

COMMITTEE ON ANTI-DUMPING PRACTICES

Draft Minutes of the Meeting of the Committee
on 30 September-4 October 1974

Attached hereto are draft minutes of the meeting of the Committee on 30 September-4 October 1974. Delegations are invited to submit comments, if any, to the secretariat by 10 January 1975.

GENERAL AGREEMENT ON TARIFFS AND TRADE

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COMMITTEE ON ANTI-DUMPING PRACTICES

Draft Minutes of the Meeting held on 30 September-4 October 1974

Chairman: Mr. M.J. HUSLID (Norway)

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A. Examination of reports submitted under Article 16 of the Agreement covering the period 1 July 1973-30 June 1974

General note

Some members of the Committee stated that the work of the Committee would be facilitated if all reports under Article 16 of the Agreement were submitted to the secretariat before the summer holidays, so that they could be circulated well in advance - i.e. minimum one month - of the annual meeting of the Committee. It was recalled that the time-limit for submission of reports was already 1 August; nevertheless it was agreed that in future the secretariat would invite members of the Committee during the month of June to submit their reports by the end of July.

(a) European Economic Community (COM.AD/31)

1. The representative of the United States asked for clarifications with regard to the length of time the case involving tenary compound fertilizers from Yugoslavia had been pending, namely since 1971.
2. The representative of the European Communities agreed that this case had been pending for some time, and said that it had certain peculiar features, including a need for fertilizer for agricultural purposes that had subsequently arisen. For a variety of reasons, the action had been put into suspense, although it might not continue in that status very much longer.
3. The representative of Japan referred to the cases involving oxalic acid and yarns of acrylic fibres (notified in the 1973 report), and slide fasteners from Japan. He questioned whether the European Communities had a staff large enough to examine anti-dumping cases adequately. In these cases, which had been settled by price assurances, the Japanese exporters in question had only been notified of the finding that a dumping margin existed. Moreover, in one of these cases, the EEC authorities had demanded export restraint in addition to price assurance for the settlement of the pending case, an action which was clearly outside the letter and spirit of the Code.
4. The representative of the European Communities said that it was to his authorities' credit that only a small and efficient staff was devoted to cases arising in this field. As for the procedures employed, foreign exporters were always given full opportunity to present their case, so as to establish that all points made by the interested parties be heard. To this end, when initiating a procedure the Commission published a special anti-dumping notice inviting all interested parties to submit any evidence in their possession both on injury and on dumping. Furthermore, all foreign exporters were notified by special letter and asked to submit evidence on both dumping and injury. Even though, in the cases mentioned by the Japanese delegation, the Japanese exporters concentrated their defence on the dumping aspect, all the decisions taken by the Commission were nevertheless justified by sufficient evidence of injury which was available from other sources. In the case involving quantitative self-restraint, the exporters had had full freedom of choice and had opted for the self-restraint as an alternative to other measures.
5. The representative of Japan asked how the absence of coercion could be determined when volume assurances were obtained. The foreign exporter, facing the risk of going through the entire anti-dumping procedure, was in a relatively weak position. He noted that the purpose of the Code's price assurance provisions was

to establish a measure by which exporters were exempted from extensive and bothersome procedures. A practice requiring an exporter to agree to any other undertaking ran counter to that purpose. Noting that Working Group 4 of the Committee on Trade in Industrial products had decided to study this issue alongside the question of quantitative restrictions, he cautioned against the use of other non-tariff measures in lieu of or supplementary to anti-dumping duties.

6. The representative of the European Communities stressed that, according to the Code, when injury ceased, anti-dumping proceedings might be terminated. It was not a "forced situation" when the foreign exporter gave assurances which removed the injury, because the alternative always existed of running the risk of application of anti-dumping duties in conformity with the Code. Proceedings were always terminated when suggestions by the exporter which would remove the injury, were accepted.

(b) Canada (COM.AD/31/Add.2)

7. The representative of the United States called attention to a case involving panel adhesives which had been terminated on a finding of no injury, and he enquired as to the basis on which the proceedings had been opened. He noted that no complaint had originated in the industry concerned, but that the Canadian authorities had on their own initiative investigated and made a preliminary finding of injury. He agreed that the Code allowed such investigation to be made in the absence of a complaint, but normally only in unusual cases, and where there was evidence both of dumping and of injury. He also asked why a case involving single row tapered roller bearings originating in Japan, which had been initiated in July 1971, was still outstanding.

