Committee on Anti-Dumping Practices

MINUTES OF THE MEETING HELD ON
24, 25 AND 27 OCTOBER 1988

Chairman: Mr. R.J. Arnott (Australia)

1. The Committee held a regular meeting on 24, 25 and 27 October 1988.

2. The Committee adopted the following agenda:

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

   B. Examination of anti-dumping laws and regulations of parties to the Agreement (ADP/1 and addenda)
      (i) EEC (ADP/1/Add.1/Rev.1 and ADP/W/162, 166, 174, 175 and 183; ADP/1/Add.1/Suppl.4 and ADP/W/152, 164, 180 and 181)
      (ii) Australia (ADP/1/Add.18/Rev.1/Suppl.2)
      (iii) New Zealand (ADP/1/Add.15)
      (iv) Mexico (ADP/1/Add.27 and Corr.1 and Add.27/Suppl.1)
      (v) Brazil (ADP/1/Add.26/Suppl.1 and Corr.1, and ADP/W/170 and 178)
      (vi) Pakistan (ADP/1/Add.24 and ADP/W/117, 120 and 124)
      (vii) Laws and/or regulations of other Parties

   C. Semi-annual reports of anti-dumping actions taken within the period 1 January-30 June 1988 (ADP/37 and addenda)

   D. Reports on all preliminary or final anti-dumping duty actions (ADP/W/176, 179, 184, 185 and 186)

   E. Report by the Chairman on the work of the Ad-Hoc Group on the implementation of the Anti-Dumping Code

The term "Agreement" refers to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade.

G. EEC - Anti-dumping duty investigations of imports of urea from various countries (ADP/M/22, paragraphs 73-81 and ADP/W/182)

H. Australia - Anti-dumping duties on power transformers from Finland (ADP/M/22, paragraphs 95-99)

I. Other business

(i) United States - Imposition of definitive anti-dumping duties on imports of stainless steel pipe and tube from Sweden - Request by Sweden for the establishment of a panel

(ii) Mexico - Initiation of anti-dumping duty investigation and imposition of a provisional duty with respect to imports of steel from EEC member States

J. Annual review and report to the CONTRACTING PARTIES

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

3. The Chairman informed the Committee that since the regular meeting held on 30 May and 1 June 1988 no further countries had adhered to or accepted the Agreement.

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

(i) EEC

(a) 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 (document ADP/1/Add.1/Rev.1)

4. 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 which replaced Council Regulation (EEC) No. 2176/84, as amended. The Chairman noted that Council Regulation (EEC) No. 2423/88 contained several amendments to the anti-dumping law of the EEC and included in Article 13:10 the contents of Council Regulation (EEC) No. 1761/87 of 22 June 1987, which had already been the subject of some discussion in the Committee. In this respect he drew the attention to the discussions of this provision at the special meeting held on 6 May 1988 (ADP/M/21), and at the regular meeting held on 30 May and 1 June 1988 (ADP/M/22, paragraphs 15-29). Written questions on Council Regulation (EEC) No. 1761/87 had been received from the delegations of Japan and Korea (ADP/W/162 and 166, respectively) and the replies to these questions by the EEC had been circulated in documents ADP/W/174 and 175, respectively. Document ADP/W/183 contained comments from the
delegation of Japan on the replies provided by the EEC in document ADP/W/174. The Chairman noted that Council Regulation (EEC) No. 1761/87 was also the subject of a request by Japan for conciliation under Article 15:3 of the Agreement.

5. The representative of the EEC, introducing Council Regulation (EEC) No. 2423/88, said that most of the amendments reflected in this Regulation were designed to provide greater clarity and certainty in the operation of the EEC anti-dumping law. These amendments were of a technical nature and reflected a long-standing practice of the EEC authorities which had recently been approved in a series of judgements by the European Court of Justice. Regarding the determination of the normal value, the new Regulation explicitly provided that, where the normal value was based on the comparable price of the like product in the domestic market of the exporter, this price should be net of all discounts and rebates directly linked to the sales under consideration. The new Regulation also listed in hierarchical order the methods to be used in calculating the amount of selling, general and administrative expenses and profit for the purpose of the determination of a constructed value. Furthermore, a new provision had been included to clarify the method for the determination of the normal value in cases where exporters neither sold nor produced a like product in the domestic market. With respect to the treatment of discounts and rebates in the calculation of export prices, Regulation (EEC) No. 2423/88 laid down the rule that export prices should be net of directly related discounts and rebates. Finally, regarding the rules for the comparison between export prices and normal values, the new Regulation contained a more precise definition of the factors affecting the comparability of export prices and normal values; this more precise definition was based on the principle that allowances should be made only for differences directly related to the sales under consideration and was also designed to avoid double counting.

6. The representative of the EEC said that, in addition to the above-mentioned amendments of a technical nature, Council Regulation (EEC) No. 2423/88 contained two important new provisions. Firstly, the Regulation provided that in case an interested party provided false or misleading information, the EEC Commission could disregard such information. Secondly, a new procedure had been adopted to address the problem of absorption of anti-dumping duties by exporters. Regarding the latter amendment, he explained that recent experience in the EEC had shown that in a number of cases the imposition of anti-dumping duties had not led to increases of the prices of the products in question in the Community. The EEC authorities had concluded that the absence of such price increases was probably due to the fact that exporters were absorbing the anti-dumping duties. The EEC had, therefore, adopted a new procedure under which, at the request of an interested party who submitted evidence showing that an anti-dumping duty had been borne by the exporter, an investigation could be initiated to determine if, and to what extent, the duty had been absorbed
by the exporter. Such an investigation could result in the imposition of an additional anti-dumping duty to compensate for the amount of the initial duty borne by the exporter. This new provision had not yet been used.

He noted that in the legislation of other Parties, provisions existed to avoid the absorption of anti-dumping duties by exporters.


8. The representative of Canada made some general observations on the question of circumvention of anti-dumping duties. The fact that this issue had recently attracted much attention was an indication of its importance and of the lack of clear international rules in this area. Increasingly, countries were faced with the need to define circumstances under which it was justified to extend the scope of an anti-dumping finding on a product from a given country to parts and components originating in the same country. Recent developments had prompted the Committee to examine the extent to which the General Agreement and the provisions of the Agreement allowed for the application of such measures. In the view of his delegation, a first difficulty encountered in this connection was one of definition and semantics. Regarding the problem of the definition of what constituted circumvention of anti-dumping duties, he said that exporters often reacted to the imposition of anti-dumping duties by shifting to the export of parts and components of the subject good for assembly in the importing country, or in a third country, so as to avoid the imposition of anti-dumping duties. The decision to locate operations in a country following the imposition of anti-dumping duties could be a rational and economically sound strategy for a firm which hoped to preserve its competitiveness. The problem was to determine when such a duty avoidance strategy became a circumvention of existing anti-dumping duties.

Not all duty avoidance should be equated with circumvention. Circumvention occurred when the extent of the importation of the parts and components of the like product was such that the duty avoidance strategy perpetuated the situation which resulted in a finding of injurious dumping in the first place. In such cases, there might be a justification for the extension of anti-dumping duties to dumped parts and components originating in the subject country. In other words, circumvention existed if a clear causality could be shown between, on the one hand, the existence of the anti-dumping duties and the importation of parts and components for assembly, and, on the other hand, the continued harm to domestic producers. This concept of circumvention required carefully selected criteria in order not to unduly frustrate business location decisions which were an important
factor for the promotion of international trade and growth and not a disruptive element. A second difficulty encountered in dealing with the issue of circumvention of anti-dumping duties related to the nature of the problem and its apparent effects. In a typical anti-dumping case the problem was the introduction of a product into the commerce of another country at a price below its normal value. The effects were measured in terms of material injury to domestic production of the like product. By contrast, the problem of circumvention derived from the existence of anti-dumping duties. The effects of the circumvention were felt not only in terms of the continuing injury but also in terms of investment. It then became a legitimate question to ask what consideration, if any, should be given to the nature of the investment in developing a regulatory response to the circumvention. If the circumvention of anti-dumping duties was viewed as a problem arising from the existence of duties against injurious dumping, then the regulatory response should primarily concern itself with the continuation of the injury effects on the domestic producers of like goods resulting from the importation of dumped parts and components, rather than with those effects observed in terms of investment or foreign ownership.

9. The representative of Canada recalled that, at the special meeting of the Committee held on 6 May 1988, his delegation had expressed the view that circumvention of anti-dumping duties constituted a real problem which should be dealt with under multilaterally agreed rules. His delegation wished to reiterate the need to address the problem coherently. Recent developments gave cause for concern. The broad nature of some of the criteria being used or proposed to define situations of potential circumvention and the discretion afforded to administrative authorities in the interpretation of these criteria ran the risk of expanding the scope of anti-dumping measures beyond the objective of providing a remedy against injuriously dumped imports. There was a very real potential for anti-dumping actions to be used to deal with problems of competitiveness, a safeguard issue, or to carry out other policy objectives, such as in the investment area. His authorities were closely examining the issue of circumvention of anti-dumping duties and they hoped to be able to return to this matter at a future date, either in the Committee or in other fora as might be appropriate at the time.

10. The representative of Japan said that his delegation would make comments on Article 13:10 of Council Regulation (EEC) No. 2423/88 under item F of the agenda. Regarding the other provisions of the new EEC anti-dumping Regulation, his delegation had submitted written questions and he requested the EEC to reply in writing to those questions. With

1See document ADP/W/190.
respect to the possible levy of additional anti-dumping duties as provided for in Article 13:11 of the Regulation, he said that such duties could apparently be applied without an investigation of the normal value of the exporter concerned; he requested the view of the EEC on whether this was consistent with the Agreement. Regarding the practice of the EEC with respect to price comparisons, which had been codified in the new Regulation, he said that where export sales were made through related parties in the EEC, the export price was calculated by deducting from the resale price to the first independent buyer in the EEC all costs incurred between importation and resale, and the profits of the related parties. On the other hand, where sales in the domestic market were made through related companies, no allowance was made for the indirect selling expenses and profits of those related companies. His authorities considered that this asymmetrical treatment of indirect selling expenses and profits in the export market and in the home market made it easier to arrive at a determination of dumping, and he requested the EEC to explain the reasons for this methodology for making price comparisons. He reserved his delegation's right to raise further questions on Council Regulation (EEC) No. 2423/88.

