, no further action would necessarily be taken unless special conditions were met. These actions would not be inconsistent with the Code provision that required that no action be taken under the monitoring programme, the reason being that an anti-dumping investigation must be initiated and its procedures followed before anti-dumping duties could be assessed.

34. The representative of Finland on behalf of the Nordic Countries referred to the concepts of "likelihood of sale" and "cumulation of injury". Regarding the former, he wondered how, in practice, this concept would be interpreted, particularly in the light of the provisions of Article 3:6 of the Code which stipulated that injury must not be based on allegation, conjecture or remote possibility, and that circumstances should be clearly foreseen and imminent. Regarding the concept of cumulation, he was not clear how this would be applied over time if it included imports which were negligible in volume and market share, and if imports already subject to anti-dumping measures would also be included.

35. The representative of the United States stated that with respect to the "likelihood of sale", the US legislation had not yet been interpreted by regulation but that there was legislative history which indicated that an irrevocable offer would be the appropriate definition of "likelihood of sale". The United States was preparing draft regulations and as those had not yet been issued, it would not be appropriate to discuss them now. Under standard procedures they would be issued for a sufficient period of time to receive public comment and the issue could be discussed further at any time, either bilaterally or in the Committee. With respect to the cumulation of
injury, the United States and other countries that applied anti-dumping laws had long recognized the necessity for cumulation in appropriate circumstances. US law had recently been revised on this point but it had not yet been interpreted and applied in concrete terms to particular cases. For that reason it was also premature for his delegation to discuss how it would be interpreted by the ITC. His delegation would keep the Committee informed about any developments in this area. In the meantime, interested delegations could discuss this and other topics with the General Counsel to the ITC, who was responsible for advising the Commission on interpretation matters.

36. The representative of India echoed the concerns of previous speakers. On the question of monitoring programmes, he was aware that their establishment was not automatic but that the mere possibility of using them caused some uncertainty in the trading community. For the time being he would hope that the provisions of the Code would be respected and that the establishment of such programmes would not give rise to superfluous investigation procedures. On the question of cumulation the Indian delegate expressed his concern as this practice would produce inequitable results to the detriment of small suppliers whose imports would be taken together with those of larger suppliers. Finally, with regard to the wine-grape legislation his delegation was concerned about the possible proliferation of this principle of definition.

37. The Chairman noted that the Ad-Hoc Group in its session of 22 April 1985 had decided to include the subject of cumulation in the agenda of its next meeting.

38. The representative of Japan expressed the concern of his authorities with certain provisions in the US legislation. He would refrain from making further comments until the implementing regulations would become available.

39. The representative of Hungary also expressed the concern of his delegation on the US definition of industry; this definition was a clear departure from the Code.

40. The representative of Romania shared the concerns of previous delegations on the question of monitoring programmes, likelihood of sale and cumulation of injury. He then referred to Section 734(i) of the US legislation making the consequences for violation of a price undertaking by the exporter the same as in the case of withdrawal of the undertaking on grounds of public interest factors, namely the retroactive application of anti-dumping duties. This was at variance with Article 7:5 of the Code which stated that "any such retroactive assessment shall not apply to imports entered before the violation of the undertaking". As a result, according to the US legislation an exporter who had not violated an undertaking was punished more severely than allowed by the Code, even in the case of a violation.

41. The representative of the United States noted that Section 734(i) had not been amended in 1984. Under the US legislation an undertaking could be terminated when there was an explicit violation of the pricing terms of the undertaking or when the Secretary of Commerce was no longer satisfied that the undertaking was in the public interest. As the latter was the same requirement for the acceptance of an undertaking, the US pertinent provision
could be read as saying "whenever the conditions under which acceptance of an undertaking are permissible cease to exist the US authorities may terminate the undertaking". It was correct that upon termination of an undertaking, provisional measures would be reapplied either on the date of publication of the notice of termination, or at any point up to 90 days retroactively, provided the conditions for retroactive application were met. Article 7:5 of the Code permitted the retroactive application of provisional measures and the US legislation was fully consistent with it.

42. The representative of Romania explained that he had raised the question of violation of undertakings because of a practical case his country was confronted with. On 4 January 1983 a suspension agreement had been worked out between a Romanian enterprise and the Department of Commerce for exports of certain steel products. Although all obligations and conditions had been respected by the Romanian exporter, the US authorities had withdrawn from the agreement on account of public interest factors, explicitly stating that it was not a violation situation; yet, provisional measures had been applied retroactively for 90 days. In this manner, the Romanian exporter who had not violated the undertaking was more severely punished than permitted by the Code in the case of a violation. His delegation wished to reserve its right on the question of the conformity of Section 734(i) of the US legislation with the relevant provision of the Anti-Dumping Code.

