

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

ADP/M/2  
18 June 1980

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## Committee on Anti-Dumping Practices

### MINUTES OF THE MEETING HELD ON 5-6 MAY 1980

Chairman: Mr. M. Lemmel

1. The Committee on Anti-Dumping Practices held its second meeting on 5-6 May 1980.
2. The Committee adopted the following agenda:
  - (1) Procedures for the participation of observers
  - (2) Application and interpretation of the Agreement
  - (3) General policy statements
  - (4) Information on implementation and administration of the Agreement (notification by signatories of their national legislation and implementing regulations)
  - (5) Format and content of reports by Parties on all preliminary or final anti-dumping actions taken and of semi-annual reports of anti-dumping actions taken within the preceding six months
  - (6) Questionnaires used in anti-dumping investigations
  - (7) Adherence of further countries to the Agreement
  - (8) Procedures for accession of non-contracting parties
  - (9) Procedures for the annual review of the operation of the Agreement
  - (10) Other business
    - (a) Panel members
    - (b) Definition of the word "related"
    - (c) Circulation of the Committee's documents
    - (d) Other

(1) Procedures for the participation of observers

3. The Committee adopted the procedures for the participation of observers reproduced in Annex I.

4. The Chairman informed the meeting that requests for observer status had been received from four non-contracting parties to the GATT: Bulgaria, Ecuador, Mexico and Thailand. He noted that there appeared to be a consensus to invite Bulgaria, Ecuador and Thailand to participate in the meeting of the Committee in an observer capacity. With regard to Mexico he stated that he had been requested by some signatories to seek further clarification, informally, from the Mexican delegation as to its interest in following the proceedings of the Committee. He therefore proposed to defer a decision on this matter until the next meeting of the Committee. The representative of the United Kingdom speaking for Hong Kong said that his delegation was ready to accept the request from Mexico already at this meeting.

5. The Committee agreed to invite Bulgaria, Ecuador and Thailand to participate in the meetings of the Committee and it deferred the decision on Mexico until its next meeting.

6. Regarding paragraph 5 of the procedures, the Chairman said that after informal consultations, he believed there was a consensus that requests from international organizations to participate as observers would be considered individually, and invitations would be issued on a meeting-by-meeting basis.

In the case of requests from international organizations to participate in an observer capacity he, as Chairman of this Committee, would consult with signatories to this Agreement to determine if there was no objection to issuing an invitation to the requesting international organization. This consultation would take place before the draft agenda for the next meeting had been issued in final form. The informally circulated draft agenda sent to signatories should include a list of those international organizations which had requested observer status. The Committee adopted these procedures.

7. The Chairman referred to letters sent by the IMF and UNCTAD asking for observer status in meetings of the Committee. It was agreed that these organizations would be invited to follow particular issues of the Committee in an observer capacity in accordance with the procedures for participation of observers, as adopted.

(2) Application and interpretation of the Agreement

8. The Chairman drew the Committee's attention to document ADP/W/4 containing draft decisions by the Committee on understandings resulting from negotiations of the Anti-Dumping Code. The operative part of these decisions

was a simple reproduction of these understandings circulated during the Multilateral Trade Negotiations in MTN/NTM/W/232/Add.2 and MTN/NTM/W/232/Rev.1/Add.1 and 2. The Committee adopted these decisions as set out in Annex II.

9. The representative of Brazil informed the Committee that in the light of the decisions just taken the Brazilian Government fully accepted the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, as of 5 May 1980.

(3) General policy statements

10. The representative of the United States stated that, in the view of his Government, the Agreement on Implementation of Article VI of the General Agreement was a significant improvement on the previous Anti-Dumping Code. This Agreement provided for greater precision and transparency, in particular with respect to domestic procedures and resolution of disputes. He strongly believed that it was crucial that signatories implement the Agreement on a timely basis in fulfilment of their obligations. The United States had passed the relevant national legislation and were promulgating implementing regulations. His Government would now closely look how other signatories were implementing the Agreement. He urged other signatories, who had not done so, to notify, as soon as possible, their legislation in a fully comprehensive form. He concluded by saying that the present signatories to the Agreement should seek to encourage other countries to become signatories. For their part, the United States intended to participate actively and co-operate in all the proceedings of the Committee with an aim to further reduce obstacles to international trade.