11. The representative of Korea said that his authorities welcomed the greater clarity and precision of some aspects of the EEC anti-dumping law which resulted from the adoption of Council Regulation (EEC) No. 2423/88. However, the Regulation also raised questions regarding its consistency with the Agreement and the provisions of the General Agreement. On Article 13:10 of the Regulation, he said that, despite the exchange of views which had taken place on this provision in the Committee, his authorities remained of the opinion that it was inconsistent with the Agreement and with the General Agreement. His authorities were also of the view that Article 13:11 of the Regulation was not in conformity with the requirement of Article VI:2 of the General Agreement that an anti-dumping duty should not be greater in amount than the margin of dumping. Finally, his delegation had doubts as to the conformity with the Agreement of Article 2:3 and 2:8 of the Regulation. His authorities were closely examining the Regulation, and he reserved his delegation's right to submit written questions on the Regulation.

12. The representative of Hong Kong recalled that at previous meetings of the Committee his delegation had raised questions and expressed its concerns regarding the provisions laid down in Article 13.10 of Council Regulation (EEC) No. 2423/88. In this context he expressed his support for the approach described by the representative of Canada in his statement at this meeting. His delegation's concerns related to the tendency to widen the scope of application of anti-dumping measures which entailed the danger
that anti-dumping measures could be used to address problems which were not
carried by unfair trade practices. His delegation did not oppose the
establishment of new multilateral rules to deal with problems which,
perhaps, were not adequately addressed in the existing Agreement.
However, in the establishment of such new rules a balance should be
maintained between the interests of importing countries and those of
exporting countries. Regarding the other provisions of Council Regulation
(EEC) No. 2423/88 he said that his delegation was interested in the replies
by the EEC to the questions which had been raised or announced by some
delegations. He reserved his delegation’s right to raise questions on the
Regulation.

13. The representative of Singapore made some preliminary comments on
Council Regulation (EEC) No. 2423/88. Her authorities were still
examining the Regulation and she, therefore, reserved her delegation’s
right to revert to the Regulation at a later stage. Regarding the amended
rules in Article 2 of the Regulation on the determination of normal value
and export price, she said that her authorities doubted whether the new
rules were fully in conformity with the provisions of the Agreement and the
General Agreement. With respect to Article 13:10 of the Regulation, she
recalled that her delegation had on previous occasions already expressed
its view that this provision had very serious implications for the
operation of the Agreement.

14. The representative of the EEC said that his delegation would reply in
writing to any questions submitted in writing. In response to the
comments made by the delegation of Japan on the criteria used by the EEC in
the comparisons between normal values and export prices, he said that in
this respect the Regulation did not change the practice of the EEC; this
practice had been approved by the European Court of Justice in a series of
recent judgements which were, no doubt, well known to the Japanese
delegation. The absence of a normal investigation in Article 13:11 of the
Regulation was explained by the fact that the use of this provision
presupposed the existence of a definitive dumping duty based on a
determination of dumping. If, after the imposition of a definitive
anti-dumping duty, it was found that the duty was borne by the exporter,
this meant that the margin of dumping of the exporter increased and in such
a situation the rules of the Agreement and the General Agreement permitted
the imposition of an additional anti-dumping duty. In response to the
comments made by the representative of Korea on Article 13:10 of Council
Regulation (EEC) No. 2423/88, he explained that the legal basis of this
provision was Article XX(d) of the General Agreement and not Article VI.

15. The Committee took note of the statements made and agreed to revert at
its next regular meeting to Council Regulation (EEC) No. 2423/88. The
Chairman invited Parties wishing to raise questions on this Regulation to
do so in writing through the secretariat by 16 January 1989 and requested
the delegation of the EEC to provide written replies to such questions by
16 March 1989.
(b) Commission Notice concerning the reimbursement of anti-dumping duties (ADP/1/Add.1/Suppl.4)

16. The **Chairman** recalled that the Committee had started its discussion of the EEC Commission Notice concerning the reimbursement of anti-dumping duties at its meeting in June 1987 (ADP/M/19, paragraph 23) and had reverted to this Notice at its meetings in October 1987 and May-June 1988 (ADP/M/20, paragraphs 9-14 and ADP/M/22, paragraphs 11-14, respectively). Written questions on this Notice had been received from the delegation of Brazil (ADP/W/152) and Japan (ADP/W/164). Replies by the EEC to these questions had been circulated in documents ADP/W/181 and 180, respectively.

17. The representatives of **Brazil** and **Japan** said that they had no further questions on the Notice. The **Chairman** said that the Committee had concluded its examination of the Notice.

(ii) **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)

18. The Committee had received a notification from the delegation of **Australia** of three recently adopted laws amending the Australian anti-dumping legislation (document ADP/1/Add.18/Rev.1/Suppl.2). The representative of **Australia** said that the three laws had come into effect on 1 September 1988. The Anti-Dumping Authority had been established and a first case had been referred to it. The laws codified to a large extent existing administrative practice in the conduct of anti-dumping duty investigations but they also introduced some important new elements. Thus, an Anti-Dumping Authority had been created which was responsible for the final stages of anti-dumping duty investigations. The Australian Customs Service remained responsible for the examination of petitions and for the conduct of preliminary investigations. Negative preliminary determinations by the Australian Customs Service could be referred to the Anti-Dumping Authority. The Authority was also competent to review existing anti-dumping measures. A second area in which the recent amendments had changed the Australian anti-dumping law concerned the calculation of a constructed value; in this respect Section 7 of the Customs Tariff (Anti-Dumping) Amendment Act provided that, as a rule, a constructed value should not include an amount for profit. A third important change consisted of the introduction of a sunset clause as a result of which anti-dumping measures would be revoked three years after their entry into force. It was expected that the effect of the application of this clause would be that as of 1 March 1989 approximately thirty of the fifty existing anti-dumping measures would have been revoked. His authorities were preparing a set of administrative guidelines for the application of the new laws; as soon as these guidelines were available, they would be notified to the Committee. Regarding the time limits provided in the new legislation for the various stages of the investigation process, he said that there was a discrepancy between the time-limits mentioned in the outline of the Customs Legislation (Anti-Dumping Amendments) Bill 1988 and the time limits laid down in the Act. The Act provided for a maximum period of 55 days for the examination of a petition, 120 days for the conduct of a preliminary investigation and 120 days for the conduct of a final investigation.
19. The representative of the United States said that his delegation had submitted questions in writing on the amendments to the Australian anti-dumping legislation. Regarding the role of the Anti-Dumping Authority in the review of preliminary determinations by the Customs Service, he asked whether it was only in case of negative preliminary determinations that parties could make an appeal to the Authority.

20. The representative of Finland, speaking on behalf of the Nordic countries, made a number of preliminary remarks on the new Australian anti-dumping legislation. He expressed his satisfaction with the introduction of a sunset clause providing for the expiry of anti-dumping measures after three years and with the deletion of the profit component in constructed value calculations. He noted that in the introductory paragraphs of document ADP/1/Add.18/Rev.1/Suppl.2, which explained the main provisions of the Anti-Dumping Authority Act 1988, it was stated that "Clause 9 of the Act permits the Government or the Authority to initiate anti-dumping enquiries where facts produced by interests indirectly concerned with a dumping issue can justify such action." He requested an explanation of how the reference to "interests indirectly concerned with a dumping issue" was compatible with the rules of the Agreement on the initiation of anti-dumping duty investigations. Referring to the explanation given on page 4 of document ADP/1/Add.18/Rev.1/Suppl.2 of the Customs Legislation (Anti-Dumping Amendments) Act 1988, he said that it was stated in this explanation that "an application for imposition of dumping or countervailing duties may be made by any person on behalf of the relevant Australian industry affected or likely to be affected by the dumping or subsidization." He wondered whether this had to be interpreted to mean that the Australian authorities would accept petitions without examining whether the petitioners had the support of a majority of the domestic producers. On the power of the Anti-Dumping Authority to review decisions by the Customs Service not to open an investigation and negative preliminary determinations, he asked whether these reviews would be undertaken on the initiative of the Authority or at the request of an interested party. On the new dumping investigation procedures described on page 5 of document ADP/1/Add.18/Rev.1/Suppl.2, he said that this description gave the impression that the new law provided for two types of preliminary determinations and he requested some further clarification on this point.

21. The representative of the EEC said that his delegation would in the near future submit written questions on the new Australian anti-dumping legislation. His delegation shared the concerns expressed by the delegation of Finland regarding the petition requirements laid down in the new legislation. Another point on which the EEC delegation was preparing written questions was Section 9 of the Anti-Dumping Authority Act 1988 which provided for reports by the Anti-Dumping Authority to the Minister. With respect to Section 269 TB of the Customs Act 1901, as amended by the Customs Legislation (Anti-Dumping Amendments) 1988, his delegation was concerned about the fact that this Section contained the possibility that an anti-dumping petition could be filed in a situation where goods were "likely to be imported into Australia."
22. The representative of Czechoslovakia requested a clarification of the procedures which would apply in the application of Section 5AA of the Customs Tariff (Anti-Dumping) Act 1975, as amended by the Customs Tariff (Anti-Dumping) Amendment Act 1988.

