

# WORLD TRADE ORGANIZATION

RESTRICTED

**G/ADP/M/4**

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## Committee on Anti-Dumping Practices

### MINUTES OF THE MEETING HELD ON 30 OCTOBER 1995

Chairman: Mr. J. McNab (Canada)

1. The Committee on Anti-Dumping Practices ("the Committee") held a regular meeting on 30 October 1995.

2. The Committee adopted the following agenda:

	<u>Page</u>
A. Rules of procedure	1
B. Semi-annual reports of anti-dumping actions (G/ADP/N/4 and Addenda)	3
C. Preliminary and final anti-dumping actions: (G/ADP/N/5 and Corr.1 and G/ADP/N/6)	4
D. Format for semi-annual reports and minimum information guidelines	5
E. Anti-circumvention: follow-up to the discussion at the meeting of 12 June 1995	7
F. Other business	10
G. Annual report to the Council for Trade in Goods	14

#### A. Rules of Procedure

The Chairman noted that draft Rules of Procedure for the Committee had been circulated in document G/ADP/W/135. The Draft Rules were essentially the rules adopted by the General Council incorporating changes made by the Council for Trade in Goods in its own rules, with relevant changes to make the rules applicable to the Anti-Dumping Committee. The substance of the rules had in almost all respects been previously adopted in either the General Council or in the Council for Trade in Goods. Those few changes to the rules of the Council for Trade in Goods proposed for the Committee were identical in almost all respects to those recently adopted in other Committees operating under the auspices of the Council for Trade in Goods. He proposed that the Committee adopt the rules of procedure, and direct the Secretariat to forward them to the Council for Trade in Goods for approval in accordance with paragraph 6 of Article 4 of the WTO Agreement.

3. The delegate of Australia observed that the draft rules left uncertain the deadlines that would be applicable to circulation of documentation prior to meetings. He supported the view that documentation should circulate at least three weeks in advance. He also expressed the hope that the

current procedure, whereby, several weeks before a scheduled meeting, the Secretariat circulated an annotated draft of issues proposed for the agenda, with a cut-off date for comments and adding issues to the agenda, would be continued. He observed that under the proposed Rule 3 the Secretariat would need to give informal advance notice to Members of the cut off date to include an item on the draft agenda. He asked for clarification whether rules of the General Council that had been deleted for purposes of the Committee would be deleted from the text, and the remaining rules renumbered, or whether the numbering would be maintained, with some rules left blank.

4. The Chairman stated his understanding that the Secretariat intended to retain its practice regarding annotated draft agendas, and intended to provide them to Members as early as possible, and as close to three weeks in advance as possible. However, the requirement as established in the rules of procedure would be circulation of the agenda ten days in advance of the meeting. He noted that he would expect the practice of including in the annotated draft a date by which Members must indicate their desire to put an issue on the agenda to continue. Finally, the Secretariat intended not to renumber the rules, but would either leave a blank or put 'not applicable' or some such text in place of rules that were deleted.

5. The delegate of Japan shared concerns similar to those of the Australian delegation. In particular, he agreed that circulating annotated draft agenda about six weeks before a Committee meeting was quite useful. He suggested changing the suggestion for three weeks' advance notification in footnote 1 to six weeks'.

6. The delegate of the United States also expressed procedural concerns with the rules of procedure. He questioned whether three weeks' notice was sufficient, especially for the regular meetings. He also observed that Members should have the maximum opportunity to add agenda items to the regular agenda. In addition, the United States had a series of other, fairly minor, clarifications such as how the Chairman would obtain a majority of the Members to agree on a special meeting, and distinguishing between regular meetings and special meetings throughout the draft rules.

7. The delegate of New Zealand endorsed the remarks of Australia and Japan about the desirability of early notice and early circulation of documentation. He also raised a question about proposed Rule 15 which provides that the Chairman participates normally as Chairman and not as a representative of a Member, but may at any time request permission to act in either capacity. He observed that the Chairman would probably not wish to have to request permission to act as Chairman, and hoped the language could be clarified, perhaps along the lines suggested in the Subsidies Committee draft Rules of Procedure.

8. A representative of the Secretariat indicated that the wording of Rule 15 was the same as in the Rules of the General Council and was not changed in order to keep the proposed rules for the Committee as much in conformity as possible with the language adopted in the General Council and the Council for Trade in Goods. It was not intended to require the Chairman to ask for permission to act as Chairman.

9. The delegate of Norway observed that even if the language of proposed Rule 15 was a direct quote from the General Council's rules it would be best to change it because as drafted it did not make sense.

10. The delegate of the European Communities also expressed interest in getting documents circulated as soon as possible, and concern for having uniformity in wording for the rules of procedure of both the Anti-Dumping and Subsidies Committees.