8. The representative of Canada said that the panel adhesive proceedings had been initiated on the basis of representations from Canadian producers, although these producers later said that they no longer wished to make their complaints public. The Canadian authorities preferred to initiate cases only on the basis of complaints; the majority of cases did in fact start this way. With regard to the case involving single row tapered roller bearings, the representative of Canada said that the question had arisen of how to determine the appropriate trade level at which to base normal value. The matter was referred to the Tariff Board and the Board had reported back to the Department of National Revenue only in April 1974, after a delay of about two years. The investigation was now proceeding normally, and he hoped that it would be brought to a conclusion in the near future.

9. The representative of Austria referred to a document (COM.AD/W/43) submitted by his authorities relating to a decision by the Canadian Anti-Dumping Tribunal concerning apple-juice concentrate originating in Austria, Bulgaria, Greece, Hungary and Switzerland, which had resulted in discrimination against imports from Austria, contrary to Article 3 of the Code, when normal values for the product had been determined, as a result of which exports from his country had virtually ceased. In 1973 there had been no imports from Austria despite the considerably lower Canadian production than in 1972, while at the same time total Canadian imports had increased substantially. Canadian imports from Austria were also comparatively low during the first half of 1974. He said that import prices for apple-juice concentrate from different countries with a substantial share in the total imports into Canada were considerably lower than the normal values that had been determined for the Austrian exporters. These had been determined by comparing the export prices with those on the Austrian market, despite the fact that the exporters' sales in the Austrian market had been negligible. His Government requested that the Canadian authorities (a) initiate a revision of the finding in accordance with Article 9 of the Code, as at least the provisions of Article 3 of the Code did not seem to have been fulfilled; (b) in the meantime determine new normal values, at the request of the Austrian exporters concerned, until the matter was finally settled; and (c) notify the Austrian Government of further measures taken.

10. The representative of Switzerland said that the problem of apple-juice concentrates seemed to have been resolved as far as Swiss exporters were concerned. His authorities were of the view, however, that the provisions of Article 3 of the Code had not been fully observed by the Canadian Government in this case.

11. The representative of Canada said that in so far as the normal value of apple-juice concentrate was concerned, the Department of National Revenue had revised the normal values earlier in 1974, at the request of the exporters. As a result of this review, there now seemed to be some prospect that shipments from Austria would be able to resume. Of the three Austrian exporters involved, one was selling all of its production of concentrate in the Austrian market at the time of the review. The Canadian authorities had therefore used the domestic price as the basis for determining normal value for this exporter. As the other two exporters sold no concentrate in Austria, but did sell apple juice - a "like product" - the price of this product had been used as a basis for calculating normal value in these two instances. The price at which apple-juice concentrate was being imported from other countries was not, in the view of the Canadian authorities, relevant to the determination of normal values for

Austrian exporters. However, the Canadian authorities would be willing to review the normal values again if requested to do so by the Austrian exporters. The representative of Canada added that he could not see that his authorities had acted contrary to the obligations of Article 3 of the Code in this case. As for initiating a review of the injury finding, the Anti-Dumping Tribunal in Canada had stated in its annual report that it intended to review all outstanding findings of injury. However, before initiating a review of any particular case it would want some evidence that the basis of the finding had changed since the original determination of injury.

12. The representative of Austria reserved the right to revert to this matter at the next meeting of the Committee if a satisfactory solution should not be found in the meantime.

(c) United States (COM.AD/31/Add.2)

13. The discussion on the cases covered by the United States report under Article 16 concentrated on the following aspects:

- (i) General discussion including questions regarding provisions of the proposed Trade Reform Bill
 - (ii) Determination of material injury
 - (iii) Determination of normal value
 - (iv) Other questions.
- (i) General discussion including questions regarding provisions of the proposed Trade Reform Bill

14. The representative of Canada referred to the important concession granted by his country during the Kennedy Round in signing the Anti-Dumping Code and the resulting fundamental changes required in the Canadian anti-dumping system. His authorities had assumed that signature of the Code by the United States had meant that the United States administration would take the necessary steps to resolve any conflicts between the obligations of the Code and the United States Anti-Dumping Act; there had been no reservation attached to the United States signature of the Code. However, United States performance in this respect had been disappointing; in a short period of time after the Code came into force, Canadian exports amounting to several hundred million dollars were subjected to anti-dumping actions in the United States. Injury determinations on many of the

products concerned had been made on the basis of criteria developed by the United States Tariff Commission before adoption of the Code; the Tariff Commission itself had acknowledged that some of these criteria were in conflict with the Code.