23. In reply to the question by the representative of the United States, the representative of Australia explained the role of the Anti-Dumping Authority as follows. Where an affirmative preliminary determination had been made by the Australian Customs Service, the case would automatically be referred to the Anti-Dumping Authority which would conduct the final stage of the investigation. In case of a negative preliminary finding, the new legislation provided for a review by the Authority at the request of the petitioner. If, in such a case, the Authority confirmed the negative preliminary determination the case would be terminated; if the Authority came to an affirmative preliminary determination, it would carry out a final investigation. A third possible form of review by the Authority was the review of existing anti-dumping measures. On the point raised by the representative of Finland regarding the petition requirements in the new Australian anti-dumping legislation, he pointed out that the Agreement provided that in normal circumstances an investigation could be initiated only at the request from a major part of the domestic industry producing a like product; the Australian authorities had never initiated an anti-dumping duty investigation on any other basis. However, the Agreement also provided that in certain circumstances an investigation could be initiated on the initiative of the authorities of the importing country. His authorities were of the view that, given that the Agreement provided for self-initiation of investigations, they could initiate investigations at the request of domestic parties who considered themselves interested in the health of the domestic industry, e.g. labour unions or suppliers of inputs. In such a case the determination of injury would, however, be made by examining the domestic industry defined in terms of producers of the like product. He added that it was normal practice in Australia to verify whether a petitioner had sufficient support from a majority of the domestic producers of the like product. In response to the question by the delegation of Finland on the provisions for preliminary determinations, he explained that within a maximum period of 120 days from the date of initiation of an investigation the Australian Customs Service had to make a preliminary determination, based on a full investigation of dumping and injury which included overseas verification. With respect to Section 9 of the Anti-Dumping Authority Act 1988, he said that this Section allowed the Minister to refer any question to the Anti-Dumping Authority; the intention of the drafters of this clause was to allow the Minister to seek the views of the Authority on matters such as the definition of injury, the determination of dumping in cases involving centrally planned economies or, more in general, the experience gained in the first years of the operation of the new legislation. In practice, this clause had been used by the Minister to refer to the Authority investigations in which preliminary findings had been made before the entry into force of the new legislation, so as to enable the Authority to carry out the final stage of
these investigations. On the point raised by the representative of the 
EEC on Section 269 TB of the Customs Act 1901, as amended, he explained 
that this Section was a codification of existing administrative practice; 
his authorities had always been of the view that it could be appropriate to 
initiate an investigation prior to the export of goods to Australia if 
there was sufficient information available on the export price of such 
goods. This could apply to a situation in which there was a firm contract 
to sell with a specific export price but in which the goods had not yet 
been exported. The Australian authorities had opened an investigation on 
this basis only once. The purpose of Section 5AA of the Customs Tariff 
(Anti-Dumping) Act 1975, as amended, was to provide the Minister with the 
authority to review normal values, on the basis of advice from the 
Anti-Dumping Authority; under the previously existing legislation, such 
reviews had been undertaken by the Australian Customs Service.

24. The representative of Finland, speaking on behalf of the Nordic 
countries, asked whether the amended Australian anti-dumping legislation 
contained a definition of the expression "introduced into the 
commerce..."; in particular, he wished to know whether this new 
legislation explicitly provided for the possibility to open an anti-dumping 
duty investigation on the basis of an irrevocable offer to sell.

25. The representative of Australia said that his earlier remarks on 
Section 269 TB of the Customs Act 1901, as amended, should not be 
interpreted to mean that the Australian authorities would impose duties 
prior to the actual importation of goods; this Section only concerned the 
initiation of investigations. Investigations would be opened on the basis 
of a likelihood of imports only if there was sufficient evidence of an 
export price. An offer to sell was not sufficient for this purpose and 
his authorities would, therefore, not initiate anti-dumping investigations 
solely on the basis of offers to sell.

26. The Committee took note of the statements made and agreed to revert to 
the Australian legislation at its next regular meeting. The Chairman 
invited Parties wishing to raise further questions to do so in writing 
through the secretariat by 16 January 1989 and requested the delegation of 
Australia to provide written replies to such questions by 16 March 1989.

(iii) New Zealand (Part VA of the Customs Act 1966, as amended, 
document ADP/1/Add.15)

27. The Committee had before it in document ADP/1/Add.15 the text of 
Part VA of the recently amended Customs Act 1966 which contained the 
anti-dumping legislation of New Zealand. The representative of 
New Zealand said that the recent amendments to the anti-dumping legislation 
of her country were intended to bring this legislation fully into 
conformity with the requirements of the Agreement. The amendments had 
been enacted on 13 June 1987.
28. The representative of the United States said that his delegation had prepared a number of written questions on the anti-dumping legislation of New Zealand.

29. The representative of Canada reserved his delegation's right to ask questions on the legislation of New Zealand at the next regular meeting.

30. The representative of the EEC said that his delegation would shortly submit some written questions on the anti-dumping legislation of New Zealand.

31. The representative of New Zealand made a number of preliminary remarks in response to some of the written questions raised by the delegation of the United States. Regarding the term "goods ... intended to be imported" as used in Section 186A(1) of the Act, he said that account had to be taken of the fact that New Zealand was a country with a relatively small domestic industry. This term could cover situations in which only one consignment of goods could cause injury to particular domestic producers or situations involving binding offers to sell products for export to New Zealand. However, in the latter case the authorities of New Zealand would certainly try to find evidence of a specific export price and the existence of such offers would not give rise to the imposition of duty but only to the opening of an investigation. With respect to the question by the United States on Section 186M of the Act, he stated that price undertakings were the only appropriate type of undertakings in anti-dumping duty investigations.

32. The Committee took note of the statements made and agreed to revert to the anti-dumping legislation of New Zealand at its next regular meeting. The Chairman invited Parties who wished to ask questions on the legislation of New Zealand to do so in writing through the secretariat by 16 January 1989 and he requested the delegation of New Zealand to provide written answers to those questions by 16 March 1989.


33. The Committee had before it in documents ADP/1/Add.27 and Corr.1 and ADP/1/Add.27/Suppl.1 the text of the Mexican anti-dumping law and regulations, as amended in May 1988. The Chairman recalled that, at the regular meeting of the Committee held on 30 May-1 June, the representative

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1See document ADP/W/195.
of Mexico had made a statement on the effect of the Agreement as domestic law in Mexico (ADP/M/22, paragraph 6).

34. The representative of Mexico said that under the Mexican Constitution, international agreements signed by the President and approved by the Senate constituted the supreme law of the Republic and prevailed over inconsistent state legislation. The Agreement had been concluded and approved in accordance with the constitutional requirements and had been promulgated by a Decree published in the Mexican Official Gazette on 21 April 1988. As a result, the Agreement had the status of mandatory federal law. The Foreign Trade Regulatory Act Implementing Article 131 of the Constitution of the United Mexican States was applicable only in cases involving imports from countries which were not contracting parties to the General Agreement or Parties to the Agreement. This Act was covered by the "grandfather clause" in the Protocol of Accession of Mexico to the General Agreement on Tariffs and Trade. He invited delegations who wished to raise questions on the Mexican legislation to do so in writing. His delegation had received written questions from the United States to which it would reply at the next meeting.

35. The representative of the EEC said that, in light of the procedures followed by the Mexican authorities in a recent anti-dumping proceeding concerning imports of steel from EEC member States, his delegation had its doubts as to conformity with the Agreement of some provisions of the Mexican anti-dumping legislation. His delegation would in the near future submit written comments and questions on this legislation; at the present meeting he wished to make a number of preliminary comments on aspects of the Mexican anti-dumping legislation which were a cause of concern to his delegation. Firstly, it seemed that under the Mexican anti-dumping law the initiation of an investigation on the initiative of the responsible authorities was a normal procedure; if this interpretation was correct, he wondered how the Mexican authorities reconciled this with the rule stipulated in the Agreement that initiation of investigations on the initiative of the authorities should take place only under special circumstances. Secondly, Article 15 of the Regulations provided that a notice of the opening of an investigation be published in the Mexican Official Gazette and that notice be given to the importers and exporters concerned and the representatives of the foreign governments in question. However, it seemed that in practice no specific notice was being given to the parties known to be concerned. He requested the delegation of Mexico to explain how interested parties were informed of the opening of an anti-dumping duty investigation by the Mexican authorities. Thirdly, his delegation wished to know what evidence was required by the Mexican authorities to justify the opening of an anti-dumping duty investigation. Fourthly, Article 15 of the Regulations provided for a period of not more than fifteen working days within which interested parties could make written representations; he wondered how this provision could be
reconciled with the Recommendation concerning the time-limits given to respondents to anti-dumping questionnaires\(^1\) in which the Committee had recommended that respondents to an anti-dumping questionnaire should normally be given at least thirty days for the reply. Fifthly, Article 11 of the Foreign Trade Regulatory Act seemed to allow for the simultaneous opening of investigations and imposition of provisional measures. He requested the delegation of Mexico to explain how this provision had operated in practice. Sixthly, he asked what were the rights of defence of exporters in anti-dumping investigations conducted by the Mexican authorities and, more in particular, whether exporters received questionnaires, whether the Mexican authorities carried out on site verifications, whether the exporters had the right to make their views known in writing or orally, and whether there was a provision for the disclosure of the results of the investigation. Seventhly, referring to Article 14 of the Foreign Trade Regulatory Act, he said that this Article seemed to foresee negotiations between the Mexican Government and foreign governments on the type of injury criteria to be applied in anti-dumping duty investigations and he requested a further explanation of this provision. Finally, his delegation asked whether exporters found to have dumped were identified in the resolutions imposing provisional or definitive anti-dumping duties. He concluded his statement by reiterating that the comments he had made were of a preliminary nature and that a more detailed list of questions would be submitted by his delegation in the near future.

36. The representative of the United States said that his authorities shared many of the concerns expressed by the representative of the EEC regarding the Mexican anti-dumping legislation. His Government recognized that a number of improvements had been made as a result of the recent amendments to the Regulations. For example, the procedural rights of exporters involved in investigations had been somewhat strengthened and it seemed that there was now a procedure for notifications to foreign governments of the opening of investigations. However, his authorities were still very much concerned about the vagueness of the provisions on the determination of injury, the arbitrariness of the short deadlines and the insufficient basis for the determinations. His delegation believed that there were insufficient guarantees of due process rights for exporters and that there was a built-in bias in favour of the allegations made by petitioners. He emphasized that it was only by virtue of the Regulations that his authorities were somewhat reassured as to some of the gaps in the Foreign Trade Regulatory Act. For example, it was only in the Regulations that provision was made for participatory rights of exporters. A number of written comments and questions on the Mexican legislation had been prepared by his delegation\(^2\) and he was looking forward to the replies by Mexico to these questions.

37. The representative of Brazil reserved his delegation's right to raise questions on the Mexican anti-dumping legislation at a later time.

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\(^1\)BISD 30S/30

\(^2\)See document ADP/W/192
38. The representative of Canada said that his delegation would raise some questions on the Mexican legislation at the next meeting.

39. The representative of Mexico thanked the delegations of the EEC and the United States for their questions which he would transmit to his authorities. On the reference made by the EEC to one particular case, he said that the discussion under this item of the agenda should focus on the legislation as such. Later at the present meeting he would make some comments on the case mentioned by the representative of the EEC.

40. The Committee took note of the statements made and agreed to revert to the anti-dumping legislation of Mexico at its next regular meeting. The Chairman invited Parties who wished to ask questions on the Mexican legislation to do so in writing through the secretariat by 16 January 1989 and he requested the delegation of Mexico to reply in writing to these written questions by 16 March 1989.

(v) Brazil (Customs Policy Commission Resolution No. 00-1227, document ADP/1/Add.26/Suppl.1 and Corr.1)

41. The Chairman recalled that the Committee had been considering Customs Policy Commission Resolution No. 00-1227 at its meetings in October 1987 (ADP/M/20, paragraphs 34-37) and in May-June 1988 (ADP/M/22, paragraphs 36-39). Written questions on this Resolution had been received from the delegation of Canada (ADP/W/170) and replies by Brazil to these questions had been circulated in document ADP/W/178.