11. The Chairman agreed that the rules of procedure for various committees should be as similar as possible.

12. The delegate of the United States supported Norway's suggestion regarding the language of Rule 15, and recognized the desirability of having uniform rules for the Committee and the Subsidies Committee. He suggested that the wording should be that of the proposed rules for the Subsidies Committee, providing that the Chairman would ask permission to act in his capacity as a national representative.

13. The Chairman observed that he had hoped the Committee would be in a position at this meeting to adopt rules of procedure for the Committee, but that did not seem likely in view of the number of issues raised. He proposed that, rather than discussing them in the full Committee, he be authorized to continue informal discussions on rules of procedure.

14. The delegate of Mexico supported the Chairman's proposal. He also supported the proposal that the rules of procedure for the Committee be consistent with those for the Subsidies Committee, and the proposal to change the wording of Rule 15.

15. The Committee agreed to authorize the Chairman to hold informal consultations on the subject of the rules of procedure, and revert to this item at a future meeting.

B. Semi-annual reports of anti-dumping actions

16. The Chairman recalled that a request for semi-annual reports for the first half of 1995 was circulated to Members on 18 July 1995. No reports had been received from the following Members: Antigua and Barbuda, Bahrain, Bangladesh, Belize, Bolivia, Botswana, Brunei Darussalam, Burkina Faso, Burundi, Central African Republic, Chile, Côte d'Ivoire, Cuba, Cyprus, Djibouti, Dominica, Dominican Republic, Egypt, El Salvador, Gabon, Ghana, Guatemala, Guinea Bissau, Guyana, Indonesia, Israel, Jamaica, Kenya, Kuwait, Lesotho, Liechtenstein, Macau, Malawi, Malaysia, Maldives, Mali, Mauritania, Mauritius, Morocco, Mozambique, Myanmar, Namibia, New Zealand, Nicaragua, Nigeria, Pakistan, Paraguay, Peru, Philippines, St. Lucia, St. Vincent & Grenadines, Senegal, Sierra Leone, Singapore, South Africa, Sri Lanka, Suriname, Swaziland, Togo, Trinidad and Tobago, Tunisia, Uganda and Zimbabwe.

17. The Chairman reminded Members that the deadline for filing semi-annual reports was 31 August 1995. With few exceptions, reports were not received by that deadline. He regretted that such a large number of Members had as yet not filed their reports, particularly those Members who had in the past filed such reports, indicating that they had undertaken actions whose status should be reported to the Committee. If a Member had taken no actions, a simple one sentence notification to that effect would suffice. The Chairman observed that the failure of Members to submit semi-annual reports in a timely fashion limited the Committee's ability to consider the substance of the notifications, one of its most important tasks of surveillance and monitoring. Moreover the semi-annual reports submitted were often incomplete, lacking important required information such as the list of measures in force at the end of the reporting period. He urged Members to take their obligations with regard to notifications seriously and make efforts to improve their compliance.

18. The Chairman enquired whether any delegation would like to address any of the notifications.

19. The delegate of the United States referred to an anti-dumping action believed to have been taken by Israel during the last half of 1994. The United States had no record of any notification of this action to the Committee. The United States' understanding of the Committee's decision regarding notification of actions taken during the last half of 1994 was that they were to be reported to the

Committee irrespective of whether the country was a Member of the Tokyo Round Committee or not. The United States asked the delegation of Israel to explain the situation.

20. The United States also referred to the semi-annual report of South Africa, noting the initiation in May 1994 of a case against titanium dioxide pigment from the United States, and asked whether the delegation of South Africa had any indication of when this investigation would be completed.

21. The Chairman observed that his recollection of the Committee's decision was the same, that all actions taken in the latter part of 1994 should have been notified to the Committee.

22. The delegate of South Africa took note of the United States' question and undertook to report back to the United States once he had received information on the matter.

23. The delegate of Israel stated that, to the best of his knowledge, an investigation was opened in May 1994, prior to the period for which notifications were to be sent to the Committee.

24. The delegate of the United States agreed that the investigation was initiated in May of 1994. However, it appeared that a preliminary determination had been reached subsequently, which would probably have occurred during the last half of 1994. It was that preliminary determination the United States believed should have been notified but was not.

25. The delegate of Israel undertook to check this again with his authorities to determine the situation.

26. The delegate of New Zealand advised its notification would be submitted the next day and apologized to the Committee for its late submission.

27. The delegate of Poland raised a question regarding two actions by the European Communities against Polish exporters, the second of which concerned an action initiated in June 1995. He enquired as to the legal basis of this action, and whether it was initiated under the Tokyo Round Code or the WTO Agreement.