15. Representatives of other delegations, especially the European Community's, joined in these critical comments, pointing out that there were still several aspects of the United States administration of anti-dumping laws and regulations which were not in conformity with the provisions of the Code. The Code required simultaneous consideration of both dumping and injury; the Code stipulated that any determination of a threat of injury must be based on "clearly foreseen and imminent" circumstances and not just a remote threat or possibility thereof; investigations should be initiated upon complaints representative of a major proportion of the industry. In these areas, as well as those regarding price comparison practices, the use of provisional measures (withholding of appraisement) and revocation of dumping and injury findings, they looked forward to material improvement in the performance of the United States. Against this background, the representative of Canada noted with concern - a concern that was shared by the representatives of the European Communities and Japan - that proposals in the pending Trade Reform Bill to amend the Anti-Dumping Act left some key problem areas untouched. He could find no evidence that the United States authorities were prepared to undertake any significant scrutiny of the evidence concerning material injury before proceeding with a full anti-dumping investigation. Moreover, there was no indication that the Administration and Congress intended that the obligations assumed by the United States regarding determinations of material injury and the definition of a regional market would be followed by the Tariff Commission in its enquiries.

16. The representatives of the countries mentioned in the previous paragraph requested some clarification with respect to certain proposals for amendment of the United States Anti-Dumping Act. They were notably interested in suggested requirements for importers to provide, on the customs invoice, information for all products on the domestic prices in the exporting country, and in the requirement for importers to submit detailed information on possible subsidies. These proposals as well as a proposal relating to transactions by multinational companies might, if enacted, create serious problems for exporters. These representatives particularly feared that, given the provisions of Section 153.25 of the Anti-Dumping Regulations, which required customs authorities to supply the Treasury with information relating to dumping, the proposed required information on the customs invoices might result in a spectacular increase in the number of anti-dumping actions initiated by the United States administration. Finally, a proposal relating to goods sold at less than cost

that would seem to authorize the United States administration to disregard market prices in certain cases even when they were set in the ordinary course of trade, and to use instead constructed values, also called for further clarification.

17. The representative of the United States pointed to a number of improvements that had taken place in United States practice since its adoption of the Anti-Dumping Code. These improvements could be summarized as follows:

- Information on the injury aspect was now required to be submitted by the complaining industry;
- recently as much as 60 per cent of complaints had been rejected;
- the Treasury provisions for withholding of appraisement had been revised;
- the time taken to complete investigations had been halved in recent years;
- United States practices had been revised to meet the Code's requirements on consideration of evidence of injury after proceedings had been initiated;
- foreign governments were now being informed of anti-dumping actions;
- estimated duties were made known to importers;
- provisions for discontinuance had been inserted in the new regulations providing for termination of the period for price reporting requirements;
- the regulations on circumstances of sale had been revised to permit for an adjustment for general advertising of particular products under investigation;
- provision had been made for the exclusion of particular companies from anti-dumping action if they were not selling at less than fair value during a representative period;
- provision had been made for revocation of dumping findings after a set period of time when there were no sales at less than fair value and price assurances had been given;
- recently a procedure had been established for possible reconsideration of injury determinations.