42. The representative of Canada said that, while at this time his delegation had no additional points to raise on the Resolution, he wished to reserve his delegation's right to revert to the Resolution at a later stage, in light of particular cases of application of the Resolution.

43. The Chairman said that the Committee had concluded its examination of the Resolution.

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

44. The Chairman said that the anti-dumping law of Pakistan had been under consideration in the Committee since April 1986. The delegations of the United States, Australia and the EEC had submitted written questions on this Ordinance (ADP/W/117, 120 and 124). At the meeting held in October 1986, the representative of Pakistan had replied to some of these written questions and indicated that his delegation would reply to the remaining questions at a future meeting of the Committee (ADP/M/18, paragraphs 12-24). At the most recent regular meeting of the Committee the delegation of Pakistan had been requested to provide written answers to all remaining questions by 9 September 1988 (ADP/M/22, paragraphs 52-58). No written replies had, however, been received from the delegation of Pakistan.
45. The representative of Pakistan said that at previous meetings of the Committee his delegation had already answered most of the questions which had been raised on the Ordinance. He recalled that at the last regular meeting he had informed the Committee that his authorities had decided to revive the Tariff Commission with a view to providing a co-ordinated response to the problems of domestic industries in Pakistan. The rules and procedures of this Commission would be fully transparent and duly published. Although the Ordinance had been in force since 1983, no anti-dumping actions had been taken so far. In the exactly identical situation in the Committee on Subsidies and Countervailing Measures, the Members of that Committee had agreed to conclude their examination of the Pakistan countervailing duty legislation in view of the fact that no countervailing duty actions had been taken by Pakistan and the fact that the Government of Pakistan had not yet promulgated implementing rules. He proposed that the Committee follow the example of the Committee on Subsidies and Countervailing Measures and conclude its examination of the Pakistan anti-dumping legislation.

46. The representative of the EEC said that, while some of the questions raised by his delegation in document ADP/W/124 had been answered by the delegation of Pakistan, no replies had, so far, been given to the remaining questions. His delegation would like to see written replies to these questions.

47. The representative of the United States supported the view expressed by the delegation of the EEC that the delegation of Pakistan should submit written replies to the questions which had not yet been answered. He reiterated his delegation’s concern about suggestions that the Government of Pakistan was considering the introduction of new legislation to counter dumping which would provide for the possibility to use embargos and similar measures.

48. The representative of Australia said that where written questions had been submitted on the legislation of a Party, that Party should provide written replies to all such questions. The legislation of Pakistan should, therefore, remain on the agenda of the Committee.

49. The representative of Pakistan said that he had taken note of the comments made by the representatives of the EEC, the United States and Australia. He reiterated that his Government had not yet adopted the implementing regulations foreseen in Article 11 of the Ordinance. In the preparation of these regulations his Government would take into account the views expressed in the Committee in the discussion of the Pakistan legislation.

50. The Committee took note of the statements made and agreed to revert to the anti-dumping legislation of Pakistan at its next regular meeting.

(vii) Laws and/or regulations of other Parties

51. The representative of Japan requested the delegation of the United States to notify the Committee as soon as possible of the amendments to its anti-dumping legislation resulting from the recent enactment of the
Omnibus Trade and Competitiveness Act of 1988. His authorities would closely follow the application of these amendments and, in particular, the application of the anti-circumvention provisions.

52. The representative of Hong Kong also requested the delegation of the United States to notify as soon as possible the anti-dumping provisions in its new trade law. He mentioned a number of points which were of serious concern to his delegation: the introduction of a provision allowing for cumulative assessment of price and volume effects in "threat of injury" determinations, the inclusion of a procedure for the monitoring of downstream product monitoring and anti-circumvention provisions which did not provide for determinations of dumping and injury. Regarding the anti-circumvention provisions in the new trade law, he noted that these provisions went further than the provisions on anti-circumvention in the EEC anti-dumping Regulation in that they also covered assembly operations in third countries. Another issue of concern to his delegation, although not directly related to the new trade law, was the fact that in the examination of whether there was a causal link between dumped imports and injury to the domestic industry, the United States authorities did not take into account the size of the margin of dumping. While his delegation appreciated the efforts of the United States Government in resisting some of the more protectionist proposals which had been made in the Congress of the United States, the enactment of the new law had put the Committee before a fait accompli which raised questions as to the effectiveness of the Committee in ensuring observance of the provisions of the Agreement by the Parties. He noted that the new law granted a considerable degree of discretion to the United States authorities and it was, therefore, important to see how the new law would operate in practice.

53. The representatives of Canada, Korea, the EEC and Singapore seconded the request by the delegations of Japan and Hong Kong for a prompt notification by the United States of its amended anti-dumping legislation.

54. The representative of Finland, speaking on behalf of the Nordic countries, agreed with the representative of Hong Kong that the recent amendments to the anti-dumping law of the United States raised questions regarding the effectiveness of the Committee in ensuring compliance with the rules of the Agreement. In the context of the Uruguay Round of Multilateral Trade Negotiations, the United States was arguing in favour of a strengthening of the GATT dispute settlement mechanism; his delegation considered that the attitude of the United States on the question of how the recent amendments to its anti-dumping law could be reconciled with the existing multilateral rules in this area would constitute a serious test of the sincerity of the United States' proposals for a reinforcement of the GATT system.

55. The representative of the United States said that his delegation would in the near future notify the Committee of the recent amendments to the anti-dumping law of the United States so as to enable the Committee to start its discussion of the new law at its next regular meeting. He regretted that in the comments made by various delegations only certain aspects of the recent amendments had been highlighted; for example,
regarding the issue of cumulative injury assessment the amendments not only provided for the possibility to apply a cumulative analysis in a "threat of injury" determination but they also contained an exemption from cumulative injury assessment for negligible imports. This should be considered by many Parties as a positive development. Furthermore, the amended law left the administering authorities with a considerable degree of discretion and his authorities intended to implement the amendments in full conformity with the rules of the Agreement.

56. The Committee took note of the statement by the United States that it would notify the amendments to its anti-dumping law in the near future and of the comments made on these amendments by various delegations.

C. Semi-annual reports of anti-dumping actions taken within the period 1 January-30 June 1988 (ADP/37) and addenda)

57. The Chairman said that an invitation to submit semi-annual reports covering the period 1 January-30 June 1988 had been circulated in document ADP/37 and Corr.1. The following Parties had informed the secretariat that they had not taken any anti-dumping actions during this period: Austria, Egypt, Hong Kong, Hungary, Japan, Norway, Poland, Romania, Sweden and Switzerland (ADP/37/Add.1). Anti-dumping actions taken during this period had been notified by Australia, Brazil, Canada, the EEC, Finland, Korea, Mexico, New Zealand and the United States. No reports had been received from Czechoslovakia, India, Pakistan, Singapore and Yugoslavia. The Chairman noted that some of the semi-annual reports by Parties who had taken anti-dumping actions had been received only very recently.

58. The representatives of Czechoslovakia, Pakistan, Singapore and Yugoslavia informed the Committee that no anti-dumping actions had been taken by their authorities during the period under review.

59. The Committee examined the semi-annual reports in the order in which they had been circulated:

   New Zealand (ADP/37/Add.2)

60. No comments were made on this report.

   Finland (ADP/37/Add.3)

61. The representative of Finland provided some additional information on the proceedings mentioned in ADP/37/Add.3 regarding imports of polythene foil and sheet. On 27 September 1988 definitive anti-dumping duties had been imposed on imports of this product originating in Poland and Romania; in the case of imports from the German Democratic Republic, a price undertaking had been accepted. An English translation of the decisions taken in this proceeding by the Finnish authorities would be submitted by his delegation to the secretariat.

1The secretariat was recently informed by the representative of India that his authorities had taken no anti-dumping actions during this period.
62. The Committee took note of the statement made by the representative of Finland.

Australia (ADP/37/Add.4)

63. The representative of Australia made some comments on recent trends in the application of anti-dumping measures by his country. In 1986, when Australia was one of the most active users of anti-dumping measures, his Government had concluded that the Australian anti-dumping law had perhaps been administered in a too protectionist manner. This concern had led to a request for an independent review of the operation of the anti-dumping law, the results of which were to some extent reflected in the recently adopted amendments. More resources had been made available for the administration of the anti-dumping law, stricter procedures and time-limits had been introduced and, more in general, an attempt had been made to make the administration of the anti-dumping law consistent with the overall trade policy of the Australian Government. As a result of these initiatives, investigations were now being conducted within much shorter periods of time and the improvements in the procedures for administrative reviews had led to the revocation of a significant number of anti-dumping measures. To illustrate this latter point, he noted that, whereas in June 1986 203 anti-dumping and countervailing measures had been in effect, this number had declined to 128 in June 1987, 55 in June 1988 and 42 in October 1988. The application of the recently introduced "sunset" clause was expected to result in the revocation of another thirty cases in the near future. Regarding the trend in the application of new anti-dumping measures, he said that in 1985-1986 31 new measures had been introduced; in 1987-1988 only 8 new anti-dumping measures had been applied. During the period 1987-1988 51 measures had been revoked. With respect to the initiation of investigations, he said that in 1985-1986 57 investigations had been opened; in 1987-1988 the number of new investigations had declined to 28. During the period 1987-1988 46 investigations had been terminated without imposition of definitive measures.

64. The Committee took note of the statement made by the representative of Australia.

United States (ADP/37/Add.5)

65. No comments were made on this report.

Canada (ADP/37/Add.6)

66. No comments were made on this report.

Mexico (ADP/37/Add.7)

67. The representative of the United States noted that it appeared from the information given on page 4 of document ADP/37/Add.7 that an anti-dumping investigation of imports of micro-computers had been initiated on 5 January 1988 and that the date of the provisional measure in this proceeding was 7 January 1988. He requested the representative of Mexico to clarify whether this indeed meant that on 7 January 1988 a provisional duty had been introduced.
68. The representative of Mexico, referring to footnote 3 in the report, said that it seemed to him that in this particular case on 7 January 1988 a declaration had been made that an investigation had been opened but that no provisional duties had been imposed on that date. He explained that the Mexican anti-dumping legislation provided for the possibility to initiate an investigation with an immediate application of a provisional duty and for the possibility to initiate an investigation without a simultaneous introduction of a provisional duty. He would consult with his authorities to find out if in this particular case a provisional duty had been introduced on 7 January 1988.