28. The delegate of the European Communities agreed to supply the specific information to the Polish delegation on a bilateral basis.

29. The Committee took note of the statements made.

C. Preliminary and final anti-dumping actions notifications

30. The Chairman noted that lists of these notifications were circulated to the Committee in documents G/ADP/N/5 and Corr.1, and G/ADP/N/6. Copies of the official notices of such actions taken by Australia, Canada, the EC, Korea, Mexico, New Zealand, Peru, Singapore and the United States had been made available in the Secretariat for review. The Chairman considered that compliance with this notification requirement had not been adequate, as some Members who submitted semi-annual reports indicating actions in progress had not submitted any reports of preliminary or final actions taken. He reiterated that these notifications were an essential element in permitting the Committee to perform its task of monitoring and discussing actions taken by Members. The failure of some Members to notify impeded the Committee from accomplishing its goal of considering Members' compliance with the requirements of the Agreement.

31. The Chairman asked whether any delegation would like to address any of the notifications.

32. The delegate of the United States corrected an inaccuracy in document G/ADP/N/6 concerning an action taken by the United States. The action on solid urea from Germany should have a footnote specifying that it involved an old order against the former GDR. He asked the delegation of Mexico if it could state whether the last three cases that were reported against the United States were Tokyo Round or Uruguay Round cases, specifically cases involving diammonium phosphate, bovine meat, and gasoline additives.

33. The delegate of Australia commented he would have thought it fairly obvious from examining the reports whether investigations were under the Tokyo Round or the WTO Agreement, by checking the dates.

34. The Chairman observed that while in certain cases the form in which the notification was made would indicate the Agreement under which the action was taken, it was up to the Member to clarify and not to the Secretariat to interpret notifications. It was apparent from the questions raised by Members that it was not always clear from the notification under which Agreement action was taken, and specificity by Members in this regard would assist in transparency.

35. The delegate of Mexico stated that he would provide the United States with the requested information after checking with his authorities.

36. The delegate of Korea asked Mexico about its notification of preliminary determinations in the anti-dumping investigation on steel products imported from Korea, in the light of Article 5(10) of the Agreement. He recalled that the case was initiated in October 1993 and the preliminary determination, finding no injury, was made in April 1995. He urged that the investigation be completed in an expedited manner.

37. The delegate of Mexico took note of Korea's statement and undertook to provide Korea with further information later.

38. The Committee took note of the statements made.

D. Format for semi-annual reports and minimum information guidelines

39. The Chairman recalled that at its last meeting the Committee had discussed the possibility of adopting updated formats for semi-annual reports. The Secretariat had circulated to Members a proposed format for semi-annual reports, incorporating relevant changes adopted by the Subsidies Committee, in document G/ADP/W/136. He proposed that the Committee adopt the format for semi-annual reports contained in that document, noting that it would be understood that paragraph 19 of the document applied only to cases covered by the WTO Agreement of Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

40. The delegate of Colombia suggested that the format should include, on page 6, information concerning preliminary as well as final measures.

41. The delegates of Hong Kong, the United States, Poland, Japan, Korea, Egypt, and the EC supported adoption of the format.

42. The Chairman reverted to the suggestion made by Colombia, and asked whether Members wished to add an Annex to the format with a requirement listing provisional measures in place, keeping in mind that these would in all likelihood change with every report.

43. The delegate of the United States indicated that he did not believe any more information could be provided than was already reported in column 4 regarding what provisional measures had been taken during the reporting period.

44. The delegate of the European Communities observed that because provisional duties cannot exceed six months, or nine months if the lesser duty rule is applied, he did not think that including provisional measures in an Annex would provide any significant additional information. Provisional measures were already reported in column 4 of the format.

45. The delegate of Colombia stated that what she had been referring to was provisional measures in force. Some countries which were not Parties to the Tokyo Round Code had imposed provisional measures which were in force before December 1994, and which apparently remained in force. It was with respect to such measures that further information and reporting was sought.

46. The delegate of the United States agreed that it would be very useful for the Committee to have information on actions taken prior to implementation of the Uruguay Round Agreement by countries who were not Parties to the Tokyo Round Code. He supported a notification requirement that would involve a listing of outstanding preliminary measures or final determination by Members who were not Tokyo Round Code Parties.

47. The Chairman observed that this seemed to go beyond the question of the reporting format, which would apply to information that would have to be reported every six months. In his view, the examples mentioned by the United States would involve a one-time reporting requirement, indicating measures that were in force at the coming into force of the WTO Agreement for a particular Member, but that the information would not necessarily have to be reported every six months as part of the format for semi-annual updates. He suggested that the Committee come back to the question of whether a format or a requirement for that kind of notification should be developed, but first decide the issue of the semi-annual report format that was before the Committee.