43. The representative of the United States indicated that since the substance of the previous intervention was not germane to the item of "Examination of National Legislations", he did not think it was appropriate for him to address it now; his delegation was prepared to discuss this issue bilaterally.

44. The representative of Czechoslovakia said that since the question of cumulation of injury would be examined by the Ad-Hoc Group, he wished to reserve his right to revert to this matter subsequently.

45. The representative of Spain reiterated his Government's concern on the question of definition of industry in the US legislation where wine and grape industries had been associated.

46. The representative of Brazil shared the views of those delegations which had expressed concern on the question of definition of sale, particularly the points on irrevocable tenders. His other concern was with the provision relating to definition of industry; he saw in the US approach the risk of proliferation to other sectors to suit particular needs. He finally reiterated his reservation on the compulsory cumulative assessment provision.

47. The representative of Yugoslavia associated herself with the remarks of previous speakers and indicated her wish to revert to certain points subsequently.

48. The representative of Poland agreed with those delegations which had expressed concern about the provisions regarding cumulation of injury and monitoring programmes. She would expect positive results from the work of the Ad-Hoc Group on these matters.
49. The Chairman said that since certain delegations had expressed their wish to revert to the US legislation and to reflect further, the Committee would re-examine this legislation at the next meeting. It was so decided.

(iv) Legislation of Poland (ADP/1/Add.20)

50. The Chairman recalled that the Committee had received a notification from Poland to the effect that anti-dumping investigations, if they took place, would be conducted on the basis of and in the manner established by the Anti-Dumping Code. This notification contained, however, some additional provisions concerning initiation of anti-dumping investigations and definition of industry.

51. The representative of the EEC questioned whether the reference to the Code in Section 1 of the Polish legislation ("anti-dumping investigations will be conducted on the basis of and in the manner established by the Anti-Dumping Code") was sufficient to deal with certain situations and procedures. The legislation itself recognized this in Section 4 where it was stated that in such a case the "Code on Administrative Procedures shall apply". He invited the delegation of Poland to make copies of these Administrative Procedures available to the Committee. The representative of the United States agreed that the Committee should look at the Polish Administrative Procedures.

52. The representative of Poland recalled her authorities' previous statement that it was not their intention to undertake any anti-dumping procedures. The Polish anti-dumping legislation could be seen as an effort of protection against unfair practices for a private domestic sector which was growing in importance. Her authorities would strictly follow the Code rules as well as the recommendations of the Ad-Hoc Group. She would transmit to her capital the points raised by the previous speakers and offer a reply at the next meeting.

53. The representative of Hungary noted that the system of ownership in a given country bore no relation whatsoever to the applicability of anti-dumping procedures; consequently, the latter was independent of the fact that a private sector was growing in importance. In his view, the only relevant factor of the applicability of anti-dumping procedures was the decentralized economic decision-making.

54. The Chairman said that in view of the observations made and the willingness of Poland to furnish additional details at the next meeting, the Committee would retain the legislation of Poland on the agenda. It was so decided.

(v) Other legislation

55. The representative of the EEC asked if Australia had finalized its Anti-Dumping Guidelines. The representative of Australia replied affirmatively and noted that it covered various aspects of the anti-dumping and countervailing legislation as well as its interpretation by the customs service. A few copies of the Guidelines would be made available to the secretariat shortly.

56. The representative of Canada wondered if Australia had finalized its examination of sunset provisions. He also asked whether Japan had circulated
some information about the establishment of a special committee (ADP/M/13, paragraph 12).

57. The representative of Australia said that a sunset provision had not been enacted as such; however, as a matter of administrative policy his Government had recently decided that dumping determinations should be reviewed two years after their entry into force in order to determine whether a full scale determination of injury or threat should be undertaken. If the decision was negative, the case would be reopened within a further twelve months and at twelve-monthly intervals thereafter. If the decision was positive and threat of injury was found, a recommendation to continue the anti-dumping action would be made; if no threat was found, the action would be rescinded. His delegation was prepared to discuss this matter in the Committee if the need arose.

58. The Chairman said that in view of the relevance of the sunset provisions, the Committee would revert to the Australian case at the next meeting.

59. The representative of Japan recalled that his delegation had informally circulated certain documents relating to the above-mentioned committee during the last session of the Committee in October 1984.