11. The representative of the European Economic Community shared the view of the previous speaker that the Agreement was an important achievement and that it would have practical meaning only if fully implemented by all signatories. So far such an implementation had been made only by two signatories. Some other signatories had merely notified that existing legislation continued to apply. This certainly was not sufficient, because in some particular cases it did not assure the possibility of appealing to national tribunals, as required by the Agreement. Therefore all signatories should promptly take the necessary steps to ensure full implementation of the Agreement and to notify the Committee accordingly.

12. The representative of Japan considered that the full implementation of the Agreement was of great importance to assure the smooth development of international trade. He stressed that all signatories should bring their national legislations into full conformity with the provisions of the Agreement. The Committee should undertake a systematic examination of

national legislations setting up, if necessary, a subsidiary body for this purpose. He also referred to some anti-dumping actions taken by the United States, the European Economic Community and Canada, which in the view of his authorities might be questioned in the light of the Agreement. He informed the Committee that procedures for final acceptance of the Agreement had been completed by his authorities and that it was the intention of the Japanese Government to take the steps necessary to ensure its effective implementation. His Government felt that it was important to encourage as many countries as possible to join the Agreement, in particular developing countries.

13. The representative of Austria said that the procedures for ratification of the Agreement had now been completed in his country and that his delegation would soon be able to deposit Austria's instrument of ratification. The Agreement had been applied since 1 January 1980 on a de facto basis. There was no necessity to change the Anti-Dumping Law of 1971; but his authorities have nevertheless decided to adjust the wording of this Law to the new Agreement.

14. The representative of Canada stated that some administrative procedures had been changed to conform to the provisions of the Agreement. As to the question of judicial review and right of appeal to national tribunals he indicated that in Canada there was an Anti-Dumping Tribunal where interested parties could present their cases. He considered that Canada had implemented the Agreement, however his Government was working on anti-dumping and countervailing procedures which would further improve the system. He fully supported the idea that the Committee proceed with systematic examination of national legislations at its autumn meeting. He thought it was preferable that this examination take place in the Committee itself, not in any subsidiary body.

15. The representative of Brazil recalled that Brazil was not party to the former Anti-Dumping Code but had actively participated in the final stage of negotiation of the new Agreement in particular on questions of special and more favourable treatment of developing countries. Although the final outcome was less than what was expected by developing countries, it constituted nevertheless an acceptable minimum. As his Government had accepted the Agreement only that day it would only now undertake a study of the necessary steps to fully implement its provisions. He considered that special attention should be given to full implementation of the provisions concerning developing countries. In this sense he noted that due consideration should be given to the fact that "reasonable amount of administrative, selling and other costs" may vary widely as between developed and developing countries. In particular the operation of Article 5 of the Agreement had to be seen in the light of the decisions adopted by the Committee earlier at this meeting. Interpretation of these provisions should not be restrictive, but, on the contrary, should facilitate development of international trade, in particular that of developing countries.

(4) Information on implementation and administration of the Agreement

16. The Chairman recalled that the invitation to submit notifications of national legislation and implementing regulations was contained in the Note from the Chairman (L/4945) and the Committee had agreed that these notifications should be submitted by 15 February 1980. The following communications had been received by the secretariat by 5 May 1980: EEC (ADP/1/Add.1), Sweden (ADP/1/Add.2), United States (ADP/1/Add.3), Norway (ADP/1/Add.4), Finland (ADP/1/Add.5), Canada (ADP/1/Add.6) and Switzerland (ADP/1/Add.7). He considered it very important that signatories fulfil their obligations and he proposed that appropriate notifications be submitted by 30 June 1980.