48. The delegate of Hong Kong agreed that the information referred to by Colombia was very important to the implementation of the Agreement, and his delegation supported her proposal in principle. However, he agreed with the Chairman that it was a one-off exercise, a sort of snap shot taken of measures outstanding at the time a Member joins the WTO Agreement. He suggested that further discussions of how to best deal with this question would be appropriate.

49. The Chairman proposed that this issue be discussed informally, and if Members wished, a one-off notification to the Committee could be required. Based on informal discussions, the Secretariat could be asked to devise a format that the Committee could consider at a future meeting.

50. The Committee so decided.

51. The Chairman proposed that, with the inclusion of a "basis for determination" code "FA", the proposed format be adopted.

52. The Committee so decided.

53. The United States raised a related issue, encouraging the Secretariat to consider means by which the semi-annual reports could be submitted electronically. The United States was willing to consider any means that would simplify the work of the Secretariat and the preparation of the Annual Report.

54. The Chairman observed that this was a good idea for the future. In the meantime, he reminded Members that the submission of notifications in hard copy and diskette form was of great help to the Secretariat.

55. The Chairman proposed that the Committee issue the minimum information guidelines which has been adopted by the Committee at its February special meeting, and which had been circulated in document G/ADP/W/134, as a Committee document. The Committee could of course revert to the guidelines at a later date to discuss any proposed modifications.

56. The delegate of Australia expressed support for the proposal, but recalled that when that text was originally adopted by the Tokyo Round Committee, the Chairman had made a statement indicating that the guidelines were not intended to prejudice the confidentiality of information. Australia considered that a statement from the Chair at the time of the adoption of the guidelines, that confidentiality of information was not prejudiced, would be useful.

57. The Chairman stated that it was not the intention to change practice in this regard, and it was not the intention of the format proposed that confidential information would have to be divulged, and proposed that with that understanding the minimum information guidelines be adopted and issued.

58. The Committee so decided.

59. The delegate of Malaysia observed that he had no objection to the format adopted, but believed that whatever information was provided should also take into account the guidelines provided under Article 12 of the Agreement.

60. The Chairman agreed that Members should keep in mind that the object of the exercise was to provide the information that all Members need, and if Members wished to provide more information they were certainly free to do so.

E. Anti-circumvention

61. The Chairman reminded Members that they had been asked at the Committee's last meeting to turn their attention to the matter of anti-circumvention. The Chairman had indicated his willingness to hold informal consultations on the matter to consider how the Committee would move forward on this issue. The Ministerial Decision on Anti-Circumvention of 15 April 1994 noted that the negotiators had been unable to agree on a specific text dealing with the problem of anti-circumvention, recognized the desirability of applying uniform rules in the area as soon as possible, and referred the matter to the Committee for resolution. The Chairman considered that this was one of the few areas of substance on which no consensus was reached in the Uruguay Round and one of the few specific forward-looking tasks assigned to the Committee. In his view, the Committee should begin substantive consideration of the issue. He was aware that certain Members had been discussing amongst themselves how the Committee might proceed on the matter, and opened the floor for suggestions.

62. The delegate of Canada welcomed the inclusion of this item on the agenda, considering it important to address the issue of anti-circumvention, given that some countries had not hesitated to use such measures and the desirability of developing generally accepted rules to prevent unacceptable precedents. Canada did not suggest that this work proceed immediately, but believed it important that the Committee discuss and agree on the forum for giving effect to the Ministerial Decision, with a view to the work beginning in early 1996. The Canadian delegation proposed the creation of a separate informal working group or sub-committee as the most practical means to proceed, with the terms of reference be those set out in the Ministerial mandate. He drew attention to the work of the WTO Committee on Rules of Origin, which had the task of harmonizing the rules of origin for all non-

preferential commercial policy instruments, including the Anti-Dumping Agreement. Canada was concerned that important aspects of the anti-circumvention issue might be decided as part of that Committee's task of harmonizing rules of origin; Canada's view was that anti-circumvention should properly be addressed in the Anti-Dumping Committee through a separate informal working group or sub-committee in accordance with the Ministerial mandate.

63. The delegate of the European Communities supported the proposal to create a working group to discuss these issues.

64. The delegate of Singapore recognized the need for the Committee to consider how best it should respond to the Ministerial decision. However, at this juncture, Singapore was not yet ready to agree to Canada's proposal to establish an informal working group. In Singapore's view, it was premature to address issues of substance. In order to be able to address substantive issues in a constructive manner, decisions about the appropriate process would be needed. Singapore proposed that a more appropriate approach at this time would be to authorize the Chairman to conduct informal consultations on the process by which the Committee should respond to the Ministerial decision and to report the outcome of such informal consultations to the Committee with a view to reaching a decision on the process at its next regular meeting.