18. He expressed his belief that part of the reason for criticism of United States practices in the anti-dumping field was to be found in the structure and openness of the United States system, which allowed for a large measure of publicity and dissent in anti-dumping proceedings. This was a period of transition in the administration of the Anti-Dumping Act, and further changes and improvements were envisaged. It was nevertheless his view that United States practices were basically in conformity with the Code.
19. The representative of the United States went on to explain that, with regard to the provisions of the Trade Reform Bill, the customs invoice provision was only a matter of writing existing regulations into the law. He assured the other members of the Committee that it was neither contemplated nor foreseen that this formal change would lead to any revision of United States policy, which had been, and would continue to be, to initiate anti-dumping procedures solely on the basis of complaints received. No case had been opened under the cited section of the Anti-Dumping Regulations, which merely reflected the flexibility permitted by the law of the United States.
20. With regard to the proposed provision on multinational corporations, the representative of the United States believed that this provision, if enacted in the present form, would be of a discretionary nature. Furthermore, it would apply only in cases where there was no viable home market in the exporting country, which again would severely limit its application. The proposed legislation on sales at less than cost would set strict guidelines as to when sales made in the home market would be disregarded for price comparison purposes and resort would be made to cost of production, in conformity with Article 2(d) of the Code.
21. Welcoming these assurances, and noting the fact that the number of cases opened in the United States had continued to decline, the representatives of Canada, the European Communities and Japan nevertheless stressed that, in spite of the progress made, the Code did require full conformity with its provisions by all participants. Other governments had, by the effective date of the Code, to change fundamentally their national legislation in order to bring it into conformity with the Code. It was added by the representative of the European Communities that the degree to which problems of other non-tariff measures could be solved in a similar manner in future negotiations would, to a significant extent, depend on the success with which the Anti-Dumping Committee could ensure full respect for the provisions of the Code.
22. The representative of the United States replied by reaffirming that his country did take the Code seriously and that efforts were constantly being made to improve on the various aspects of the application of the United States law. He noted that he had stated that United States practices in the anti-dumping field

were "basically" in compliance with its provisions since there had been a technical violation of the Code with respect to an investigation on non-powered hand tools from Japan (paragraphs 34-35 below). The United States firmly believed in the idea of codes as a valid and worthwhile type of solution, both in the field of anti-dumping and in other non-tariff problem areas.

(ii) Determination of material injury

23. The representative of the European Communities welcomed the tendency of the Tariff Commission to be moving away from the notion that the concept of material injury was a disjunctive with immaterial injury, i.e. that anything which did not constitute negligible injury was therefore material injury. While the requirement that some evidence of injury be present had been introduced into the United States procedures, the practical effect of this provision was very unsatisfactory. Article 5(b) of the Code required the simultaneous examination of both the dumping and the injury aspect; what was called for was therefore a thorough examination already in the initial stages of a proceeding of whether the alleged injury really justified such grave measures as the opening of a proceeding and the withholding of appraisement, with well-known consequences for the exporter. For instance, in all three cases concerning the European Communities under the section "cases dismissed" in the United States report, the Tariff Commission's reports had shown that there was no injury and that the proceedings had been unnecessary. In the case of regenerative blower/pumps from the Federal Republic of Germany, there had been no United States production at all; in the cases of electronic colour separating machines from the United Kingdom and stainless steel sheet and strip from France, there was equally no basis in the facts of the case to establish injury. He strongly underlined that for the exporters concerned the matter did not end with the case being dismissed, but that the provisional measures that had been taken by the Treasury had had grave consequences in the form of, inter alia, costly legal procedures, loss of confidence and of future sales, thus undermining and frustrating their legitimate efforts in the market. These were real cases which struck at the heart of the purpose of the Code, which was designed to prevent the operation of anti-dumping proceedings turning into a capricious non-tariff measure with serious effects on trade.

24. The representative of the United States rejected the allegation that United States anti-dumping practices constituted a capricious non-tariff measure. United States practice was well known; it was circumscribed by law and extensive regulations and by well-known precedents, which were applied in an objective fashion. With regard to the simultaneity question, the United States had changed its regulations to require information on injury to be included in complaints; 60 per cent of complaints were rejected during the reporting period. The fact

that there had been many determinations of no injury did not mean that there was no preliminary examination of the injury aspect. The Code did not require a full injury investigation before provisional action was taken, and he believed that United States practice was in essential conformity with the mandatory provisions of the Code. With respect to the specific examples cited in the preceding paragraph, he explained that in the case of regenerative blower/pumps from the Federal Republic of Germany, although a significant United States industry did not exist, there was extensive evidence submitted which alleged that the dumping of the product was materially retarding the establishment of an industry, and that the investigation was therefore in conformity with the Code.

25. Referring to the case of primary lead metal, the representative of Canada expressed regret that the Chairman of the Cost of Living Council had been unsuccessful in his efforts to get the Tariff Commission to reverse its decision on this case. He hoped that an early review of the case would take place in the light of the changed conditions in the industry and the recent reconsideration and reversal of the previous injury decision with respect to hardwood pulp by the Tariff Commission. He noted furthermore that, in a number of recent cases including the lead case, the Tariff Commission had based its decision partly on the conjecture that the entry of the United Kingdom into the European Communities would lead to a diversion of exports into the United States. In the lead case, the Commission also appeared to have ignored the improvement in the market situation that had taken place in 1973. Such decisions were not in harmony with Article 3(e) of the Code, which prescribed that a threat of material injury must be clearly imminent and that a determination must be based on facts and not merely on allegation, conjecture or remote possibility.