60. The Chairman invited the Japanese delegation to furnish the Committee, informally through the secretariat, some further copies of those documents.

61. The representative of Romania asked whether in the forthcoming secretariat publication containing the Anti-Dumping legislation of all Parties to the Code, it would not be possible to list in an annex all references to other laws, regulations or administrative procedures appearing under each national legislation.

62. The Chairman recalled that the secretariat could only circulate what it received from delegations.

63. In concluding this point of the agenda, the Chairman said that since there were no more comments on this general item, the Committee would maintain it on its agenda in order to allow the Parties to revert to particular aspects of some legislation at a later stage or in the light of the actual implementation of a legislation.

C. Semi-annual reports of anti-dumping actions taken within the period 1 July 1984-31 December 1984 (ADP/23 and addenda)

64. The Chairman noted that an invitation to submit semi-annual reports under Article 14:4 of the Agreement had been circulated in ADP/23 of 18 January 1985. Responses to this request had been issued in addenda to this document. The following Parties had notified the Committee that they had not taken any anti-dumping action during the period 1 July 1984-31 December 1984: Austria, Brazil, Czechoslovakia, Egypt, Hungary, India, Japan, Norway, Pakistan, Poland, Romania, Singapore, Sweden, Switzerland, United Kingdom on behalf of Hong Kong, and Yugoslavia (ADP/23/Add.1). Anti-Dumping actions have been notified by Australia, Canada, the EEC, Finland, Spain and the United States. The Committee would discuss these reports in the order in which they had been submitted:
65. The representative of the United States asked if the heading on page 8 of the Australian report applied only to anti-dumping measures. He also wanted to know the meaning of the term "nil" under column 13 of the report.

66. The representative of Australia replied affirmatively to the first question. He indicated that the cases where the term "nil" had been put in were only in the preliminary stage and that the pertinent figure would be inserted if the case was carried forward. The representative of the United States added that "nil" had also been used for polystyrene from France, that the case was final and that it was not in the preliminary stage. The representative of Australia said that in this case, normal value had been calculated on the basis of a third country price.

67. The representative of the United States invited the Finnish delegation to list, in column 4 of the report, the level of provisional measures prior to the acceptance of the undertaking. This information was vital, not only in the present case against Switzerland, but in all future cases.

68. The representative of Finland indicated that the level of provisional measures was that required by the bank guarantee to the amount of the full provisionally calculated dumping margin.

69. The representative of the United States asked if the level of provisional measures would be included in column 4 of the Spanish report.

70. The representative of Spain recalled that this was his country's first report and that the level of the provisional measures was 250 pesetas per square metre or around 30 per cent.

71. The representative of Yugoslavia noted that on page 2 of the Spanish report the "reporting country" was the European Community. The representative of Spain said that in the original version in Spanish, Spain appeared as the "reporting country"; there was probably a translation problem.

72. The representative of Canada referred to a case concerning structural steel not included in the US report. The US company had in its petition to the Commerce Department referred to only one Canadian exporter. Since Canada's submission had not been accepted on the ground that it was inappropriate to make a submission at the particular time in question, he wanted to know if now that the case had been initiated it was appropriate for his authorities to make such a submission.

73. The representative of the United States replied negatively because the US company had amended its petition to refer to all producers of the product in Canada and therefore the issue had been moved.
Canada (ADP/23/Add.6/Rev.1)

74. The representative of the United Kingdom on behalf of Hong Kong referred to a case concerning wooden clothespins in the list of outstanding anti-dumping actions. Since action dated back to 1978 he wondered whether the Canadian authorities had taken any measures to review the need to continue this action.

75. The representative of Canada said that in 1984 a finding of injury had been made concerning the same product against Czechoslovakia (page 2 of the report) and that therefore the case had come under the sunset provision of the Canadian legislation. It would be reviewed again at the appropriate time.

EEC (ADP/23/Add.7)

76. The representative of the United States noted that in the EEC report there was no reference to the list of outstanding orders. The representative of the EEC reiterated what he had said on previous occasions regarding the introduction of a sunset clause provision and the efforts of his authorities to furnish such a list in the near future.

77. The Chairman hoped that all reporting Parties would comply with the requirement to list in an annex all outstanding anti-dumping actions in accordance with the footnote to the agreed standard form (ADP/3).

D. Reports on all preliminary or final anti-dumping actions

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

79. There were no comments under this agenda item.


80. The Chairman recalled that the Ad-Hoc Group had submitted to the Committee the "Draft Recommendation Concerning Determination of Threat of Material Injury" (ADP/W/82/Rev.2) for possible adoption. In this connection he further recalled that the Committee had agreed that its recommendations constituted an understanding on the manner in which Parties intended to implement relevant provisions of the Code and did not add new obligations nor did they detract from the existing obligations under the Code.