69. The representative of the EEC said that his delegation would raise under "Other business" some questions on a case in which the Mexican authorities had effectively imposed a provisional duty on the date of the opening of the investigation.

70. The representative of Brazil reserved his delegation's right to revert at the next regular meeting to some of the cases involving imports from Brazil mentioned in the report by Mexico.

71. The Committee took note of the statements made.

Brazil (ADP/37/Add.8)

72. No comments were made on this report.

EEC (ADP/37/Add.9)

73. In view of the late receipt of this report, the Committee agreed to revert to it at its next regular meeting.

Korea (ADP/37/Add.10)

74. No comments were made on this report.

D. Reports on all preliminary or final anti-dumping duty actions
(ADP/W/176, 179, 184, 185 and 186)

75. The Chairman said that notifications under these procedures had been received from Australia, Canada, Finland and the United States. He recalled that the purpose of this procedure provided for in Article 14:4 of the Agreement, was to make available to the secretariat for consultation by interested delegations all preliminary and final anti-dumping determinations. Not all the Parties who were taking anti-dumping actions complied with this obligation.

76. The Committee had a brief discussion of the nature of the notification procedures under Article 14:4 of the Agreement. The Chairman explained that, in addition to the submission of semi-annual reports, Parties were expected under Article 14:4 to provide the secretariat with copies of each preliminary and final anti-dumping determination.

77. The Committee took note of the statements made.

78. The Chairman informed the Committee that the Group had met on 30 May and 24 October 1988 to continue its discussions of various aspects of the use of price undertakings in the context of anti-dumping duty investigations. These issues had been under consideration in the Group for some time. While some progress had been made at the two most recent meetings, the Group was not yet in a position to submit draft recommendations to the Committee on these issues. He believed that the time had come to try and bring the work of the Group on these subjects to a conclusion. The Group could in the near future arrive at a consensus on some aspects of the papers which it had been discussing; with respect to other aspects it should be recognized that it would be difficult to reach a consensus in the Group in the foreseeable future. It was his intention to consult with delegations prior to the next meeting of the Group in order to enable it to conclude at that meeting its discussions of aspects of price undertakings. The Chairman also informed the Committee that, at its meeting of 24 October 1988, the Group had discussed a communication from Finland on language and translation problems in anti-dumping duty investigations. The Group would revert to this matter at its next meeting.

79. The Committee took note of the report by the Chairman on the work of the Ad-Hoc Group.

F. EEC - Council Regulation 1761/87 of 22 June 1987 - Request by Japan for conciliation under Article 15:3 of the Agreement

80. The Committee had before it, in document ADP/39, a communication from Japan containing a request for conciliation under Article 15:3 of the Agreement in respect of Council Regulation (EEC) No. 1761/87 of 22 June 1987 and its application in particular cases.

81. The representative of Japan recalled that at an early stage his delegation had expressed its concerns on this Regulation, both in bilateral consultations with the EEC and in discussions in the Committee and in other GATT bodies. Japan had requested the EEC to make amendments to the Regulation and improve its application in order to ensure that the contents of the Regulation and its application would be consistent with the Agreement and the General Agreement. However, despite these requests, the EEC had imposed duties under the Regulation on electronic typewriters, electronic weighing scales and photocopiers assembled or produced by Japanese-related companies in the EEC. In addition, an investigation had been opened with respect to assembly operations in the EEC of ball bearings. Subsequently, the EEC had accepted undertakings from some of the companies which had been subject to the duties; these undertakings provided for the mandatory use by the companies concerned of more than 40 per cent of parts of EEC origin.
82. The representative of Japan said that Council Regulation (EEC) No. 1761/87 had already been discussed three times by the Committee; in particular at the special meeting held on 6 May 1988 his delegation had insisted on an intensive examination of the consistency of this Regulation with the Agreement and the General Agreement. However, the discussions in the Committee had not led to clear conclusions. On 27 July 1988, Japan had requested bilateral consultations with the EEC on this matter. In the consultations, which had taken place in Brussels on 16 September 1988, the EEC Commission had clarified the nature of the levies imposed pursuant to the Regulations as anti-dumping duties, neither ordinary customs tariffs nor internal taxes. The Japanese authorities had pointed out that the application of anti-dumping duties was only justified where investigations showed that there was both dumping and injury resulting therefrom; the EEC Regulation conflicted with this fundamental requirement of the Agreement and of Article VI of the General Agreement. The EEC's reply to this argument had been that additional determinations of dumping and injury were not necessary to justify the application of duties on products assembled in the EEC because such determinations had already been made in the investigations of the imports of the finished products. In the view of the EEC, the only issue in investigations under Council Regulation (EEC) No. 1761/87 was whether existing anti-dumping duties were being circumvented. Given these divergent views, the bilateral consultations had not led to a mutually satisfactory solution and the Japanese authorities considered that further consultations would not be useful. His authorities were of the view that, if a Party applied a domestic law or regulation without sufficient discussion in the Committee of its consistency with the Agreement, this could constitute a threat of nullification or impairment of rights and benefits of other Parties under the Agreement. They had, therefore, decided to request the Committee at the present meeting to examine under Article 15:3 of the Agreement the issues raised by his delegation regarding Council Regulation (EEC) No. 1761/87; in its examination of this matter, the Committee should take into account the previous discussions in the Committee of the problems raised by the Regulation. He concluded his statement by urging the EEC to immediately revoke the duties which it had applied under the Regulation and to repeal the Regulation or bring it into conformity with the Agreement.

83. The representative of the EEC opposed the request for conciliation by the delegation of Japan for the following reasons. Firstly, the legal basis of the measures provided for in Council Regulation (EEC) No. 1761/87 was not the Agreement but Article XX(d) of the General Agreement; these measures, designed to avoid circumvention of legitimate anti-dumping measures, were not anti-dumping measures within the meaning of the Agreement. Secondly, the GATT Council had recently established a panel on this issue under Article XXIII of the General Agreement. There could not be two panels on the same question as this entailed the danger of contradictory reports. He also referred to footnote 14 to Article 15 of the Agreement which provided that Parties should only resort to the dispute settlement mechanism of Article XXIII of the General Agreement when the dispute settlement procedure provided for in the Agreement had been completed. It followed that, by requesting a panel under the General Agreement, Japan had implicitly recognized that the provisions of the
Agreement were not relevant to this case. The EEC had always made it clear in its consultations with Japan that it would not agree to the establishment of two panels in this dispute. He emphasized that, while his delegation could not accept a conciliation procedure under Article 15 of the Agreement, it was prepared to continue discussions on Council Regulation (EEC) No. 1761/87.

84. The representative of Japan considered that the view of the EEC delegation that, since Council Regulation (EEC) No. 1761/87 was justified under Article XX(d) of the General Agreement it should not be examined under the Agreement, undermined the effectiveness of the Agreement and the Committee. His delegation had repeatedly pointed out that the provisions of this Regulation raised serious questions regarding its conformity with the Agreement and regarding its conformity with the General Agreement. Consequently, the fact that the GATT Council at its most recent meeting had established a panel in this matter did not affect the rights of Japan to invoke the dispute settlement procedure of the Agreement. His delegation was of the view that since Council Regulation (EEC) No. 1761/87 were anti-dumping duties within the meaning of the Agreement which should be examined in light of the provisions of the Agreement. To support this view he pointed to the following factors. Firstly, the Regulation provided that "definitive anti-dumping duties may be imposed" on products assembled or produced in the EEC. Secondly, the contents of the Regulation had been incorporated into Council Regulation (EEC) No. 2423/88 of 11 July 1988. Thirdly, the EEC had notified the Committee of the provisions of this Regulation in accordance with Article 16 of the Agreement. Fourthly, the Committee had on three occasions examined the Regulation in light of the provisions of the Agreement. Fifthly, in its reply to one of the written questions on the Regulation by the delegation of Japan, the EEC delegation had stated that "the duty designed to counteract circumvention necessarily has the same nature as the duty evaded." Sixthly, in the bilateral consultations which had taken place on 16 September 1988 the EEC had explicitly recognized that the duties which could be applied under the Regulation were anti-dumping duties. Finally, the actions taken under the Regulation had been reported to the Committee by the EEC in its most recent semi-annual report under Article 14:4 of the Agreement (ADP/37/Add.9). There could, therefore, be no doubt that the duties provided for under the Regulation had to be characterized as anti-dumping duties and that the Committee was competent to examine these duties in light of the rules of the Agreement. In response to the remarks made by the EEC representative on footnote 14 to Article 15, he said that there was a well known legal difference between the words "shall" and "should"; in view of the fact that the footnote used the word "should", it was clear that it constituted only a recommendation and not a legal obligation.

85. The representative of Canada said that in principle any Party had the right to refer to the Committee any anti-dumping action taken by another Party. He agreed with the representative of Japan regarding the interpretation of footnote 14 to Article 15 as a non-binding exhortation. His delegation supported the request by Japan for conciliation under Article 15 of the Agreement.
86. The representative of the EEC reiterated that his delegation had always pointed out that the legal basis of Council Regulation (EEC) No. 1761/87 was Article XX (d) of the General Agreement. In the interest of transparency the EEC had notified the Regulation to the Committee and had reported the actions taken under its provisions. While the EEC’s attitude had been clear and unambiguous, the same could not be said with respect to the position of Japan. If Japan considered that the measures under the Regulation were anti-dumping measures within the meaning of the Agreement, the question arose why the Japanese delegation had requested the GATT Council to establish a panel under Article XXIII of the General Agreement instead of invoking the dispute settlement mechanism of the Agreement, as suggested by footnote 14 to Article 15. The acceptance by the EEC of a panel under Article XXIII of the General Agreement was consistent with the view expressed on many occasions by his delegation that the relevant standard to judge the Regulation was Article XX (d) of the General Agreement. Since this issue was now before the panel established by the GATT Council, his delegation considered that a second dispute settlement procedure, under the Agreement, would be inappropriate.

87. The representative of Korea recalled that his delegation had on many occasions expressed its concerns regarding Council Regulation (EEC) No. 1761/87. Further bilateral consultations should take place between Japan and the EEC in order that the two Parties find a mutually agreeable solution to their dispute.