26. The representative of the United States said that the lead case was a good example of the structure and openness of the United States system. In this case not only had there been disagreement among members of the Tariff Commission, but the Chairman of the Cost of Living Council had also expressed his disagreement with the Commission's decision. The fact that reasonable men disagreed did not mean that the decision reached was incorrect. The United States representative rejected the allegation that the threat of injury in this case was remote on the basis of the figures developed in the Commission's investigation; imports had increased by 24 per cent from 1971 to 1972; inventories in the last half of 1972 had increased by 50 per cent as a monthly average; United States prices during the same period had fallen by $6\frac{1}{2}$ per cent. In addition, a fall-off in demand had been projected as a result of environmental factors. These facts,

taken together with the United Kingdom entry into the European Communities and ensuing increased sales to the United States, clearly showed much more than a remote threat of injury.

27. Referring to the case of expanded metal of base metal, the representative of Japan said that he doubted the justification for a determination of material injury to the domestic industry when the market share in the United States of the Japanese product was less than 5 per cent, i.e. in this particular case only 4.3 per cent. Furthermore, in this case, the injury finding had not been unanimous, the members of the Tariff Commission who had made the affirmative finding having based themselves on injury found in some Western States only, while the dissenting Commissioners had found no factual basis for treating these States as a separate market for the purposes of the Anti-Dumping Act. The Western States were interchangeable with other regional markets of the United States, so that there was no justification for a finding of material injury. Even if it was accepted that there had been material injury to the industry in these States, then Article 8(e) of the Code required anti-dumping duties to be imposed only on products destined for consumption in that region. In this case, however, duties had been imposed on all exports to the United States.

28. The representative of the United States stated that in his view one could not establish a market share level of imports, for example, 5 per cent, below which there could be no injury incurred by a domestic industry. In the case cited by the representative of Japan, Japanese sales in the United States market had increased by more than 50 per cent in one year, while at the same time prices and profits for domestic firms had dropped considerably, by 15 and 6 per cent respectively. With regard to the regional injury aspect of the case, he agreed that it might appear that injury had been more significant in some regions than in others, but given the nature of the United States as a market, injury to a portion of United States industry could not generally be isolated from the injury incurred by the entire national industry. In the case at hand, the Tariff Commission had considered that the industry in question consisted of all facilities in the United States used in producing expanded metal of base metal. Eight firms accounted for the bulk of total domestic output, and six of these firms sold their production in the Western market. Some firms located in areas outside this market had also suffered injury, so that on the whole the determination in question was quite proper.

29. The representative of Canada doubted whether investigations had always been initiated on the basis of complaints on behalf of the affect industry as a whole, as defined in Article 4(a) of the Code. In the primary lead metal case, for example, the investigation had been initiated on request of only one producer, and

the injury finding also seemed to have been made mainly on the basis of that producer's situation. At the time of the finding it had been known that the Lead Zinc Producers' Committee, which was generally considered to be representative of the industry as a whole, had not supported the complaint.

30. The representative of the European Communities concurred with the Canadian view, adding that his concept of a national industry differed significantly from some United States cases where, apparently, secondary manufacturers unrepresentative of that national industry had caused the introduction of proceedings. This was yet another example of the provisions of the Code not having been complied with.

31. The representative of the United States replied that even though the complaint might come from one company, information on injury must pertain to the industry as a whole, and the Tariff Commission did in fact look at sales at less than fair value as they affected the industry as a whole. He pointed out that in the lead case, the complaint was initially rejected because of lack of sufficient injury data.

(iii) Determination of normal value

32. The representative of Japan referred to the case of non-powered hand tools where proceedings had been initiated against fourteen Japanese companies and appraisal had been withheld. One of these companies had had no domestic sales of the product concerned, while another had had quite negligible sales (less than 1 per cent of total sales). Nevertheless, their export prices to the United States had been compared to the domestic prices of similar goods manufactured by other Japanese companies and a substantial dumping margin had been determined to exist in contravention of Article 2(d) of the Code, which, in the view of the representative of Japan provided for price comparison in such cases to be made with the price of exports to any third country of the products manufactured by the above-mentioned two companies. Furthermore, the quality of the exported product might have differed considerably from similar goods manufactured and sold in the home market by other companies, as might the productivity of different companies. In this context he also referred to an earlier similar discussion in the Committee (COM.AD/9, paragraphs 12-13), where consensus had been reached that in such cases the domestic prices of other companies should not be used for price comparison purposes under Article VI:1.

