GENERAL AGREEMENT ON TARIFFS AND TRADE

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COMMITTEE ON ANTI-DUMPING PRACTICES

Minutes of the Meeting held on 4-6 October 1976

Chairman: Mr. M. EGGERT (Finland)

A. Examination of reports submitted under Article 16 of the Agreement covering the period 1 July 1975-30 June 1976

(a) Australia (COM.AD/39 and Corr.1 and 2)

1. The representative of the European Economic Community pointed out that already a few months after its accession to the Code, Australia had proved to be a very active country in the anti-dumping field. Australia had reported the highest number of investigations ever notified to the Committee. Nine of the investigations which still remained unsolved concerned the Community. In relation to these investigations he raised two questions. The first one concerned the fact that no member of the Community had been officially informed about any of the investigations initiated in

regard to its exports in spite of the rules of the Code that the exporters and importers concerned as well as official representatives of the exporting countries should be officially informed thereof. The second point concerned the fact that a number of the investigations initiated by Australia had reference to a wide range of countries with a very vague determination, e.g. "ex Europe" and "from all countries". He asked whether in these cases the investigations had been initiated upon a complaint, supported by evidence of both dumping and injury.

2. The representative of Australia stated that the report of his country specified one commodity coming from "all sources". An amended version of the Australian report, which was to be submitted (see COM.AD/39/Corr.2), would however give the specifications required. As regards the magnitude of the Australian return, he said that in part it was due to the fact that Australia had included all cases where a complaint had been lodged with the Government which satisfied the preliminary requirements for further action. That action consisted in the first instance in a visit to the manufacturer in question to be taken by the competent authorities within ten days after the receipt of the complaint. The aim of the visit was to make a preliminary assessment on the basis of the figures supplied by the complaining manufacturer whether or not there was any validity in the complaint made. He said that a significant proportion of the cases under point 2 in the Australian report were resolved in this ten-day period. Foreign governments were not notified during the ten-day period but only when the authorities were satisfied that there really was a substantive investigation to undertake. He added that this procedure had been followed since 1 July 1975.

3. On a question of the representative of Canada as to the current disposition of the provisional action reported on typewriter and computer ribbons, the representative of Australia stated that in the amended report (COM.AD/W/39/Corr.2) the case regarding typewriter and computer ribbons would appear in item 6 as pending. He added that the investigation in question had been resolved the previous week by agreement by the exporter and the Australian manufacturer to continue the discusssion privately between themselves. The official anti-dumping investigation had consequently been terminated.

4. Referring to the fact that no cases were reported pending as of 1 July 1975, the representative of Japan asked for the treatment of the following five cases, where investigations had been initiated before that date, namely canned tuna meat on which the investigation began on 9 April 1975, expandable polystyrene (27 May 1975), disposable cigarette lighters (12 June 1975), ABS resin of prima type (6 June 1975), and PVC resin (21 July 1975).

5. The representative of Australia replied that there had been no outstanding anti-dumping investigations on 1 July 1975 under the legislation that prevailed prior to that date. In the period of three years leading up to the Australian

accession to the Anti-Dumping Code, the Australian administration had taken every effort to clear the books of as many cases as possible. Ninety cases had been revoked before 1 July 1975 under the pre-existing legislation and twelve commodities remained subject to dumping duties. He stated that the three first cases cited by the Japanese representative had been terminated before 1 July 1975 and that his understanding was that the investigation of the other two cases had also been terminated. There was no investigation into any of the five commodities mentioned still pending.

6. The representatives of Japan and Australia agreed to continue the clarification of the matter bilaterally.

(b) Canada (COM.AD/39)

7. The representative of Canada stated that three cases pending as of 1 July 1976 had since been terminated, namely scholastic and award rings, hand-held portable fire extinguishers and 9-lives brand luxury cat food. The first two cases had been terminated without reference to the Anti-Dumping Tribunal for an injury finding. The third case had been terminated on the basis of a finding of no injury by the Tribunal. He added that in three other cases there had been findings of material injury since the 1976 report had been submitted, namely as regards gymnasium equipment, gasoline-powdered chain saws and hydraulic turbines.