88. The representative of Hong Kong said that the basic question raised by the request by Japan for conciliation under Article 15 was whether there was a dispute between the EEC and Japan involving rights and obligations under the Agreement. The Parties to the Agreement had rights and obligations in addition to those which they had as contracting parties to the General Agreement, including the right to invoke the dispute settlement mechanism provided for in Article 15 of the Agreement. On the view expressed by the delegation of the EEC that in one particular dispute there could only be one dispute settlement procedure, he said that this was not always necessarily the case and depended upon the subject matter of the dispute. His understanding was that the EEC was of the opinion that Council Regulation (EEC) No. 1761/87 could be justified either under Article VI or under Article XX (d) of the General Agreement. Consequently, both the Agreement and the General Agreement were relevant to this case. In any event, even if the Regulation was designed to attain an objective which might be justifiable under a provision of the General Agreement other than Article VI, it was a fact that its implementation involved the same administrative process and machinery used in normal anti-dumping duty proceedings and that it could result in the extension of definitive anti-dumping duties. In addition, the Regulation had been notified to and examined by the Committee. There could, therefore, be no doubt that the provisions of the Agreement were relevant to this case. He further emphasized that the delegation of Japan had requested conciliation and not the establishment of a panel. The purpose of conciliation was to facilitate the development of a mutually acceptable solution between the two Parties. In this regard he noted that the delegation of the EEC had expressed its willingness to continue discussions with Japan which implied
that in the view of the EEC there was a possibility that the Parties would find a mutually acceptable solution. Regarding the question as to whether a panel under the General Agreement and a panel under one of the MTN Agreements or Arrangements could be established in the same dispute, he requested a legal opinion from the GATT secretariat.

89. The representative of Brazil expressed his delegation's support for the request by Japan for conciliation under the Agreement. The fact that a panel had recently been established on this matter by the GATT Council did not mean that Japan could not exercise its right to request conciliation under Article 15:3 of the Agreement. He agreed with the representative of Hong Kong that this request should be seen as an attempt to reach a mutually acceptable solution in the dispute between the EEC and Japan. His delegation considered that there were many provisions of the Agreement which were relevant to this case.

90. The representative of New Zealand said that, regardless of the legal basis invoked by the EEC for Council Regulation (EEC) No. 1761/87, there were many elements of the Regulation and its application which were directly relevant to the operation of the Agreement. A thorough examination of the Regulation and its implementation in the Committee was, therefore, warranted. In her view there was also room for discussion in the Committee on the interpretation of Article XX(d) of the General Agreement. Her delegation supported Japan's request for conciliation under Article 15:3 of the Agreement and agreed with the views expressed by other delegations on the non-binding character of footnote 14 to Article 15. Like the delegation of Hong Kong, her delegation would welcome a legal opinion on the question whether there could be two panels in the same dispute.

91. The representative of Singapore reiterated her delegation's concerns regarding the implications of the EEC Regulation for the operation of the Agreement. The fact that a panel had been established in this matter by the GATT Council did not affect the right of Japan to request a conciliation procedure under Article 15:3 of the Agreement; her delegation, therefore, supported this request.

92. Mr. Kautzor-Schröder (secretariat), said that this was the first case in the GATT history in which the question of the possibility of two simultaneous dispute settlement proceedings under the General Agreement and under one of the MTN Agreements and Arrangements in the same dispute had arisen. Regarding footnote 14 to Article 15 of the Agreement, he said that, while there was a legal difference between "shall" and "should", the precise interpretation of this footnote was a matter to be decided by the Committee. If the Committee so wished, the secretariat could prepare a legal opinion on this matter in due course.

93. The representative of Japan asked the delegation of the EEC whether it was prepared to reconsider its position in light of the views expressed by the delegations which had spoken on this matter.
94. The representative of the EEC said his delegation saw no reason to reconsider its position; the EEC had always argued that Council Regulation (EEC) No. 1761/87 was not based on provisions of the Agreement or on Article VI of the General Agreement. The measures provided for under this Regulation were not the result of anti-dumping duty investigations within the meaning of the Agreement. It followed from the specific nature of these measures as measures to avoid circumvention of anti-dumping duties that they could not be judged by the standards applicable to normal anti-dumping measures. If certain delegations considered that, by notifying these measures to the Committee, the EEC had acknowledged that they were anti-dumping measures, it would perhaps clarify matters if the EEC in the future refrained from notifying these measures.

95. The representative of Japan said that his delegation had made numerous efforts to have a detailed examination in the Committee of Council Regulation (EEC) No. 1761/87; however, the EEC had not co-operated and was trying to undermine the Agreement by invoking Article XX(d) of the General Agreement in an arbitrary manner. As a result, the Committee had been unable to have a full discussion of the Regulation and draw conclusions on its consistency with the Agreement. Irrespective of the contention of the EEC that the legal basis of the Regulation was constituted by Article XX(d) of the General Agreement, it was clear that the Committee had the competence to examine the conformity of the Regulation with the Agreement. It was therefore highly regrettable that the EEC used Article XX(d) of the General Agreement as a pretext to avoid a conciliation procedure under the Agreement. Before invoking Article XX(d) of the General Agreement, the EEC should acknowledge that the duties provided for under the Regulation did not satisfy the requirements of the Agreement. In this connection he asked the delegation of the EEC whether it agreed that Council Regulation (EEC) No. 1761/87 and its implementation in particular cases were inconsistent with the relevant provisions of the Agreement.

96. The representative of the EEC replied that there were no provisions of the Agreement relevant to Council Regulation (EEC) No. 1761/87. The essential question was whether this Regulation was consistent with Article XX(d) of the General Agreement, a question which was before the panel recently established by the GATT Council. He rejected the contention by the representative of Japan that the EEC had not co-operated with Japan on this matter; on numerous occasions the EEC had consulted with Japan and it had not objected to the establishment of a panel under Article XXIII of the General Agreement to examine whether the Regulation was consistent with Article XX(d). However, the provisions of the Agreement were irrelevant in this context.

97. In response to the point made by the representative of the EEC on the legal nature of anti-circumvention measures under Council Regulation (EEC) No. 1761/87, the representative of Hong Kong said that the contents of this Regulation had recently been incorporated into Council Regulation (EEC) No. 2423/88, the express purpose of which was to provide protection against dumped or subsidized imports from countries not members of the EEC. A further indication that these anti-circumvention measures had to be considered anti-dumping measures was provided by Article 13:10(a) of
Council Regulation (EEC) No. 2423/88, which specified that the anti-dumping circumvention measures would take the form of "definitive anti-dumping duties".

98. The representative of Australia said that Council Regulation (EEC) No. 1761/87 raised three separate issues. One question was whether this Regulation was consistent with the General Agreement. This question was now being examined by the panel established by the GATT Council. Another question was whether the Regulation was in conformity with the provisions of the Agreement; the central question in the present discussion was whether the dispute settlement procedure of the Agreement should be initiated so as to enable the Committee to address this issue. A third question was whether the provisions of the Agreement adequately dealt with the type of problems experienced by the EEC which had led to the adoption of the Regulation. It was necessary to clearly distinguish these three issues. His delegation felt some sympathy for the EEC position regarding the third point; the Australian authorities had encountered similar problems in their anti-dumping practice. However, the issue of the possible inadequacy of the existing provisions in addressing problems of circumvention of anti-dumping duties should be considered in another forum. The issue which was now before the Committee was whether the EEC Regulation was in conformity with the Agreement. According to Article 1 of the Agreement, the imposition of anti-dumping duties should take place only under the circumstances provided for in Article VI of the General Agreement, as interpreted by the Agreement. While he could understand that in the view of the EEC the measures provided for under the Regulation were not anti-dumping measures, he considered that it was for the Committee to determine whether or not these measures were relevant to the Agreement. His delegation was of the view that one should be extremely reluctant in restricting a Party's right of access to the dispute settlement mechanism of the Agreement and he, therefore, supported the request by Japan for conciliation under Article 15:3 of the Agreement.

99. The representative of Japan expressed his delegation's disappointment at the results of the discussion of its request for conciliation. He reserved his delegation's rights under the Agreement, including the right to request a special meeting to continue the debate in the Committee on this matter.

100. The Committee took note of the statements made.

G. EEC - Anti-dumping duty investigations of imports of Urea from various countries (ADP/M/22, paragraphs 73-81 and ADP/W/182)

101. The Chairman recalled that at its last regular meeting the Committee had discussed issues relating to anti-dumping duty investigations carried out by the EEC of imports of urea from a number of countries (ADP/M/22, paragraphs 73-81). One issue which had been raised in that discussion was whether the Agreement permitted undertakings of a quantitative nature in anti-dumping duty investigations. In addition, some delegations had drawn attention to the fact that certain EEC member States had taken safeguard measures with respect to the products subject to investigation. Written questions on this case had been received from the delegation of Romania
(ADP/W/182); written replies from the EEC to these questions had been received very recently (ADP/W/189).

102. The representative of the EEC said that the replies given by his delegation in document ADP/W/189 did not differ from the comments made on this matter by his delegation at the last regular meeting of the Committee. On the question raised in document ADP/W/182 by the delegation of Romania, regarding the conformity with the Agreement of quantitative undertakings, he reiterated his delegation's position that Article 7 permitted both price undertakings and undertakings to cease exports; given that the Agreement allowed for undertakings involving a complete cessation of exports, it was only logical to conclude that it also permitted undertakings to limit the quantity of exports. On the suspension by France of imports of urea from Romania which were also subject to an anti-dumping duty investigation, he said that the application of a safeguard measure did not preclude the opening of an anti-dumping duty investigation on imports of the same product. In an anti-dumping duty investigation the central element was injury caused by products imported at dumped prices, while in a safeguard proceeding the basic factor to be considered was the quantity of imports.

103. The representative of Romania said that Article 7 of the Agreement provided that "Proceedings may be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices ...". From this it followed that the Agreement only allowed for price undertakings; this was also made clear by the title of Article 7. The acceptance by the EEC of undertakings regarding the quantities of exports in the investigation of imports of urea was, therefore, inconsistent with the Agreement. The basic problem to be addressed in anti-dumping duty proceedings concerned the pricing behaviour of individual exporters, and quantitative export restraints were not an appropriate response to problems caused by the prices at which exporters sold their products in the importing country. His delegation considered that the acceptance of quantitative undertakings by the EEC from exporters of urea who accounted for approximately 50 per cent of imports of urea into the EEC had prejudiced the position of other exporters whose exports were presently subject to investigation; the existence of the quantitative undertakings had reduced the likelihood that the EEC would accept from these exporters price undertakings offered in accordance with the provisions of the Agreement.