33. The representative of the United States conceded that in this case several of the manufacturers concerned had had no home sales and that sales of similar merchandise by other manufacturers were used for price comparison purposes. This procedure was required by United States law, and was permitted under the Code;

however, the new trade legislation was expected to change this to allow for the use of third country sales for price comparison purposes in such cases. Regarding the question of differences in quality between products sold in domestic markets and products exported, it was normal United States practice to adjust for such differences. The authorities had, however, been unable to make such adjustments in this case, since the Japanese manufacturers had been unwilling to supply the necessary information.

(iv) Other questions

34. The representative of Japan said that Article 10(d) of the Code had been violated in the non-powered hand tools case, in that appraisement had been withheld for a total period of seven months, after the initial determination had been modified to comprise fewer product categories. Provisional action prolonged beyond the maximum time-limit established by the Code placed an undue burden on the exporters concerned, and he suggested that steps be taken to close what seemed to be a loophole in the United States Anti-Dumping Regulations.

35. The representative of the United States admitted that in this case the Code had been technically violated in that withholding of appraisement had lasted a little longer than the six-month period. This was due to a technical error, i.e. that it had been discovered late in the investigation that several categories of the merchandise had not been thoroughly investigated, so that it became necessary to narrow the scope of the enquiry. However, he did not think this was a critical violation of the Code, but a technical one.

36. The representative of Canada referred to the unsatisfactory system in the United States of revoking dumping findings or findings with respect to injury or the threat of injury. With regard to dumping findings the present system required not only that there be no dumping margins over a considerable period of time, but also that price undertakings be given for future shipments for a non-specified period of time. With regard to injury findings he hoped that the recent Tariff Commission decision on Canadian hardwood pulp was an indication that the United States authorities were acknowledging their obligations in this area.

37. The representative of the United States confirmed that a precedent had been established in the hardwood pulp case, and that there was reason to believe that similar cases would be dealt with in a similar way in the future.

B. Examination of national legislation

Note: All legislations referred to under this section are reproduced in the document Anti-Dumping Legislation 1974.

(a) Spain

38. Replying to questions by the representative of Sweden, the representative of Spain said that the purpose of the report and consultations referred to in Articles 3 and 4 of Decree 3519/1970 was to inform the department dealing with the relevant product sector that a complaint had been received. As there had as yet been no anti-dumping action taken in Spain, despite numerous complaints, the Spanish authorities had not been able to gain experience with the possible value of such reports. With regard to the function given to the Inter-ministerial Valuation Committee to study imports with abnormal values (Article 3(c) of Decree 3529/1970), he explained that some old functions of this Committee had been retained after Spain adhered to the Code and the special legislation on abnormal prices had been abolished. This was a result of the search for simplicity in adapting to the Code, and the use of old procedures to the widest extent possible.

(b) Denmark

39. The representative of the European Communities explained that the Community regulations now applied in respect of imports to Denmark from third countries.

(c) Portugal

40. The representative of Portugal stated that some unforeseen administrative delays had occurred in the process of adapting the Portuguese legislation to the Code, and he asked that the examination of this legislation be postponed to a later meeting of the Committee. He assured the Committee that intermittent Portuguese anti-dumping actions, if any, would be in full conformity with the Code.

(d) Greece

41. The representative of the European Communities, referring to his similar intervention at the preceding meeting of the Committee, inquired whether action had been taken to adapt the Greek legislation to the Code. This was an important matter since, after all, Greece had adhered to the Code as early as 1968 and was also fairly active in the anti-dumping field.

42. The representative of Greece said that, in addition to the technical difficulties to which he had alluded at the previous meeting, other unforeseen and exceptional circumstances had prevented his authorities from completing the adaptation. He much regretted this delay and hoped that the Committee would be able to complete the examination at the next meeting. Meanwhile, anti-dumping measures would be taken in strict conformity with the provisions of the Code.

C. Adherence of further countries to the Code

(a) Developed countries

43. The Chairman stated that there had been no formal change in the situation in New Zealand and South Africa since the last meeting. He expressed the hope that the decision of the Government of Australia to adopt the Code would be implemented in the near future.