(c) European Economic Community (COM.AD/39)

8. The representative of Hungary stated that his authorities were in the course of an exchange of communications with Ireland and the Commission of the European Communities concerning a provisional introduction of anti-dumping duties on filament lamps, and with the United Kingdom as regards an anti-dumping proceeding concerning mechanical alarm clocks (COM.AD/39, page 20). He added that three communications from Hungary to the countries in question were being circulated in document COM.AD/W/57. He explained that he did not wish to initiate a debate on this matter at this stage since the cases concerned were reported pending. He reserved however the right to return to this question if need be.

9. The representative of the European Economic Community stated that he had taken note of the text of the Hungarian communications.

(d) United Kingdom (COM.AD/39)

10. The representative of the United States called attention to the investigation on acrylic sheet. He asked for explanation of what injury information was available at the time the investigation was initiated and under what arrangement the investigation was terminated.

11. The representative of the United Kingdom replied that the information on material injury was a confidential matter which could not be disclosed. It indicated however a substantial loss of sales to the United States. As to the second question, he explained that a request for anti-dumping action had been received, supported by sufficiency, in the opinion of his authorities, of prima facie evidence. On that basis, an investigation had been opened. After some time, the applicants had however asked the authorities concerned not to pursue the investigation for the time being, since they were reassessing the situation. Finally they had withdrawn their application, whereupon the investigation had been closed.

12. The representative of the United States stressed that the information available to him indicated that the market penetration was less than overwhelming, especially in view of the predominant position of the English complainant in this case. Furthermore, it was his understanding that the nature of the arrangement by which this investigation had been discontinued included not only a pricing commitment on the part of the American exporter, but also a quota or a voluntary restraint arrangement. He deplored the practice, which seemd to be prevalent in many of the signatories, to use duplicate remedies, i.e. to secure not only price increases but at the same time conclude restraint arrangements. He added that this issue would be raised by his delegation in connexion with the work of the Committee to draw up an analytical inventory of problems and issues in the anti-dumping field.

13. The representative of the United Kingdom replied that his authorities had had no contact whatsoever, of any kind, with the American exporters, with the Italian parent company of one of the American exporters, with the English importers or with anyone else that could be construed as having any influence on the arrangement that had finally been agreed upon.

(e) United States (COM.AD/39)

14. The representative of the European Economic Community recalled that at its last meetings the Committee had focused on the United States anti-dumping policy, mainly on one procedure of a great importance, which in the meantime had been brought to a satisfactory result as far as the exporters were concerned: some of the exporters had been found innocent of dumping, others had given price assurances which had been accepted. He expressed his relief and satisfaction that a considerable threat thereby had been eliminated which had a bearing on an important part of the exports of the Community to the United States. This had also saved a lengthy and impetuous discussion among members of the Committee as to the multiple legal problems which, however, evidently remained open. He also expressed his satisfaction that a settlement had been reached that was in accordance with the provisions of the Anti-Dumping Code and their legal interpretation permitting an amicable solution with a view to avoid measures and counter measures with

far-reaching consequences. As to the anti-dumping cases reported this year his attention had been drawn to the investigations concerning ski bindings from West Germany and water circulating pumps from the United Kingdom. Taking up first the case concerning ski bindings he pointed to the fact that the United States International Trade Commission had unanimously found that there was no evidence of injury. Imports of these ski bindings had dropped from 520,000 pairs to 62,000 pairs between 1973 and 1975 and their share of the American market had decreased from 18 per cent to 7 per cent. At the same time the sales of the American producers had almost doubled on the United States market. He asked whether the American administration could not have made a more profound examination of injury at the very beginning of the investigation in order to avoid a situation which unnecessarily had created uncertainty among European exporters, which had caused them considerable costs and which had also entailed serious repercussions on international trade. As to the case regarding water circulating pumps, he said that this product had been exported by one single producer. After the United States authorities had opened an anti-dumping investigation, this firm had gone bankrupt or had in any case sold the business to another, completely independent enterprise. The new producer had offered the American authorities a price undertaking. In spite of this evolution the anti-dumping investigation had continued and the International Trade Commission had finally made a decision that the imports were not only the principal cause of injury but the very cause thereof. He asked whether the change of ownership had not constituted a new fact, sufficient to stop the anti-dumping investigation especially when a price undertaking had been offered.