17. The representative of Sweden referred to his notification in ADP/1/Add.2. He said that although this notification was very short, the Agreement in its entirety was approved by the Parliament and would be fully applied in case his Government decided to initiate and conduct an investigation and impose anti-dumping duties.

18. The representative of the European Economic Community said that one could distinguish between two different approaches. The United States and the European Economic Community had developed comprehensive national legislation while some other Parties made general notifications that they were applying the Agreement. This second approach was not satisfactory, because, for instance it did not assure the possibility of appeal to national courts. He would like to see how this problem appeared in the legislations of, among others, Canada, Sweden and Japan. This was why he agreed with the representative of Canada, that the systematic examination of national legislations should be done by the Committee itself, although some additional meetings might be required.

19. The representative of Canada reiterated his position that the examination of national legislations should take place in the Committee, at formal or informal meetings. On the point of whether the implementation by Canada was meaningful or otherwise and in particular on the question of appeals, he said that the Canadian legislation as adopted in 1969, provided not only for appeals by importers of the Department of National Revenues Assessment of Anti-Dumping Duties, which could be carried right to the Federal Court of Canada on any question of law, but also for appeals on questions of natural justice on decisions of the Anti-Dumping Tribunal, which could also go to the Federal Court of Canada. Therefore he felt that the implementation of the Agreement by Canada was very meaningful.

20. The representative of the United States was also of the opinion that the Committee should proceed with the examination of national legislations at its autumn meeting. He felt it useful to reflect on how this review would be structured and how delegations should prepare themselves for this review.

21. The Chairman said that the Committee would certainly have to spend quite a considerable amount of time on a systematic examination. There might be a need to meet informally to discuss the procedures for this review. The representative of the European Economic Community proposed that the Committee proceed with the review in the same way as had the former Anti-Dumping Committee. The Committee agreed to this proposal.

(5) Format and content of reports by Parties on all preliminary or final anti-dumping actions taken and of semi-annual reports of anti-dumping actions taken within the preceding six months

(i) All preliminary or final actions taken with respect to anti-dumping duties

22. The Chairman proposed that signatories send to the GATT secretariat all formal decisions concerning preliminary or final actions taken with respect to anti-dumping duties, immediately after such decisions had been taken. These notifications would be available in the secretariat for inspection by government representatives. In addition the secretariat would circulate a monthly checklist of notifications received during each calendar month. Once experienced with the operation of these procedures had been gained, the Committee would review the situation and consider possible modifications. Having heard some comments from representatives of the European Economic Community and Austria the Chairman said that reports sent to the secretariat should be in one of the official GATT languages. It would, however, be appreciated if these reports were accompanied by the full text of a decision in the national language. The Committee adopted this proposal.

(ii) Semi-annual reports on all anti-dumping actions taken within the preceding six months

23. The Committee agreed that semi-annual reports to be submitted before the autumn session of the Committee would cover the period 1 January 1980-30 June 1980. As to the reports under the old Anti-Dumping Code, covering the period 1 July 1979-31 December 1979, they should also be submitted by countries which had been parties to that Code. The decision on whether they would be subject to a review or not would be taken in informal consultations. It would depend, inter alia on how many countries, parties to the old Anti-Dumping Code, but not to the present one, would have joined the Agreement at the time of the review.

24. The representative of the European Economic Community submitted an informal proposal for a standard format for semi-annual reports, which constituted a simplification of the proposal submitted by the United States in the former Anti-Dumping Committee (COM.AD/W/86) and was brought in line with the requirements of the new Agreement. The representative of Canada considered that semi-annual reports should also contain information on all outstanding anti-dumping actions and indications of whether some of them had been subject to review. With reference to the EEC proposal he pointed out

that information on trade volumes if not accompanied by other economic data could be misleading as, sometimes, what might seem to be minimal amounts were sufficient in a relatively small market to justify the finding of injury. He proposed that a standard format should also contain columns showing the margin of dumping and dumped imports as a percentage of domestic consumption. The representative of the United States said that as national legislations sometimes allowed for different resolutions of anti-dumping investigations, a column "other" should be included to cover such unspecified outcomes.