104. The representative of Czechoslovakia shared the view expressed by the representative of Romania that undertakings of a quantitative nature were not permitted under the Agreement. In his view there were no domestic laws or regulations of Parties to the Agreement which allowed for the use of quantitative undertakings in anti-dumping duty investigations. He also noted that past discussions in the Committee and in the Ad-Hoc Group had related only to price undertakings and not to undertakings of a quantitative nature. Thus, the domestic legislation of the Parties to the Agreement and the practice of the Committee clearly supported the view that Article 7 of the Agreement was intended to cover only price undertakings.
105. The representative of the EEC disagreed with the views expressed by the representatives of Romania and Czechoslovakia and reiterated that Article 7 of the Agreement mentioned undertakings to cease exports. If exporters were of the opinion that quantitative undertakings were not a constructive solution, they were free not to offer such undertakings. The EEC had not imposed upon exporters any obligation to limit the quantity of their exports; such undertakings had been offered on a voluntary basis by the exporters concerned.

106. The representative of Canada said that the provisions on undertakings in the Canadian anti-dumping law did not allow for the acceptance of quantitative undertakings. This reflected his authorities' interpretation of Article 7 of the Agreement. However, he had taken note of the statement by the representative of the EEC that the undertakings to limit the quantity of exports of urea to the EEC had been the result of voluntary offers from the exporters and that the EEC had not requested exporters to offer such undertakings.

107. The representative of Australia said that his authorities' interpretation of Article 7 of the Agreement was that it provided only for price undertakings. However, nothing in the General Agreement or in the Agreement prevented exporters from offering on a voluntary basis undertakings of a different nature and if such undertakings resulted in the removal of the injury to the domestic industry in the importing country, the anti-dumping investigation had to be terminated. His position would have been different if the EEC, instead of terminating the investigation upon the acceptance of the quantitative undertakings, had merely suspended the investigation.

108. The representative of Finland disagreed with the view that Article 7 allowed for quantitative undertakings. Article 7:1 provided for undertakings to revise prices or to cease exports at dumped prices; the latter type of undertakings were clearly not quantitative undertakings. He considered that quantitative undertakings were not much different from voluntary export restraint arrangements which were safeguard measures and should not be used in the context of Article VI of the General Agreement.

109. The representative of the EEC said that he was surprised by the statements made by the representatives of Romania and Czechoslovakia on the acceptance by the EEC of quantitative undertakings. He suggested that these representatives consult with their exporters who had been involved in the investigation of imports of urea and reconsider their position. The acceptance of quantitative undertakings by the EEC was very exceptional; normally, the undertakings accepted were price undertakings. In the proceeding concerning imports of urea, the EEC had only accepted quantitative undertakings because the exporters in question had explicitly requested the EEC to accept undertakings to limit the quantity of their exports. The EEC could, of course, in the future refuse to accept this type of undertaking, but this would not necessarily be in the interest of exporters.
110. The representative of Czechoslovakia said that in his earlier remarks he had only wished to raise the general question whether, as a matter of principle, quantitative undertakings were compatible with the Agreement.

111. The representative of Romania said that the fundamental issue raised by the urea case was whether it was in conformity with the Agreement if authorities of an importing country accepted quantitative undertakings from some exporters which made it more difficult for other exporters to suggest price undertakings, which were the only type of undertakings consistent with the Agreement.

112. The representative of Finland considered that the issues raised by Romania related to voluntary export restraint arrangements which were not covered by the Agreement. He, therefore, wondered whether the Committee was the appropriate forum to discuss these issues.

113. The representative of Hong Kong expressed the view that arrangements for quantitative restrictions were not allowed under the Agreement and considered that a frequent use of such arrangements would undermine the disciplines provided for in the Agreement.

114. In response to the remarks by the representative of Finland, the representative of Romania said that the Romanian exporters had not offered quantitative undertakings. The concerns of the Romanian exporters resulted from the fact that the EEC had in a previous investigation accepted quantitative undertakings from a number of important suppliers of urea and that this might have eliminated the possibility that the EEC would accept price undertakings from the Romanian exporters involved in the current investigation concerning urea.

115. The representative of the EEC said that so far no undertaking had been offered by the Romanian exporters in the current investigation of imports of urea. The issue raised by the representative of Romania was, therefore, speculative. The EEC authorities would bear in mind the points made by the representatives of Romania and Czechoslovakia when considering possible offers of undertakings which might be made in the current investigation.

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

H. Australia - Anti-Dumping Duties on Power Transformers from Finland (ADP/M/22, paragraphs 95-99).

117. The Chairman recalled that at its last regular meeting the Committee had heard statements by the representatives of Finland and Australia on an anti-dumping duty proceeding in Australia with respect to imports of power transformers from Finland (ADP/M/22, paragraphs 95-99). An issue which had been discussed in some detail at that meeting was the methodology used by the Australian authorities in making adjustments for technical differences between the subject product sold in Finland and the product sold for export to Australia. In addition, the representative of Finland
had raised some points regarding the manner in which the Australian authorities had examined the existence of injury to the Australian domestic industry.

118. The representative of Australia made the following comments in response to the points raised by the delegation of Finland at the last regular meeting of the Committee. Dumping Report No. 34 of 14 August 1981 on power transformers from Finland, Sweden and the United Kingdom had recommended that it be found that transformers, not being testing transformers, rated for use at nominal system voltages of 66,000 or greater and having a rating of 10 MVA or greater, had been exported to Australia from Finland at dumped prices and that such exports had caused, and were threatening, material injury to the Australian transformer industry. Anti-dumping duties had, subsequently, been imposed on 30 September 1981. In the determination of the normal value, it had been necessary to invoke the provisions of Article 6:8 of the Agreement as the exporter had failed to supply sufficient information to the investigating authorities. The normal value had, consequently, been determined on the basis of the facts available. The assessment of the normal value had initially been based on the estimated cost of production of the Finnish power transformers plus an amount for selling expenses and profit. The reason given in Dumping Report No. 34 for the choice of this method to determine the normal value was the custom-built nature of the products in question which precluded a comparison with prices for like products sold either domestically or for export.

119. The representative of Australia said that in 1986 his authorities had started a review of the Australian anti-dumping law and its administration having regard to Australia's international obligations and other relevant agreements. The report on the results of this review had emphasized that, whenever possible, dumping should be defined as a situation in which the selling prices of goods abroad were below those prevailing in the domestic market. The Australian authorities considered that this approach was consistent with the provisions of the Agreement and had applied this approach in the later normal value assessments in respect of power transformers from Finland. Accordingly, they considered that there were no circumstances justifying a revision of these assessments of normal values based on a constructed value method rather than on market prices. Regarding the adjustments for technical differences under the Westinghouse Price Rules used by Australia in the normal value assessment contested by Finland, he said that the Australian authorities had employed an independent engineering consultant to provide expert technical advice that the application of the Westinghouse Price Rules was appropriate in this case. With respect to the question of the valuation of the special transformer oil, a meeting had taken place in Sydney on 17 December 1987 at which an independent consultant, acting in a technical capacity for the Finnish firm Stromberg, had agreed that the approach taken by Australia was consistent with the expert advice from the independent engineering consultant engaged by the Australian authorities. In the application of the Westinghouse Price rules all efforts had been made by the Australian
authorities to ensure fairness and equity in the calculation of normal values and export prices.

120. Regarding the issue of the relevant exchange rate for price comparisons between products sold for export and products sold in the domestic market, the representative of Australia said that the practice of his authorities was to use the exchange rate applicable on the date of the export contract; this was consistent with internationally accepted practices and with the provisions of Article 2:16 of the Agreement. He further said that it was not correct, as had been alleged by the representative of Finland, that Australia had adopted a market segmentation approach for the analysis of the existence of injury to the Australian domestic industry. His authorities did not disagree with the findings and conclusions of the Panel in the dispute between Finland and New Zealand concerning anti-dumping proceedings by New Zealand on imports of electrical transformers from Finland. The arguments presented by the delegation of Finland regarding the issue of market segmentation did not apply to the assessment by the Australian authorities of material injury to the Australian transformer industry. He concluded his statement by saying that Australia had a well-developed system of administrative review of anti-dumping measures. The Finnish exporter in this case had made an appeal to the Australian Administrative Appeals Tribunal in respect of the liability for payment of anti-dumping duties as these had been calculated for several importations. The Australian authorities considered that further discussion of this case should await the findings of the Tribunal.

121. The representative of Finland said that the basic issue in this case was the correct manner to determine normal value and export price. He recalled that at the last regular meeting of the Committee the representative of Australia had explained that, in view of the important differences in technical characteristics between power transformers exported to Australia and power transformers sold on the domestic Finnish market, the determination of the normal value in the original anti-dumping duty investigation had been based on the constructed value method. The determination of the normal value on the basis of the constructed value methodology had led to finding that the power transformers exported from Finland were not being dumped. Since 1986, the Australian authorities had no longer determined the normal value of the Finnish power transformers on the basis of the constructed value methodology but on the basis of domestic prices of power transformers in Finland. This change in approach had been the result of a review by the Australian authorities of the operation of the Australian anti-dumping law which had led them to conclude that, whenever possible, determinations of dumping should be made by comparing export prices with home market prices. In order to take into account the technical differences between the power transformers exported from Finland.

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122. The representative of Finland said that under Article 2:1 of the Agreement it was only when there were like products that domestic sales prices could be compared to export prices. Article 2:2 provided a clear and precise definition of the term "like product". However, the Australian authorities had not even claimed that the power transformers sold in Finland and those exported to the Australian market were like products. While Article 2:6 required that certain adjustments be made to ensure a fair comparison between export prices and domestic prices, the application of this provision presupposed the existence of two like products. The provisions of the Agreement, and in particular Articles 2:1, 2:2 and 2:6 could not be interpreted as permitting the type of theoretical price calculations made by the Australian authorities. The methodology applied in this case could not be justified as a technical adjustment within the meaning of Article 2:6 of the Agreement and was inconsistent with the Agreement. He further noted that the independent engineering consultant employed by the Australian authorities to give advice on the appropriateness of the use of the Westinghouse Price Rules was a former employee of an Australian subsidiary of Westinghouse company. In the view of his delegation the fact that the case was pending before the Australian Administrative Appeals Tribunal was not a reason to suspend discussions on this matter in the Committee. He considered that it was very important that the Tribunal have a clear opinion regarding the compatibility with Australia's international obligations of the procedures followed in this case. He concluded by reserving his country's rights under the General Agreement and under the Agreement.