15. Answering first on the case concerning ski bindings, the representative of the United States explained that at the time when the investigation had been initiated, there had been projections based on actual orders that the American industry was about to have a drop of around 50 per cent of its share of the market, which then amounted to 35 per cent, and that the imports from West Germany would increase from a 9 per cent market share to something over 15 per cent. It had consequently seemed to the American authorities that there had been sufficient evidence of injury for the proceeding to continue. In reality, this development did not take place. The International Trade Commission had been able to find no injury. He stressed however that those administering the law had to judge in accordance with the facts prevailing ex ante and not ex post facto. Moving on to the case concerning water circulating pumps, he recognized that the firm investigated had sold out to another firm after the completion of the investigation and that a price undertaking had been offered by the new firm. The American authorities had however looked into the entire set of circumstances including the fact that the English firm, which had been investigated, had previously been producing in another country before taking up production in the United Kingdom. Furthermore, the relationship with the American importer had remained the same all the time. He stressed that the termination of the case in these circumstances would create

a very difficult precedent, and would encourage exporting firms, especially multinational corporations, to avoid dumping remedies simply by manipulation of ownership. He pointed out, however, that the United States authorities assessed anti-dumping duties on a transaction-by-transaction basis. Consequently, if the firm in question made no sales with less than fair value, it would not be paying any anti-dumping duties.

16. The representative of the European Economic Community replied that even if it sometimes was difficult to distinguish manipulations from real changes of ownership, it was quite clear in the case concerning water circulating pumps that a new situation had arisen and that the new owner of the firm had expressed his willingness to follow a different price policy than his predecessor. Consequently he appealed to the American authorities to review the investigation as soon as possible.

17. The representative of Japan made a statement on a recent investigation by the United States International Trade Commission under Section 337 of the Tariff Act of 1930 and the Trade Act of 1974 with regard to Japanese colour television sets, on suspicion of unfair trade practices, dumping and export subsidies. He expressed the serious concern of the Japanese Government with this investigation. The investigation had already exerted an adverse effect upon the trade in the commodity concerned, thereby augmenting the anxiety of the Japanese Government of its restrictive effect. Pointing out that the investigation of the International Trade Commission did not fall within its jurisdicition, a fact which had been acknowledged by the departments concerned of the United States Government, he made an appeal that the Commission should promptly suspend its investigation.

18. Sharing the Japanese concerns, the representative of the European Economic Community expressed his serious preoccupations with regard to two investigations that the United States International Trade Commission had opened under Section 337 of the 1930 Tariff Act. Noting that one investigation concerning exports from the Community had been terminated, he pointed to the fact that, as the Japanese delegate had stated, another much more important investigation concerning imports of television receivers from Japan still continued. He called attention to the fact that the questionnaires used in this investigation consisted of not less than 120 questions in thirty-seven pages, for which the replies should cover a period of ten years. He noted furthermore that the extensive procedure under Article 337 covered unfair trade practices through such notions as conspiracy, efforts to monopolize the market, efforts to establish cartels as well as practices of dumping and subsidies. He recalled that an anti-dumping investigation had already taken place in the Japanese case and that an anti-dumping duty had been imposed and that this dumping finding was still in force. In spite of this fact, a second investigation had now been initiated reopening what had already been dealt with. He was extremely worried about the serious consequences that could result from an investigation under Article 337, which could involve a complete import prohibition. He