25. The representative of Japan welcomed the proposal submitted by the representative of the European Economic Community, but he needed some time for reflection before he could give his definitive consent. The representative of Sweden generally supported the EEC proposal but considered that some points needed further reflection. It was also his opinion that semi-annual reports should contain information on all outstanding anti-dumping actions.

26. The observer for Australia submitted a proposal on the standard format for semi-annual reports. He considered that such reports should not contain a column on trade volume, as such information was particularly misleading, especially in the case of small countries. A column giving reasons for termination should be added and it could contain a summary of reasons or give reference to appropriate documentation. The observer for Poland thought it would be useful to have information on reasons for undertaking an anti-dumping action. Such information could be included in the column "initiation" in the EEC proposal.

27. The representative of Brazil considered that semi-annual reports on anti-dumping actions should also contain an indication of whether special treatment was given to developing countries having regard to Article 13 of the Agreement and the decisions taken earlier at this meeting.

28. The Chairman said that he would consult with interested delegations on a standard format for semi-annual reports. If it appeared in these consultations that there was a basis for a consensus on a standard format he would circulate such a format with a recommendation that it be followed as closely as possible in semi-annual reports to be submitted before the autumn meeting. It was understood that, in the light of experience, the proposed format would be subject to further discussions in the Committee and modifications might be made.

29. The representative of the United States said that although the Agreement called only for an annual review of anti-dumping actions and it did not provide for semi-annual reviews of semi-annual reports, his delegation was prepared to proceed with such reviews on a trial basis. The Committee should, in the light of practical experience, revert to these procedures. He also said that it should be understood that no case should be discussed during the review unless it had been previously brought to the notice of the country concerned.

(6) Questionnaire used in anti-dumping investigations

30. The Chairman proposed that Parties who used questionnaires on anti-dumping investigations should submit them to the Committee for information. The representative of Japan said that such questionnaires should not be excessively detailed and that the delay for answering to them should not be too short. The representative of the European Economic Community considered that this item should remain on the Committee's agenda. He said that although detailed information was quite often indispensable, questionnaires should not be overloaded and time-limits for submitting answers should also be reasonable. The representative of Canada said that the question of to what extent a questionnaire was detailed depended quite often on requirements provided for in national legislation as well as on the nature of the case under investigation. The Chairman concluded that there was a consensus in the Committee that Parties who used questionnaires should submit them for information.

(7) Adherence of further countries to the Agreement

31. The Chairman informed the Committee that since its last meeting the Government of Hungary had signed and definitively accepted the Agreement (23 April 1980) and the Government of Japan had definitively accepted the Agreement (25 April 1980). He also informed the Committee that he had had informal consultations with countries, parties to the old Anti-Dumping Code, who had not signed the present Agreement and that it was his feeling that most of them, if not all, would be able to accept the Agreement in the near future.

(8) Procedures for accession of non-contracting parties

32. The Chairman drew the Committee's attention to the Note by the secretariat circulated in this Committee as ADP/W/2 and to the Note by the secretariat entitled "Procedures for the Accession of Non-Contracting Parties" (ADP/W/3). He said that the latter set out, in legal terms, the procedures and terms generally described in ADP/W/2, in particular in paragraphs 10 and 11 thereof. Annexed to it was a Draft Decision by the Committee. As this question was also of interest to other committees and as some questions were raised on this matter in other committees there seemed to be a need for further informal consultations. These consultations would continue with an aim to arrive at procedures which would be adopted at the next meeting of this Committee. If, in the meantime, a non-contracting party applied to join the Agreement, negotiations with such a non-contracting party should be conducted at the same time as consultations among signatories on general procedures so that a decision on accession could be taken at the same meeting when the procedures would be adopted. The Committee took note of this statement.