65. The delegates of Norway and the United States expressed support for the proposal made by Canada.

66. The delegate of Hong Kong recognized that there was a need for the Committee to respond to the Ministerial decision. However, Hong Kong agreed with Singapore that given the complexity and sensitivity of the issue it might be premature to set up an informal working group to consider issues of a substantive nature such as priorities or work programme. Hong Kong agreed with Singapore that at the present stage, the Committee should focus on the procedural aspects of the issue. Thus, Hong Kong supported Singapore's proposal.

67. The delegate of Japan observed that this was a very important issue, and expressed disappointment that some countries had already incorporated illegal anti-circumvention provisions in their legislation. In Japan's view, these should be abolished before turning the Committee's attention to the general issue of anti-circumvention. While the Ministerial decision referred this matter to the Committee, careful discussions were needed before starting the substantial discussion. The Committee needed to discuss the process to facilitate the substantial discussion later. Therefore, Japan supported the position of Singapore and Hong Kong.

68. The delegate of New Zealand observed that there was a wide range of views on this issue. In view of the wide range of views he was not certain that the Committee really could or should decide at this stage exactly what the terms of reference of this sub-committee should be. He believed the Committee needed to be very careful and understand precisely what was going to be discussed before beginning. Therefore, New Zealand supported the notion of discussing how the Committee would proceed first and reaching some decision on that. A decision on process did not necessarily rule out discussion on what might be discussed in terms of the substance. Overall, New Zealand would prefer to decide how the Committee would proceed, in terms of the kind of mechanism and within what framework or terms of reference the discussion would be carried on, and would prefer those matters to be discussed informally, rather than reach a decision today on the Canadian proposal.

69. The delegate of Australia observed that the Ministers collectively took a decision that the issue should be referred to the Anti-Dumping Committee, and Australia believed that the Committee had some obligation to see whether agreement could be reached before the first regular Ministerial meeting under the WTO at the end of 1996. He was concerned about a proposal under which the Committee



left the decision on whether to actually start discussing substance until its regular meeting next May. Given the complexity and the difficulty of the issues, this would essentially preclude the Committee having anything to report to Ministers at the end of 1996. Because any decision on anti-circumvention would presumably be considered to be some amendment to the Agreement, it was the sort of decision that might well be put on the menu for the Ministerial conference. The Ministerial decision was a political decision to establish discussions in the Committee and in Australia's view, it gave Members of the Committee who wished to discuss it the right to have a formal discussion. At present, an increasing number of countries were inserting anti-circumvention provisions in their legislation, which most would consider to be rather dubious in terms of consistency with the Agreement. In addition, work on some aspects of anti-circumvention was going on tangentially in the WTO Rules of Origin Committee, or would be dealt with through the World Customs Organization in Brussels. He did not believe it was in anyone's interest to let others run away with the issue without doing something in this Committee.

70. The delegate of Mexico observed that while Mexico did not have a great interest in this particular subject, it was interested that the terms of reference of any group that was to be set up should be examined by all the participants of this Committee. Therefore, it was very important that the Committee look carefully at the terms of reference, the time frame for meetings, and what the group could actually achieve. Therefore, Mexico believed that there should be discussions with certain delegations so that all could have the opportunity to give specific attention to the mandate and terms of reference of the informal group as well as all the other aspects relating to its functioning.

71. The delegate of Korea supported Singapore's proposal.

72. The delegate of the United States reiterated the position of the United States that there was nothing in the Agreement which prohibited the United States from enacting legislation and taking actions to deal with problems of circumvention. The United States believed that it was incumbent upon the Committee to work on the issue of unified rules. He stated the view that there did not appear to be a number of procedural issues which needed to be discussed, and requested clarification from Singapore on exactly which procedural measures these might be. He expressed the view that the Ministerial declaration provided the Committee with terms of reference for a working group.

73. The delegate of the European Communities expressed surprise that some delegations appeared to believe it premature to discuss substantive issues. In the EC's view, the Ministerial decision was clear - the matter was referred to the Committee. Consequently, the Committee should either discuss the matter itself, or in a separate forum. He supported the United States' request for clarification concerning what procedural questions some delegations thought should be addressed before the Committee could start discussing substantive issues.

74. The delegate of Singapore noted that this issue was complex, and that positions and concerns varied tremendously among WTO Members. Singapore recognized the need to address the Ministerial Decision, but observed that that decision did not pre-judge any particular outcome one way or another. Singapore interpreted the proposal to establish a working group and look into substance, as a proposal to look into substantive rules for anti-circumvention. Singapore felt it necessary to discuss terms of reference and the framework before substantive discussions took place. Singapore's proposal did not preclude Members from bringing up any aspects of their concerns in the Committee, but Singapore was not in a position to agree to a working group to look at both procedures and substance.