recalled that the remedies foreseen in Article VI of the GATT to practices of dumping and subsidies were respectively anti-dumping and countervailing duties. He stated his concern over the differences of the conception and the proceedings under Article 337 of the Tariff Act and the Anti-Dumping Code. He stressed that this investigation, which was of immense comprehensiveness involved the danger of risking almost all of what had been achieved in the entire anti-dumping field so far, i.e. the Anti-Dumping Code and even the principles of Article VI of the GATT. It could also put into question all further negotiations in the areas of anti-dumping, subsidies and countervailing duties and even on other non-tariff barriers. He noted, however, that important forces in the United States were fully alert to the implications of this investigation and that consideration was going on by the United States authorities as to the future course of these proceedings.

19. The representative of Canada indicated that his authorities were also concerned about the implications of this investigation and the precedent it could set in duplicating investigations on the same product. He added that this case had broad implications outside the field of anti-dumping in terms of the United States' obligations under the GATT. Therefore, his authorities reserved the right to raise it in other GATT fora.

20. The representative of the United States noted the concern expressed by the representatives of Japan, the European Economic Community and Canada. He assured the Committee that he would transmit these concerns to the Government of the United States and to the International Trade Commission.

B. Examination of national legislation

(a) Australia (COM.AD/40, L/4270)

21. Referring to the reply to question 2 in COM.AD/40, the representative of Canada pointed to the fact that Section 14 of the Australian Anti-Dumping Act contained the double negative formulation "...not inconsistent". He questioned whether this formulation was introduced to allow actions which were not quite consistent with Australia's international obligations.

22. The representative of Australia replied that the Minister had to be satisfied that the Anti-Dumping Code had been fully complied with before a notice could be published under Section 14. He said that Section 14 was possibly unique in the legislation of the signatories to the Code in that it fully adopted all the obligations encumbered upon signatories by the Code. By virtue of Section 14, the provisions of the Code were now arguable in courts of law in Australia. In fact one could say that the Code was part and parcel of the Australian legislation. On a question put by the representative of Japan he added that the obligations under Section 14 of the Act of course also covered matters of notification of representatives of the exporting country in question as well as the exporters and importers concerned as prescribed by the Code.

23. Taking up the reply to question 6 in COM.AD/40, the representative of Japan asked for confirmation whether the Australian notification procedures were in complete conformity with the criteria for imposition of provisional measures laid down in the Code.

24. The representative of Australia replied that the procedures followed by the Australian authorities when applying interim anti-dumping measures were in general the following. When a decision for provisional measures was made, a public communication was immediately made by means of a notice published by the Bureau of Customs. The particular goods would simultaneously be subject to interim action. Advice would be forwarded to all interested parties, importers, exporters and governments of countries concerned in the particular case, of the fact of the imposition of provisional measures as well as a summary of the details which led to the decision, in particular a reference to the Section of the Act which had been resorted to and details as to the finding of dumping and of injury. His authorities felt that the obligations under the Code was to submit as much information to interested parties as requirements of a normal commercial confidentiality allowed.

25. Referring to the answer to question 8 and to the flow chart annexed to COM.AD/40, the representative of Japan asked when price assurances could be given and accepted in the course of the Australian anti-dumping procedures.

26. The representative of Australia replied that price undertakings could be accepted at any stage of the proceedings.

27. In relation to the answer to question 10, the representative of Japan asked whether sufficient evidence of an injury in accordance with Article 2 of the Code was required in order to take provisional measures.

28. The representative of Australia replied that the injury criterion had to be substantially satisfied, before interim measures were applied.

29. Pointing to the reply to question 12 the representative of the European Economic Community stated that he found alarming and inequitable the possibility given under Section 5, sub-section 1, to compare, in cases where an exporter did not make any sales on his own market, his export price with the domestic price of another seller in the same country. He recalled earlier discussions that the Committee had had when another country had resorted to similar price comparisons. In these cases, his delegation had underlined that Article VI of the GATT addressed itself to unfair pricing practices. Thus, it could never be a question of reproaching an exporter to sell at a price below another exporter if a free and normal competition existed in the market. After these discussions in the Committee the signatory concerned had revised its legislation excluding the possibility of price comparisons with other exporters.