44. The Committee noted that the South African Interdepartmental Committee had completed its work on valuation and had recently started to look at the question of anti-dumping practices, including the possibility of South Africa adopting the Code.

(b) Developing countries

45. The Chairman recalled that the Working Party on the Acceptance of the Anti-Dumping Code at its previous meeting had reached agreement on an ad referendum note on price comparisons in the domestic markets of developing countries (Spec(73)52), but that before the time-limit expired, an objection was raised (Spec(74)14), making it necessary for the Working Party to meet again. He had meanwhile consulted with the countries most interested (India and Egypt) with a view to finding a solution, but with no results.

46. The Committee generally agreed that it would not be possible to go further than had been done at the last meeting. Most members expressed the opinion that unless an acceptable agreement was reached at this year's meeting, the Working Party should report the result of its deliberations to the Council.¹

¹The Working Party met on 1-2 October and came close to an agreement. It agreed to meet again early in 1975 (in connexion with the meeting of the Committee referred to in paragraph 63), meanwhile reflecting on a draft text arrived at during the October meeting. A note on the meeting containing, inter alia, the said text has been circulated in Spec(74)65.

D. Examination of questionnaires used in price investigations

47. The Committee generally felt that since this question had been discussed at length at a previous meeting, it would not be advisable to discuss it in detail at this meeting. The representative of the European Communities reiterated his interest in having this question dealt with with a view to harmonizing the practices of the signatories to the Code. He therefore expressed the wish that the question remain on the agenda.

E. Other Business

(a) United States policy with respect to Voluntary Undertakings

48. The Chairman recalled that a document submitted by the Japanese delegation regarding United States policy with respect to Voluntary Price Undertakings, and a response to this document by the United States delegation, had been distributed.

49. The representative of Japan said that he would welcome a discussion based on the notes before the Committee, but that in view of the late date of circulation of the United States paper, he could at this time only make some preliminary remarks on it. He therefore reserved the right to comment more fully on the reply at a later stage.

50. The representative of the European Communities said that he could not agree with the basic assumptions on which the United States paper was based. In his view anti-dumping procedures could serve two basic purposes: first, to offset injurious dumping and, second, to prevent future dumping by stigmatizing and thereby penalizing the exporter. Article VI of the General Agreement and the Code interpreting it were based on the concept of offsetting injurious dumping effects; they did not permit preventive or punitive actions. This idea was clearly expressed in Article 5(c) of the Code, which provided that "an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or injury to justify the case", and in Article 9(a), according to which "an anti-dumping duty shall remain in force only as long as necessary in order to counteract dumping which is causing injury". The United States policy on price undertakings was designed to serve preventive and punitive purposes and there violated the principles of the Code. According to this policy, exporters whose offers of price undertakings had been refused but who, nevertheless, revised their export prices and thereby eliminated the injurious dumping, were all the same exposed to the stigma and the inconveniences of anti-dumping procedures. It was true, of course, that Article 7 of the Code made price undertakings optional. However, this was not

intended to permit signatories to the Code to proceed in a punitive fashion against exporters, but was intended rather to take account of the fact that price undertakings were not always practicable." He concluded by expressing the wish that the United States Government reconsider its practice on price undertakings in the light of the basic principles of the Code, as expressed in Articles 5 and 9.

51. The representative of Japan concurred with the statement of the European Communities representative; the excessive stress the United States authorities placed on the preventive aspect was clearly contrary to the spirit of the Code.

52. The representative of the United States said that the issue had now been discussed for over four years. His Government had, both in writing and orally, explained its position clearly. He wished to reaffirm that the United States policy on price undertakings was in full conformity with the Code. Articles 5 and 9 of the Code could not be interpreted as requiring the acceptance of price undertakings, since Article 7 clearly stated that it was in each government's power to decide whether or not to terminate proceedings after the acceptance of price undertakings.

53. The representative of the European Communities replied that the principles embodied in Articles 5 and 9 should be respected in the exercise of the discretionary power conferred upon governments in Article 7. The Committee agreed that this question would be discussed at the next meeting.

(b) Improvements to the work of the Committee

54. The Chairman recalled proposals made during the last session of the CONTRACTING PARTIES by Sweden and Switzerland to give the work of the Committee a more multilateral character. He then asked the representatives of Sweden and Switzerland to further explain their proposals to the Committee.