75. The Chairman noted that there appeared to be two distinct schools of thought. The proposal made by Singapore was that informal consultations be held on the form the response to the Ministerial decision should take, with the Chairman to report back at the next regular meeting, in late April or early May, after which a decision could be taken. The proposal made by Canada was to form an

informal working group now to commence discussions on the Committee's response to the Ministerial decision.

76. The delegate of Japan observed that the issue before the Committee was how it could best discuss the issue that was referred to it by the Ministers in Marrakesh. Japan believed the Committee needed to decide how the issue could best be dealt with, in the sense of terms of reference, framework of the discussion, schedules, and so forth. These matters needed to be discussed, and in Japan's view, it was premature to try to set up a working party. Consequently, Japan strongly supported Singapore's proposal of informal consultations.

77. The delegate of Norway expressed concern that time was passing, and that the informal consultations suggested by Singapore would result in more time passing, without discussion of substance, during which there may be decisions made in dispute settlement that would effectively take the decision of how to deal with the matter of anti-circumvention out of the Committee's hands. If the Committee was not prepared to adopt Canada's proposal, Norway suggested the Committee should at least see this as an urgent matter, that informal discussions be held as soon as possible, and that the Committee not wait until late Spring to take a decision.

78. The delegate of Malaysia expressed support for Singapore's proposal.

79. The delegate of Hong Kong stated that he was not ready to support Canada's position. Hong Kong supported Singapore's proposal.

80. The delegate of India also supported Singapore's proposal.

81. The delegate of Canada suggested that there seemed to be some common ground. Therefore, Canada proposed, as a compromise, that the Chairman continue informal consultations, with a view to reporting back in December, rather than next May, on progress that has been made.

82. The delegates of the United States, New Zealand, Malaysia, Singapore, the European Communities, Hong Kong, Korea, and Mexico all expressed support for Canada's proposal.

83. The Chairman proposed, therefore, that the Committee authorize him to engage in informal consultations with a view to reporting back to the Committee at its meeting in December on how the Committee was going to respond to the Ministerial Decision.

84. The Committee so decided.

85. The Chairman observed that, in the context of informal consultations, he urged Members who would participate to be prepared to present their views on the issues that have to be addressed, and especially the procedural issues mentioned by several delegations.

#### F. Other business

86. The delegate of Hong Kong raised one item of other business, involving the European Communities' anti-circumvention enquiry regarding imports of 3.5 inch micro-disks. He noted that the EC had informed Hong Kong of the initiation of this investigation of circumvention of anti-dumping duties imposed on imports of micro-disks from Japan, Taiwan, Hong Kong, Korea, and China by imports originating in Hong Kong, Canada, Malaysia, Macau, Indonesia, Thailand, India, Singapore and the Philippines. Hong Kong expressed strong objections to the initiation of the investigation. Hong Kong considered the anti-circumvention action initiated or contemplated by the EC to be incompatible with GATT/WTO principles.

87. In Hong Kong's view, GATT Article VI.2 allowed a WTO Member to levy an anti-dumping duty only in order to offset or prevent dumping. Article VI.6(a) provides that no WTO Member shall levy an anti-dumping duty unless it determines that the effects of dumping are such as to cause or threaten material injury to an established domestic industry.

88. Article 1 of the WTO Anti-Dumping Agreement provides that an anti-dumping measure shall be applied only under the circumstances provided for in GATT Article VI and pursuant to investigations initiated and conducted in accordance with the provisions of the WTO Agreement. Article 18.1 prohibits countries from taking action against dumping of exports by a Member except in accordance with the provision of the Agreement.

89. The WTO Agreement did not contain any anti-circumvention provisions which derogate from these obligations. Anti-dumping measures could therefore only be imposed on the product after proof of dumping of the product, injury and causation in accordance with GATT Article VI, and following the procedures prescribed in the WTO Agreement.

90. Contrary to this obligation, Article 13 of the EC's anti-dumping regulations provided for the imposition of anti-dumping duties on a product without proof of dumping, injury and causation in accordance with GATT Article VI and the procedures prescribed in the Agreement. The EC's unilateral action of including anti-circumvention provisions in its anti-dumping regulation violated Article 18.4 of the WTO Agreement, which requires each WTO Member to ensure the conformity of its laws, regulations and administrative procedures with the provisions of the WTO Agreement.