30. Pointing to the answer to question 15, the representative of Japan expressed also his hesitation whether the Australian rules for price comparisons were consistent with Article 2(d) of the Code.

31. The representative of Australia explained that shortly before the decision of Australia to accede to the Code he had visited a number of national administrations of countries signatories to the Code in order to discuss their legislation and administrative practices. He had also discussed certain issues with representatives of the GATT secretariat. On the basis inter alia of these discussions the Australian Government had formed its views of what appeared to be a consensus on a proper conduct for countries acceding to the Code. The Australian authorities had noted that almost all signatories to the Code had taken the provisions of either Article VI of the GATT or the relevant article of the Code itself almost verbatim into their legislation. In ascertaining normal value based on sales in the countries of export, Article VI, the Code and the legislation of many signatories, including now that of Australia, made no specific reference to prices of the exporter in question. He was not aware of the discussions in the Committee that the representative of the European Economic Community had alluded to. However, he declared himself prepared to take part in discussions on how to interpret and implement the provisions of Article VI and the Code. For the moment though, the Australian law would permit an assessment of normal value in a manner which evidently would appear to be anathema to at last some members of the Committee. He wanted however to point out that the legislation of a large number of signatories, including that of the Community, seemed to be able to be applied in a similar manner.

32. The representative of the European Economic Community replied that as far as he knew there was not any longer any signatory to the Code that had a legislation which provided expressly for such a price comparison as the Australian law. For the Community it was a question of equity that the legislation of all signatories should be in conformity with the spirit of the provisions of the Code.

33. The representative of the United States said that it was his country that had changed its rules on the point concerned. He wanted however to mention that his authorities had earlier had difficulties with the sort of price comparison referred to. He agreed on one hand that a strict reading of the relevant articles of the Code did permit this kind of comparison. On the other hand he agreed with the representative of the Community that it was highly doubtful from the point of view of equity to allow one exporter to determine whether or not another was selling at less than fair value.

34. The representative of Australia stated that the legislation of Australia according to his view was in full conformity with Article VI of GATT and the Anti-Dumping Code as they now were written. He could however agree with the views expressed on the matter of equitable application of anti-dumping provisions. There was in his view a clear contradiction between what appeared to be a consensus as to the equitable approach to Article VI and the Code in this particular matter, and those two legal texts as they were written. He suggested that this and similar problems should be dealt with either by amendments or by some sort of notifications so that acceding members could have a possibility to gain knowledge of issues of that kind.

35. The Canadian representative said that Canada also had a provision in its Anti-Dumping Act that permitted the Canadian authorities to compare prices of an exporter with those of another producer in certain cases. These cases were however defined a bit more clearly than in the Australian legislation. He agreed that the question of equity was involved in these matters and his authorities were aware of this. These provisions were however not used very often because of the qualifications built into them.

36. Referring to the reply to question 15 the representative of the European Economic Community pointed out that Section 5, Sub-section 2(b) of the Australian legislation laid down the rule that comparisons should be based on the highest price, while Article VI of the GATT and the Anti-Dumping Code prescribed that comparison should be based on a representative price. He did not share the Australian view that the phrase "in the ordinary course of trade" achieved the same effect as the epithet "representative".

37. The representative of Australia replied that the difficulty the Australian Government had had with this provision when preparing its legislation had essentially been of drafting nature. The Parliamentary draftsman in Australia had not been prepared to countenance the use of the word "representative" in the national legislation, because this term had no precise meaning in the Australian legal tradition. In the Australian view, much of the intention of the relevant provision of the Code was covered by the concept "in the ordinary course of trade". This expression together with Section 14 of the Act, covered, according to the Australian Government, the obligations under the Code. The answer to question 15 added in itself stress to the Australian intention not to resort to a price which was clearly unrepresentative of the bulk of the export transactions in question.