(9) Procedures for the annual review of the operation of the Agreement and the annual report to the CONTRACTING PARTIES

33. The Chairman recalled that Article 16:7 of the Agreement provided that the Committee "shall review annually the implementation and operation of the Agreement taking into account the objectives thereof". He proposed that the Committee should proceed with such a review at its autumn session on the basis of reports from Committee's meetings and other reports under the Agreement which would be available at that time. Following this review the Committee would prepare its report to the CONTRACTING PARTIES for their annual session in November 1980. This report would be drawn up along the lines of the annual reports of the former Anti-Dumping Committee.

34. The representative of Brazil said that he would like to see as a separate item on the agenda of such a review, the application of provisions regarding special treatment for developing countries. The representative of the United Kingdom speaking for Hong Kong supported the proposal made by the representative of Brazil.

(10) Other business

(a) Panel members

35. The Chairman informed the Committee that the following countries had indicated to him, persons available for serving on panels: the United States, Finland, Austria, Sweden, the European Economic Community and Norway. He invited other Parties to do so without delay.

36. The representative of Sweden said that his Government had prepared an informal list of experts, both governmental and non-governmental who would also be available to serve on panels if a need for experts in some specialized areas arose. The representative of the United States recalled that his Government had informed the secretariat that it had an additional list of both non-governmental and governmental experts to serve on panels. He urged other signatories to submit their lists as soon as possible.

(b) Definition of the word "related"

37. The Chairman recalled that the footnote 7 to Article 4 of the Agreement required that an understanding among Parties should be developed defining the word "related" as used in this Code". A similar question arose in the Committee on Subsidies and Countervailing Measures. Taking this common interest into account he suggested that the Committee authorize him to propose, at the forthcoming meeting of the Committee on Subsidies and Countervailing Measures the establishment of a group of experts to identify and examine, at a technical level, problems involved in the definition of the word "related". This group would act as an Inter-Committee Group and would report to both the Committees.

38. The representative of Japan supported this suggestion and said that his delegation would like to have as clear a definition as possible and he expected that such a group of experts would complete its work quite soon. The representative of the European Economic Community also supported the Chairman's suggestion. The representative of Sweden recalled that the Agreement on Implementation of Article VII of the General Agreement provided for a definition of the term related and wondered whether this definition could be used as one of the starting points in the experts' group work. The representative of Japan said that although this definition was of some relevance it could only be considered as one of the reference items because of the different nature of the issues involved in the field of anti-dumping and countervailing duties.

(c) Circulation of the Committee's documents

39. The Chairman stated that there seemed to be a common approach on the matter and informed the Committee of arrangements which, in his view, met the general need for transparency, and the Committee's particular, if occasional, need for confidentiality.

He proposed that after each meeting he would issue under his own responsibility, a concise note on the meeting. This would be circulated to all contracting parties. The Committee's working papers, minutes, Signatories' notifications, etc., would be issued in their appropriate ADP/series and circulated to all participants. These would of course be available to all contracting parties on request.

When the need for confidentiality arose, as for instance in a dispute settlement procedure, documents would be issued on an ad hoc basis, and would have a restricted circulation, to be determined in each case.

He proposed to proceed on this basis.

Concerning derestriction of documents, the Chairman stated that he assumed that a procedure based on customary GATT practice for the derestriction of documents would be followed, i.e. that working documents and minutes would never be derestricted and that the secretariat should make a proposal annually regarding other documents to be derestricted at the end of the year and that these documents would be derestricted if no delegation objected to the proposal. As to derestriction of Panel Reports he said he would come back to this question after having some consultations with interested delegations. It was so agreed.