91. Furthermore, any anti-dumping action taken by the EU pursuant to the anti-circumvention provisions was a violation of its obligations under the WTO. Specifically, Article 5.2 of the WTO Agreement requires an application for an investigation to include evidence of (a) dumping, (b) injury within the meaning of Article VI of GATT 1994 as interpreted by the Agreement and (c) a causal link between the dumped imports and alleged injury. Article 13 of the EC's regulation appeared to allow initiation of an investigation without evidence of these elements. Dumping was alleged to be established on the basis of a comparison with a normal value established previously and outside the exporting country. The requirements of injury and causal link were absent in the EC's anti-circumvention provisions. The initiation of the present investigation by the EC was therefore a violation of Article 5.2 of the Agreement.

92. Hong Kong regarded the specific allegation of circumvention against Hong Kong as totally unjustified. On the basis of both import and export statistics, no change could be seen in the pattern of trade, as required to suggest that the anti-circumvention complaint might be substantiated. Hong Kong's exports of micro-disks were on a declining trend, and those exports had already been subject to an anti-dumping duty at a high residual rate of 27.4 per cent since 1994. Hong Kong's exports of unrecorded magnetic disks to the EC had decreased by 70 per cent in 1994 over 1993. Hong Kong's share of the EC's market had also dropped from 19 per cent to 8 per cent during the same period. Hong Kong's exports and market share would not have dropped so drastically had there been circumvention of anti-dumping measures as alleged.

93. Hong Kong also suspected that there was a possibility that the complaint was related to rules of origin matters. If that was the case, it should be dealt with under the normal customs rules. Suspected origin fraud cases should not be tackled by anti-circumvention actions which would unfairly prejudice innocent exporters who had fulfilled proper origin declaration requirements. A blanket extension of anti-dumping measures under the disguise of anti-circumvention with a view to solving what was basically an origin fraud problem was unacceptable. Hong Kong strongly urged the EC authorities to comply with GATT Article VI and the WTO Agreement and to immediately terminate the anti-circumvention case. Hong Kong reserved its rights under the WTO Agreement to pursue the matter further.

94. The delegate of Singapore, speaking on behalf of the ASEAN countries, addressed the same matter. Singapore noted that the investigations were initiated following a complaint by the Committee of the European Diskette Manufacturers, pursuant to Article 13.3 of the EC Regulation No. 3283/94. Article 13 allowed the EC to extend existing anti-dumping duties to imports from third countries of like products or parts thereof which were destined for assembly in the Community when it was considered that circumvention of measures in force was taking place. Article 13 of the EC regulation further loosely defined the concept of circumvention as "a change in pattern of trade between third countries and the Community which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the A-D duty and there is evidence that the remedial effects of the duty are being undermined".

95. Singapore and the ASEAN countries were seriously concerned that the EC had initiated this investigation on micro-disks from Indonesia, Malaysia, the Philippines, Singapore and Thailand. They strongly objected to the anti-circumvention investigations initiated by the EC, as they considered this anti-circumvention action to be inconsistent with the WTO Anti-Dumping Agreement and the GATT 1994, and as having no legal basis whatsoever under the WTO Agreement and the GATT.

96. Firstly, Article 1 of the WTO Agreement provides that an anti-dumping measure shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations conducted in accordance with the provisions of the WTO Agreement. Second, Article 18.1 of the WTO Agreement prohibits countries from taking action against dumping of exports from another Member except in accordance with the provisions of GATT 1994 as interpreted by the provisions by the WTO Agreement. Third, Article VI.2 of the GATT allows a Member to levy on any dumped product an anti-dumping duty in order to offset dumping. Article VI.6(a) of the GATT further provides that no WTO Member shall levy an anti-dumping duty on the importation of any product unless it determines that the effect of the dumping is such as to cause or threaten material injury to an established domestic industry. Singapore reiterated that neither the GATT 1994 nor the WTO Agreement contained any anti-circumvention provisions.

97. Anti-dumping measures could therefore only be imposed on a product after it had been established that the product was dumped and causing material injury in accordance with GATT Article VI and the procedures prescribed in the WTO Agreement. Hence the EC's anti-circumvention action, whereby an anti-dumping duty would be extended to imports of micro-disks from third countries such as Indonesia, Malaysia, the Philippines, Singapore and Thailand without evidence of dumping injury and causal link, was inconsistent with GATT Article VI, Articles 1 and 18 of the WTO Agreement and the procedures prescribed therein.

98. The ASEAN countries strongly objected to the initiation by the EC of the anti-circumvention investigations on micro-disks from Indonesia, Malaysia, the Philippines, Singapore and Thailand and urged the EC to immediately terminate the anti-circumvention investigations. In the event that the matter could not be resolved to their satisfaction, the ASEAN countries reserved the right to refer the matter to the Dispute Settlement Body of the WTO.

99. The delegate of India expressed support for the statements made by Hong Kong and Singapore. In India's view, the action taken by the EC was against the spirit of the WTO Agreement. There was no provision for anti-circumvention action under the existing WTO Agreement.