38. Taking up the reply to question 17, the representative of the European Economic Community said that the second interpretative note to Article VI:1 referred to imports from a country "which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State".

Consequently the note referred to the particular situation which existed in certain types of economies. The note had nothing to do with the special situation for certain enterprises in other types of economies. In consequence he reiterated that the Australian legislation on this point considerably extended the second supplementary provision relating to Article VI:1.

39. The representative of Japan asked for the basis of the Australian interpretation of the GATT rules that the normal value of the goods in cases of State trading could be set as the price of the goods sold in another country as stated in Section 5, Sub-section 3.

40. The representative of Australia stated that when drafting the legislation the Australian Government had found the second interpretative note to Article VI difficult to understand. The Government had looked into the relevant provisions of other signatories to the Code. When taking into account the legal tradition of Australia and the sort of problems encountered in this field, it had found that the relevant rules of Canada best suited as a model for Australia in this case. He agreed that, theoretically, the Australian as well as the corresponding Canadian provision could be misinterpreted in a manner suggested by the representative of the European Economic Community. He declared, however, that Australia was not seeking to go beyond what normally was referred to as State-trading countries in its application of the provision in question.

41. The representative of Canada stated that the position of his country with regard to the General Agreement as well as to the Code had always been that the obligations therein should not be judged against the exact wording of a national legislation but rather in relation to the administration of that legislation. He wished, however, to point out that Canada's legislation did not go so far as Australia's in this particular instance.

42. The representative of the United States shared the view of Canada that judgements of GATT conformity should be based on the actual application of a legislation rather than on particular formulations of the legal texts. He therefore abstained from making too many comments on the Australian legislation at this stage.

43. Following requests from members of the Committee, the representative of Australia promised to submit Sub-section 45(2) of the Customs Act, which was referred to inter alia in the reply to question 21, for circulation as a GATT document (see L/4273/Add.1).

44. Referring to the answer to question 18, the representative of Japan asked whether the Minister could decide the normal value in a manner not in conformity with the Code.

45. The representative of Australia said that it was not the intention that the Minister by virtue of Section 5, Sub-section 4 of the Act, should be able to extend his power on anti-dumping matters beyond what was permitted by the Code.

46. Referring to the answer to question 22 the representative of Japan pointed to the fact that Article 10(b) of the Code said that provisional measures might take the form of a provisional duty, or preferably a security by deposit or bond. With this in mind, he asked why the Australian provisional measures normally were in the form of cash securities.

47. The representative of Australia replied that the reason for this was simply that his authorities had earlier had great difficulties in extracting cash from documentary securities when the goods in question had finally been subject to dumping duties.

48. The representative of Japan expressed his hope, that Australia all the same would accept also other forms of guarantees in the future as prescribed in the provision of Article 10(b).

49. Taking up the answer to question 26, the representative of the European Economic Community said that he had interpreted Article VI of GATT as valid only for international sales and purchases of goods and not of services. According to his interpretation of the report of the Group of Experts on Anti-Dumping and Countervailing Duties of 1961 Article VI of GATT did not cover freight dumping. The question of freight dumping was in his view important and should be discussed by the Committee in another context. He warned against a development in which other signatories would be led to include provisions regarding measures against freight dumping in their legislation, since this would add a large new field to the area of anti-dumping policies.

50. The representative of Australia said that a freight dumping provision had been a part of Australia's anti-dumping legislation since 1957. This provision had however never been used. He added that he had concluded from discussions inter alia with the representatives of the GATT secretariat that freight dumping was not covered by Article VI or the Code. His assumption was therefore that Australia would not be in breach of its obligations if it retained the provision in question from its old legislation and carried it over into the new. He agreed that the term freight dumping was ambiguous and that dumping normally was understood to apply to goods and not to services such as transports. He stressed that the term was used in Australia only to describe a certain situation. It would in his view lead to confusion if freight dumping was looked upon as a parallel or analogous provision in the anti-dumping field.