55. The representative of Sweden said that in his view the discussions of the Committee were too heavily concentrated on purely bilateral issues. In many cases where one country lodged a complaint against another, the Committee as a whole did not take a position on the matter. The way the Committee had handled a particular case presented at this meeting by Austria (concentrated apple juice case) was, in his view, a typical example. This case was discussed only between the representatives of Canada and Austria without any involvement of the Committee as a whole. Even in those cases where there had been more general discussion - as, for example, in the cases involving United States practices - the debate was really based on a collection of bilateral complaints. The time had come to reconsider the nature of the Committee's work. In his view the Committee could, for example, be more concerned with the strict application

of the Code by all members. It might also pronounce itself more often on specific cases. This would help build a stock of precedents that would assist in clarifying the meaning of certain provisions of the Code. The Committee's work, if improved in this sense, might serve as an example to be followed for other non-tariff measures.

56. The representative of Switzerland elaborated on the ideas expressed by the representative of Sweden. In his view the problem of anti-dumping practices should be seen in the broader context of overall commercial policies, since it was clear that certain markets seemed much more sensitive to foreign competition than others. He wondered whether this was so because of market size or different interpretations of the provisions of the Code. The Committee should be concerned with overall policies. To shed more light on the interrelationship between anti-dumping practices and economic policies in general, the secretariat might be asked to prepare a report listing the anti-dumping measures taken during the last five years and analyzing the motives for which they had been taken.

57. The representative of Japan felt that more specific proposals were needed for a fruitful discussion. The representative of Canada expressed his concern that the proposals might expand the Committee's work beyond the mandate given to it in Article 17 of the Code. He emphasized that the discussion of bilateral problems in the Committee had served a useful purpose in the past, and that the Committee should not become an arbitration tribunal. A secretariat paper listing past anti-dumping actions might be useful, but he had doubts as to the appropriateness and feasibility of a paper attempting to evaluate the trade policies of adherents as measured by their policies in the field of anti-dumping.

58. The representative of the United States said that there were other GATT bodies in which broad policy questions could be more appropriately discussed than in the Committee, and that the Committee should not be transformed into an international court of arbitration. He added that he had difficulty commenting further on the proposals made by Sweden and Switzerland because they were still very vaguely formulated.

59. The representative of the European Communities joined with the United States in the view that the Anti-Dumping Committee was not the place to discuss broad policy issues; the general principles of commercial policy had already found their concrete expression in the Anti-Dumping Code and it was the rôle of the Committee to monitor the application of the Code. As far as the proceedings of the Committee were concerned, he welcomed the Swedish delegation's proposals and considered that after years of rather sterile discussion it would be worthwhile to examine this problem very thoroughly. Even without going so far as to create an international court of arbitration there could be many other ways of giving real effectiveness to the work of the Committee.

60. The representative of Sweden replied that his intention had been to initiate a discussion rather than to make concrete proposals. The Committee could improve its work, within its present terms of reference, if all reports were submitted before the summer, so that all members of the Committee - and not only those directly concerned - could have time enough to study carefully the questions raised. Separate papers describing concrete difficulties of specific cases and submitted well in advance would also serve this purpose. The records of the meetings should reflect, where possible, both majority and minority opinions in concrete cases. Taking these procedural steps would considerably help to broaden the discussions of the Committee.

61. The representative of the European Communities agreed with the Swedish delegation that it would be premature at present to come to concrete decisions. The ideas advanced on the transmission of reports might be a useful first step. However, it would be necessary to examine in depth the whole problem of the effectiveness of the Committee; therefore he proposed that a special meeting be held before the next ordinary meeting.

62. The Chairman noted that the question of stricter adherence to the Code could be a possible topic in the multilateral trade negotiations.

63. The Committee concluded that a further discussion of the proposals by the representative of Sweden and Switzerland would be useful after some time for reflection, and therefore agreed to revert to the matter at a special meeting early in 1975.

COMITE DES PRATIQUES ANTIDUMPING

Projet de compte rendu de la réunion du Comité
tenue du 30 septembre au 4 octobre 1974

Les délégations voudront bien trouver ci-joint le projet de compte rendu de la réunion du Comité tenue du 30 septembre au 4 octobre 1974. Elles sont priées de faire connaître leurs observations éventuelles au secrétariat pour le 10 janvier 1975 au plus tard.