100. The delegate of Japan expressed the view that the EC's anti-circumvention investigation on micro-disks was unjustifiable under the Anti-Dumping Agreement and GATT 1994. Japan supported the position taken by Hong Kong and Singapore and their legal assessment of the inconsistency of the EC action with the Agreement. Japan requested the EC to terminate the investigation immediately.

101. The delegate of Mexico supported the statements of Hong Kong, Singapore, Japan, and India. Mexico also joined the request to the EC to stop the investigation.

102. The delegate of the European Communities observed that the statements of the delegations on this issue demonstrated the need for a substantive discussion on the overall subject of anti-circumvention measures. In the EC's view, the Anti-dumping Agreement provided for measures against injurious dumping, and those measures should be efficient. In this situation, the EC was coping with cases in which, through certain activities, existing measures were being eluded by products being circumvented through third countries. The rules of the EC on such investigations were precise and clear, and included both dumping and injury investigation and tests. Thus, the EC did not accept the argument that duties would be imposed without investigation and without findings of dumping and injury.

103. The EC provisions on circumvention required that the pattern of trade be examined, as well as whether there was a changing pattern of trade, as seen from volumes of imports into the Community. With respect to one country involved, there had been a change from 207,000 kilos of micro-disks exported in 1990, to 513,000 kilos in 1994, a doubling in four years. Regarding another country, the figures went up from nil exports to almost three million kilos, from a third country from 4,000 kilos to 1.5 million kilos. As seen from these figures, the increase in imports was considerable, and there did not appear a *prima facie* economic justification for those increases, which was one element the EC legislation required be considered.

104. A second aspect that must be considered was the undermining of the duties or of the measures which had been imposed. In the present case, import unit values had decreased from 18 ECU per kilo from April 1993 to 13 ECU in 1994. For another country the decrease had been from 24 to 10 ECU, and in other cases from 15 to 11 ECU, and from 20 to 14 ECU. All those figures showed clearly, in the EC's view, that there had been a very considerable undermining of the measures imposed.

105. Finally, the last aspect that was required to be established was the existence of dumping. The unit export prices, which had, on the basis of the complaint, been examined, by reference to the normal values established in the original investigation, clearly showed that there was dumping. So the three tests were clearly met in this particular case.

106. The EC emphasized that this matter dealt with duties which should have been paid, not a new investigation on new dumping from different countries. The case involved the possibility that, through circumvention through a third country, the original duties were being eluded.

107. Finally, he noted that EC legislation provided for a customs certificate, which allowed exporters and producers from the countries investigated to be protected. The EC believed its position was clearly and fully consistent with the Agreement, and for that reason intended to continue with its investigation.

108. The delegate of the United States observed that the United States' position on anti-circumvention was well-known. It was the opinion of the United States that the original anti-dumping investigation determined whether or not there was dumping and whether the dumping was injurious. The anti-circumvention investigation determined whether to include under the order goods which should have been included or covered by the original order. In other words, these were not goods with respect to which a separate determination of dumping or injury must be made. It was simply the determination whether goods coming from a country which was covered by an order were going through a third country for the purpose of circumventing a dumping order.

109. The delegate of Korea expressed support for Hong Kong and Singapore's interventions.

110. The delegate of Canada took note of the EC's reply to the comments of other delegations on the issue. However, Canada believed the explanation was not quite adequate. Canada expressed concern with the investigation. Canada would not accept any actions that unjustifiably impeded access to the European market for Canadian products.

111. The delegate of Hong Kong observed that the figures for exports and imports cited by the EC to justify the anti-circumvention proceedings went as far back as 1990, but the measures allegedly being circumvented were only imposed in 1993. Hong Kong also maintained that whatever the facts on import increases from other countries, this was not the case for Hong Kong. Hong Kong's imports had decreased by 70 per cent in 1994 over 1993, and the market share dropped from 19 per cent to 8 per cent.

112. The delegate of Malaysia, on behalf of the ASEAN countries, stated that they did not accept the explanation afforded by the EC, and stood by the earlier remarks made on behalf of ASEAN countries.

113. The delegate of the European Communities stressed that an investigation had been opened, but no measures had been imposed. The EC believed there were reasons to initiate the investigation. Obviously should the investigation confirm that some of the requirements in the EC's legislation were not met, the case would be finalized without measures.

114. The Committee took note of the statements made.

G. Annual report to the Council for Trade in Goods

115. The Committee adopted its first Annual Report to the Council for Trade in Goods.

Date of the next regular meeting

116. The Committee agreed to hold its next regular meeting in the week of 29 April 1996.

117. The meeting was adjourned.