123. The representative of Australia said that it was generally accepted that the preferred method for the determination of normal value was the use of a domestic market price of a like product. In the determinations contested by the delegation of Finland his authorities had used a method designed to approach the domestic market price of power transformers in Finland more closely than the method which had been used in the original investigation. To this end, technical adjustments had been made on the
basis of the Westinghouse Price Rules. Regarding the proceedings before the Australian Administrative Appeals Tribunal, he noted that the Tribunal would examine the case in light of the Australian domestic law and not in light of Australia's international obligations. He also drew the attention to the fact that, as a result of the recently introduced "sunset clause", the measures in force on imports of power transformers from Finland were expected to expire in March 1989.

124. The Committee took note of the statements made.

I. Other Business

(i) United States - Imposition of definitive anti-dumping duties on imports of stainless steel pipe and tube from Sweden - Request by Sweden for the establishment of a panel.

125. The representative of Sweden said that the Committee had already discussed this matter on two occasions. He recalled that in December 1987 the United States had introduced definitive anti-dumping duties on imports of seamless steel pipes and tubes from Sweden. The Swedish delegation had made a number of observations on aspects of the dumping and injury investigations at the meeting of the Committee held in May-June 1988 (ADP/M/22, paragraphs 88-93). Subsequently, bilateral consultations under Article 15:2 of the Agreement had taken place on 14 July 1988. When these consultations had failed to lead to a mutually satisfactory solution, the Swedish delegation had requested a special meeting of the Committee for the purpose of conciliation under Article 15:3 of the Agreement. This meeting had taken place on 5 October 1988. His delegation considered that the consultation and conciliation procedures had not resulted in a mutually satisfactory solution. For the reasons explained in document ADP/38, his delegation remained of the view that the rights of Sweden under the Agreement had been nullified. His delegation, therefore, requested that the Committee establish a panel in this dispute. It was important that this be done promptly as the United States was already collecting duties on imports of seamless steel pipes and tubes from Sweden. He expected that the United States delegation would adopt an attitude which would be consistent with its position in the Uruguay Round with respect to the strengthening of the GATT dispute settlement mechanism and not oppose the prompt establishment of a panel. While he was aware that Article 15:5 of the Agreement provided for a period of three months between a conciliation meeting and the mandatory establishment of a panel, he considered that nothing in the Agreement prevented the Committee from establishing a panel prior to the expiry of this period. His delegation's request for a panel was based on the points made in document ADP/38 but he reserved his delegation's rights to raise additional issues before the panel.

\[\text{See ADP/M/23}\]
126. The representative of the United States said that the request by Sweden for the establishment of a panel was premature. A conciliation meeting on this matter had taken place on 5 October 1988; while the conciliation process had not yet led to a mutually acceptable solution, continuation of this process was warranted, in particular in light of Article 15:5 of the Agreement which provided that "if no mutually agreed solution has been reached after detailed examination by the Committee under paragraph 3 within three months, the Committee shall, at the request of any party to the dispute, establish a panel". The period of three months had not passed and his delegation was of the view that this provision should be respected. He also drew attention to the fact that the request by Sweden for the establishment of a panel had been made under "Other Business" and that the normal procedures for advance notice and circulation of a written complaint had not been followed.

127. The representative of Canada agreed with the representative of Sweden that Article 15:5 of the Agreement did not prevent the Committee from establishing a panel prior to the expiry of the period of three months. His delegation could agree to the establishment of a panel at this meeting if the two Parties to the dispute were both of the view that further discussions would not lead to a solution. He noted, in this connection, that the statement made by the representative of the United States suggested that the United States still saw a possibility to arrive at a mutually satisfactory solution.

128. The representative of Sweden expressed his doubts regarding the possibility of a satisfactory solution of this matter. If the United States delegation was of the view that further discussions could be useful, his delegation would be prepared to hold further talks but in that case the initiative should come from the United States. He regretted that the United States had not agreed to the establishment of a panel at this meeting and expected that his delegation would revert to this matter not later than 5 January 1989.

129. The Committee took note of the statements made.

(iii) Mexico - Initiation of anti-dumping duty investigation and imposition of a provisional duty with respect to imports of steel from EEC member States

130. The representative of the EEC expressed his delegation's concerns regarding the initiation of an anti-dumping duty investigation by Mexico on 21 September 1988 on imports of steel from EEC member States. In this case the Mexican authorities had in one single decision announced the initiation of an investigation and simultaneously introduced a provisional duty. The investigation covered not less than 15 different types of steel and his delegation doubted whether an adequate investigation could take place when the product coverage had been defined in such a broad manner. Regarding the imposition of the provisional duty, he said that there had been insufficient evidence to justify this decision. In particular, there
had been no evidence that the imports from the EEC, which accounted for 0.5 percent of the Mexican market, had caused injury to the Mexican domestic industry. He noted that so far, no notice had been given by the Mexican authorities to the exporters concerned, to the governments of the exporting countries or to the EEC authorities. Nevertheless, the exporters had been required to make written representations within 15 working days after the publication of the decision to open an investigation, which was not in conformity with the Recommendation adopted by the Committee on the time-limits to be given to respondents to questionnaires in anti-dumping duty investigations. His delegation was, therefore, of the view that in this case a provisional duty had been imposed in the absence of a prior investigation and that inadequate possibilities had been provided by the Mexican authorities to the exporters concerned to defend their interests. He would welcome assurances from the Mexican delegation regarding the intention of the Mexican authorities to carry out an adequate investigation and to respect the procedural rights of the exporters concerned.

131. The representative of Mexico said that he could respond in part to the points made by the representative of the EEC. On 21 September 1988 the Mexican authorities had opened an anti-dumping investigation on imports of steel from EEC member States and introduced a provisional duty which had taken effect on 22 September 1988. In accordance with Articles 17 and 18 of the Regulations Against Unfair International Trade Practices, the decision announcing the opening of the investigation had contained a notice to interested parties to appear before the Mexican authorities to make their views known. A number of interested parties had already used this opportunity. The Mexican authorities had recently addressed a diplomatic note to the EEC authorities inviting them to participate in the investigation and to provide any relevant information. However, so far the EEC authorities had not replied. He emphasized the provisional character of the duty which had been imposed. As provided for by the Mexican law, a revision of the amount of a duty was possible in light of changes in the margin of dumping or in light of other relevant changed circumstances. There was also a possibility that the investigation would be terminated if the authorities concluded that there was no dumping or injury resulting therefrom. In case of a downward revision of the duty or termination of the investigation, securities deposited by exporters would be cancelled and duties paid refunded within not more than 10 working days. His authorities were prepared to have further consultations with the EEC.

132. The representative of the EEC considered that the replies by the representative of Mexico were far from being satisfactory. A fundamental issue in this case was that a provisional duty had been imposed on the day of the opening of the investigation. Any anti-dumping measure, whether provisional or final, had to be based on evidence gathered in an investigation. This was reflected in all the domestic laws and

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2Documents ADP/1/Add.27 and Corr.1 and ADP/1/Add.27/Suppl.1
regulations which had been examined so far in the Committee. The Mexican legislation seemed to be different and he recalled that earlier at the meeting his delegation had raised a number of questions on this legislation. He wondered what were the views of other delegations on the simultaneous opening of an investigation and imposition of a provisional duty. A second issue of concern to his delegation was the fact that to his knowledge exporters had not yet been contacted by the Mexican authorities. It might be that in the meantime the Mexican authorities had notified the EEC authorities of the opening of the investigation; however, in an anti-dumping investigation the relevant information had to be obtained from the individual exporters and not from the governments of the exporting country. He requested the Mexican delegation to indicate whether its authorities would provide exporters with questionnaires and carry out on site verifications and to explain what were the rights of interested parties to defend their interests.

133. The representative of Mexico said that his authorities were carrying out this investigation in accordance with the Mexican anti-dumping law which was consistent with Mexico's obligations under the Agreement. If Parties had doubts in this respect, they could raise questions in the context of the Committee's examination of Mexico's anti-dumping legislation. The Committee had not yet concluded this examination and it was not appropriate to prejudge the results of the Committee's discussion of the Mexican anti-dumping legislation. He reiterated that his Government had given public notice of the initiation of the investigation in the Mexican official gazette; when Mexican exporters had been subject to investigations in other countries, they had been informed of the opening of these investigations in the same manner. Furthermore, his authorities had informed the EEC through diplomatic channels. It was, therefore, clear that the Mexican authorities had proceeded in a transparent manner and in conformity with the Agreement.

134. The representative of Finland said that the Mexican authorities had perhaps not made a sufficient distinction between the requirements in Article 5:1 of the Agreement regarding the initiation of investigations, and the requirements in Article 10:1 of the Agreement concerning the application of provisional measures. He emphasized that Article 10:1 required a preliminary affirmative finding and that the evidence necessary to justify the initiation of investigations was not sufficient to justify application of provisional measures under Article 10:1 of the Agreement.

135. The representative of the EEC said that he had noted with great interest the statement by the representative of Mexico that the procedures followed by the Mexican authorities in this case were consistent with the rules of the Agreement. He wondered whether this meant that it would be acceptable to the Mexican authorities if the EEC, in any future case involving imports from Mexico, would initiate an investigation and immediately apply a provisional duty.

136. The representative of Mexico said that given that the Committee had not yet examined the Mexican anti-dumping law, there was no basis to
content that this legislation was inconsistent with the Agreement. His delegation was prepared to have further consultations with the EEC on this matter if the EEC replied to the note which had been sent to his Government.

137. The representative of the EEC said that his authorities had not yet seen the note referred to by the representative of Mexico. In any event, in anti-dumping duty investigations, diplomatic notes were not relevant.

138. The representative of Canada said that his delegation was very concerned about the interpretation of the Agreement by the Mexican authorities. His delegation would carefully study the Mexican anti-dumping legislation with a view to raising questions on this legislation at the next regular meeting of the Committee.

139. The representative of the United States said that his delegation was also troubled by the procedures followed by the Mexican authorities in the case referred to by the EEC. His authorities would closely follow the implementation of the Mexican anti-dumping law. He urged the representative of Mexico to convey to his authorities the concerns expressed in the Committee.

140. The Committee took note of the statements made.

J. Annual Review and Report to the CONTRACTING PARTIES


Date of the next regular meeting

142. The Chairman said that, in accordance with the decision taken by the Committee at its meeting in April 1981 (ADP/M/5), the next regular meeting of the Committee would take place in the week of 24 April 1989.