51. The representative of the United States expressed also his hesitation as regards the question of freight dumping. He agreed with the representative of the Community that remedies against unfair trade practices and possible remedies as regards services should be kept separate.

(b) Greece (L/4390, L/4405)

52. The representative of Greece outlined his country's new anti-dumping law, No. 338/76. He pointed out that, as a result, Greek legislation was now in conformity with the provisions of the Anti-Dumping Code.

53. The representative of the European Economic Community pointed to the fact that the Consultative Committee set up in accordance with Article 5 of the Greek legislation consisted inter alia of representatives of trade and of industry. He asked whether all members of this Committee were obliged to obey normal rules of secrecy in the same manner as other governmental officials. He also asked for the conditions under which the Minister of Finance made decisions on the opening of anti-dumping investigations. The reason for his question was that the rules did not, for instance, mention the necessity of requests, supported by evidence of dumping and of injury resulting therefrom.

54. The representative of Greece replied that a ministerial decision had been made as regards Article 5 of the Greek legislation. This decision, No. 5659 of 9 September 1976 published in the Official Journal of 22 September 1976, concerned initiation of investigations and determination of injury and contained instructions and other rules for the Consultative Committee. He promised to furnish details of this decision to the representative of the Community. He assured that the decision conformed fully with the provision of the Code.

55. On a question from the Canadian delegation on Article 1, the representative of Greece confirmed that the term "significant injury" had exactly the same meaning in the Greek original text as the concept of the Code "material injury".

56. The representative of Japan asked whether the Greek legislation contained any provision saying that it should be applied in accordance with international agreements adhered to by Greece.

57. The representative of Greece replied that the enabling act was based on Article 78, paragraph 5 of the new Greek constitution, which provided for the adoption of measures consistent with Greece's commitments in the international economic organizations.

58. Since some members of the Committee indicated that they had had too little a time to study the Greek legislation and the questions and replies to the Australian delegation (COM.AD/40), it was agreed that as was the case with the national legislations of other members of the Committee, any member had the right to revert to particular aspects of these two legislations in the light of the practical application of these legislations by the competent authorities.

(c) Hungary (L/4302)

59. The representative of Hungary presented the general outline of the Hungarian anti-dumping legislation. No questions were raised.

(d) United States

60. The representative of Canada referred to a decision recently taken by the United States Court of Appeal which had affirmed the decision of a district court concerning tapered roller bearings from Japan. According to this decision, Section 201(b) of the Anti-Dumping Act did not authorize the Secretary of Treasury to prevent retroactive assessment of anti-dumping duties by directing customs officials to appraise all unappraised entries covered by a withholding of appraisement notice. He asked whether this meant that the entries would have to be re-appraised in this and similar cases, and if so, for what period of retroactivity. He also asked whether this decision meant that the competent authorities in the United States would no longer be able to respect the obligations imposed by Article 11 of the Code.

61. The representative of the United States confirmed that as a consequence of the ruling of the court his authorities had to apply anti-dumping duties from the date of application of provisional measures and not from the date of injury determination as required by Article 11 of the Code, in the cases in which a threat of injury determination was made. He added that those cases had been rare in the past. He further stated that his Government would seek a change in the legislation on this point at the first appropriate opportunity.

62. Referring to the revised United States Anti-Dumping Regulations of 25 June 1976 the representative of Canada pointed to the fact that the word "shall" in Section 153.27 had been replaced by "should" in relation to the requirements for applicants to include certain information in petitions. He hoped that this would not mean that there would now be less scrutiny of these petitions than in the past. He added in this connexion that the investigation regarding industrial tyres, which had been included in the United States report (COM.AD/39, page 23), could in his view have been terminated sooner than it was, had the information contained in the petition been scrutinized more closely.