40. In response to questions from the representative of the United States, Mr. Lindén (GATT secretariat) confirmed that in accordance with GATT practice, restricted documents were circulated to governments entitled to receive them for their own, and not for public use. These documents were also under

certain circumstances circulated to international organizations on the understanding that this was for the internal use of the secretariat of those organizations and that, for instance, the substance of the documents should not be communicated to governments not otherwise entitled to receive them.

Date of the next meeting of the Committee

41. The Chairman proposed that the next meeting of the Committee be scheduled for the week of 20 October 1980, subject to confirmation by him in consultation with delegations.

ANNEX I

Participation of Observers

Taking into account the decision arrived at by the CONTRACTING PARTIES at their thirty-fifth session on 28 November 1979, (document L/4905) the Committee agreed on the following procedures for the participation of observers:

1. Representatives of contracting parties which are not signatories may follow the proceedings of the Committee in an observer capacity.
2. Representatives of non-signatory countries not contracting parties, which participated in the multilateral trade negotiations and which are interested in following the proceedings of the Committee in an observer capacity, should communicate a request to the Director-General of the GATT indicating their desire to do so. The Committee shall decide on each request.
3. Observers may participate in the discussions but decisions shall be taken only by Signatories.
4. The Committee may deliberate on confidential matters in special restricted sessions.
5. The Committee may invite, as appropriate, international organizations to follow particular issues of the Committee in an observer capacity. In addition, requests from international organizations to follow particular issues within the Committee in an observer capacity shall be considered on a case-by-case basis by the Committee.

ANNEX II

DECISIONS BY THE COMMITTEE ON ANTI-DUMPING PRACTICES  
TAKEN ON 5 MAY 1980

1. The Committee, cognizant of the commitment in Article 13 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade that special regard must be given by developed countries to the special situation of developing countries when considering the application of anti-dumping measures under the Agreement, takes the following decision concerning the application and interpretation of the Agreement in relation to developing countries:

- (i) In developing countries, governments play a large rôle in promoting economic growth and development in accordance with their national priorities, and their economic régimes for the export sector can be different from those relating to their domestic sectors resulting *inter alia* in different cost structures. This Agreement is not intended to prevent developing countries from adopting measures in this context, including measures in the export sector, as long as they are used in a manner which is consistent with the provisions of the General Agreement on Tariffs and Trade, as applicable to these countries.
- (ii) In the case of imports from a developing country, the fact that the export price may be lower than the comparable price for the like product when destined for domestic consumption in the exporting country does not *per se* justify an investigation or the determination of dumping unless the other factors mentioned in Article 5:1 are also present. Due consideration should be given to all cases where, because special economic conditions affect prices in the home market, these prices do not provide a commercially realistic basis for dumping calculations. In such cases the normal value for the purposes of ascertaining whether the goods are being dumped shall be determined by methods such as a comparison of the export price with the comparable price of the like product when exported to any third country or with the cost of production of the exported goods in the country of origin plus a reasonable amount for administrative, selling and any other costs and for profits.

- (iii) It is recognized that developing countries may face special problems initially in adapting their legislation to the requirements of the Code, including administrative and infrastructural problems, in carrying out anti-dumping investigations initiated by them. Accordingly, the Committee on Anti-Dumping Practices may grant, upon specific request and on conditions to be negotiated on a case-by-case basis, time-limited exceptions in whole or in part from obligations which relate to investigations undertaken by a developing country under this Agreement.
- (iv) Developed countries Parties to this Agreement shall endeavour to furnish, upon request and on terms to be agreed, technical assistance to developing countries Parties to this Agreement, with regard to the implementation of this Agreement; including training of personnel, and the supplying of information on methods, techniques and other aspects of conducting investigations on dumping practices.

2. The Committee further decides that paragraph 7 of Article 15 of the Agreement is to be interpreted to mean that the measures which may be authorized by the Committee on Anti-Dumping Practices for the purpose of the Agreement may include all such measures as can be authorized under Articles XXII and XXIII of the General Agreement.