81. The representatives of various delegations supported the adoption of the draft recommendation whereas others indicated that they still had certain difficulties with it. In view of this the Chairman in his summation indicated that, as document ADP/W/82/Rev.2 had received the support of the Committee, and since the delegation of Romania had expressed the need to clarify certain matters, and the delegation of Brazil had the intention of making a statement after adoption, the Committee would postpone adoption of this document until the next meeting of the Committee.
82. The Chairman then invited the outgoing Chairman of the Committee (Mr. Robertson) to report on the status of work in the Ad-Hoc Group.

83. The outgoing Chairman referred firstly to the question of "Definition of Sale". At its meeting of 8 May 1984 the Committee had requested the Ad-Hoc Group to examine the question of "Definition of Sale" and to submit a draft recommendation on this matter, at the latest by the end of 1984. In spite of continuous efforts the Group had been unable to fulfill the mandate given to it by the Committee. Informal consultations had revealed some of the complexities of this issue, so that a generally acceptable solution could be expected only after further and extended work. If the Committee so wished, consultations could continue in order to identify problems in this area and to outline the scope of any possible solution. Progress achieved in these consultations would be periodically reported to the Committee. In respect of "input dumping", another issue considered by the Group, the discussion had been taken as far as possible and a text had been produced (ADP/W/83/Rev.2). Delegations would notice that there were no square brackets in this text; however, the Group had been unable to recommend its adoption to the Committee, the reason being that while there was substantial agreement in the Group, no consensus could be reached. It was his decision that this matter should now be transferred from the Ad-Hoc Group to the Committee which might wish to take note of the text and consider this matter at an appropriate later stage. As to further work of the Ad-Hoc Group, it had examined a list of outstanding issues which had been proposed for consideration by the Group itself. Most of these issues had been the subject of preliminary discussions but no substantial progress had been made on any of them. The Group had agreed to revert to some of these issues on the basis of new submissions or written comments which some delegations had volunteered to make. At its next meeting which he proposed should be held in conjunction with the regular session of the Committee in October 1985, the Group would consider only those issues on which written submissions would be received by 13 September 1985. The secretariat would circulate an agenda specifying these issues shortly after that date.

84. The representative of Finland said that it was regrettable that the Group had not been able to produce a recommendation on input dumping. It was his hope that those countries preparing legislation on this subject would take the views of other Parties as set out in ADP/W/83/Rev.2 into consideration.

85. The Chairman invited the Committee to take note of the statement by the outgoing Chairman. He also stated that delegations might wish to revert to particular aspects of this statement at a subsequent meeting. It was so decided.

F. Other Business

Proposal by Romania

86. The representative of Romania reiterated his proposal that the Committee examine some constructive remedies, as provided for in the Code, for the imports of developing countries subject to anti-dumping investigations. His delegation was prepared to present a paper at the next meeting on the use of price undertakings as a possible constructive remedy, in accordance with Article 13 of the Code.
87. The representative of the United States asked if the Romanian delegation could elaborate on the aims of the paper.

88. The representative of Romania said that discussions on this subject could be based on information submitted by delegations or by the secretariat on appropriate measures (constructive remedies) which could be taken in favour of developing country imports before applying anti-dumping duties as suggested under Article 13 of the Code. The examination of these submissions would certainly be useful both for Parties to the Code as well as for developing countries wishing to accede to it.

89. The representative of the EEC wondered if Romania could present its working paper to the Ad-Hoc Group where all proposals were examined in detail before being considered by the Committee. The representative of Brazil agreed with this view.

90. The Chairman indicated that the secretariat could only circulate information received from delegations and that the proposal to present a working paper to the Ad-Hoc Group was welcome. The Committee therefore decided to accept the proposal by Romania to submit a working paper on "constructive remedies in favour of developing country imports before the application of anti-dumping duties". Other delegations might present their own working papers too. Working papers should be sent to the secretariat before 13 September 1985. It was so decided.

91. The Chairman further indicated that he would hold informal consultations to explore avenues to conduct the review of the Agreement (the Anti-Dumping Code) as provided in Article 16:7 of the Code.

Date of next meeting

According to the decision taken by the Committee at its April 1981 meeting (ADP/M/5, paragraph 51), the next regular session of the Committee will take place in the week of 21 October 1985.