63. The representative of the United States replied that this change in the regulations had been made in order to avoid a conflict with United States anti-trust laws that could be created by requiring that United States companies obtain and submit detailed business data on competing United States companies. He stressed however that this change did not imply a lowering of the requirements as regards petitions.

64. The representative of Canada asked in which situations the Secretary of Treasury in accordance with Section 153.35(d) of the Regulations could specify as the effective date of a "Withholding of Appraisement Notice" a date prior to the date of publication of such a notice and what would be the normal period of retroactivity in those cases.

65. The representative of the United States replied that this could be done in cases where a price assurance had been given and where the criteria of Article 11 of the Code had been met.

66. Noting that Section 153.44(f) of the Regulations had not yet been enacted, the representative of Canada asked when a procedure for reviewing injury findings would be established.

67. The representative of the United States replied that efforts were made to develop a regulation on this point. He pointed however to the fact that the International Trade Commission had reviewed injury findings in two cases and that precedents consequently had been established meanwhile to deal with such matters.

68. The representative of the United States invited the countries signatories to the Code to submit comments by 14 November 1976 on a notice published in the United States Federal Register requesting the submission of possible revisions to Section 153.10 of the United States Anti-Dumping Regulations relating to adjustments for circumstances of sales (see COM.AD/W/59).

(e) Portugal

69. The Committee noted that the process of adaptation of the legislation of Portugal had been further delayed but that any anti-dumping measures would meanwhile be taken in full conformity with the Code.

C. Adherence of further countries to the Code

70. The Chairman stated that there had been no change in the official position of New Zealand and South Africa since the last meeting. In South Africa the question of adherence had however been taken up in 1975 in an inter-departmental committee on investigation on dumping but it was not yet possible to say when this committee would complete its work and submit a recommendation to the Government.

D. Examination of questionnaires used in price investigations

71. The Committee agreed that this question should remain on the agenda.

E. Establishment of an analytical inventory of problems and issues arising under the Code and its application by the parties to the Code

72. The Chairman recalled that the Committee at its last annual meeting in October 1975 had decided to draw up an analytical inventory of problems and issues arising under the Code and its application by parties to the Code. The secretariat had then been requested to prepare, as basis for this work, a systematic

inventory, article by article of the Code, of problems and issues that had been raised by adherents to the Code since the inception of the Committee (cf. COM.AD/37, paragraph 59). This paper has subsequently been circulated as document COM.AD/W/51. The Committee had also invited its members to provide any written contributions they wished to make in preparation for this task. Such papers had subsequently been submitted by Canada (reproduced in COM.AD/W/52) and by Japan (reproduced in COM.AD/W/54). Furthermore, two papers commenting on the Japanese contribution had been submitted by Canada and the United States (reproduced in COM.AD/W/54/Add.1 and Add.2 respectively). The Chairman went on to recall that the Committee had embarked on its work to establish an analytical inventory at its special meeting on 29-31 March 1976. The secretariat had then been asked to prepare a revised inventory of problems and issues to serve as a basis for the continued discussion of the matter at this meeting of the Committee. Such a paper had been circulated as COM.AD/W/56.

73. Referring to document COM.AD/W/56 the representative of Austria made a proposal for the inclusion of Article 6(e) into the inventory, in view of the close connexion between Articles 6(b) and 6(e) of the Code. (The Austrian statement has been reproduced in COM.AD/W/60.)

74. The Committee decided to have another special meeting in the week of 21 February 1977 in order to pursue its work to draw up the inventory. It invited its members to submit written proposals for amendments to document COM.AD/W/56 by 31 December 1976. It was agreed that the secretariat should draft a new version of this document on the basis of the contributions made.

75. The Committee instructed its Chairman to make a statement at the next meeting of the Council and the MTN Group "Non-Tariff Measures" inviting representatives of countries non-adherents to the Code to discuss with the members of the Committee in connexion with the special meeting in February 1977 the problems that those countries faced in the anti-dumping field. Countries non-adherents to the Code should also be given the opportunity to provide any written contributions they might wish to make for these discussions.