

GENERAL AGREEMENT ON  
TARIFFS AND TRADE

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Committee on Anti-Dumping Practices

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PROBLEMS AND ISSUES IN THE FIELD  
OF ANTI-DUMPING

Japan

The following communication has been received from the delegation of Japan.

The main problems raised by the delegation of Japan in the past meetings of the Committee on Anti-Dumping Practices are as follows:

1. Article 2 (1975, United States)

The United States Trade Act 1974 allows the determination of the foreign market value on the basis of the market value in the third country, when the investigation concerns with the dumping by multinational enterprises. These provisions are not consistent with the Code.

2. Article 2(d) (1974, United States, non-powered hand tools)

In this case, among fourteen Japanese companies against which the investigation was initiated, one company had no domestic sales of the goods concerned and another company had quite negligible domestic sales. Although export prices for third countries by these two companies were available, the domestic prices of similar goods manufactured by other Japanese companies were used as the basis for comparison and consequently unduly large dumping margin was determined to exist. In such a case, the export prices to a third country should have been the basis for price comparison in accordance with Article 2(d) of the Code.

In this connexion, it should be noted that it was broadly agreed before in the Committee on Anti-Dumping Practices that, if there was not a sufficient number of domestic sales of like goods by the exporters concerned, the domestic prices of like products sold by other enterprises should not be used as a basis of price comparison (cf. COM.AD/9, paragraph 12-13).

3. Article 2(d) (1975, United States)

The United States Trade Act stipulates that when sales are made at less than the cost of production over an extended period of time and in substantial quantities and not at prices which permit recovery of all costs within a reasonable period of time, domestic prices or export prices to a third country of such sales shall be disregarded in the determination of fair market value. These provisions, if misused, would be against the purpose and the spirit of the Code.

With regard to the interpretation of "the ordinary course of trade" and "the particular market situation" in paragraph (d) of Article 2 of the Code, a certain trade which could be carried on ordinarily for a certain period of time by an enterprise to meet competition in the normal market situation should be considered as an ordinary course of trade and not under the particular market situation, even if the domestic price is found to be less than the cost of production in the calculation of the dumping margin. An enterprise, for instance, will try to dispose of its obsolete stocks, when necessary, at a price less than the cost of production, if new and competitive products have been introduced into the market.

4. Article 2(d) (1975, Canada, parts of fasteners)

In this case, the Canadian authorities, in the course of the calculation of fair market value, applied the rate of mark up of the final product (fastener itself) instead of the rate of mark up of the like products (parts of fasteners). The fair market value thus obtained was over-valued and produced a dumping margin. It is against the provisions of the Code which states that the comparison should be made with the cost of production plus a reasonable amount for other costs and for profits.

5. Article 2(f) (1975, Canada, colour TV)

The calculation done by the Japanese enterprises concerned with this case indicates that in the investigation of domestic prices of like products which was carried out in Japan, expenses required in normal trade practices, e.g. remuneration to the affiliated sales shops and rebates, were not fully taken into account by the Canadian authorities.

6. Article 2(f) (1975, United States)

The United States anti-dumping regulations limit the circumstances in which allowances will be made to those which bear a direct relationship to the sales which are under consideration. These provisions leave the possibility of disregarding due allowances which should be made with respect to the normal price elements in the trade practices in the exporting country. These provisions of the regulations should be administered in the line set out by the Code.

7. Article 2(f) (1969, Canada)

The Canadian anti-dumping legislation enumerates the various factors for which allowances could be made in price comparison and thus limits the scope of application of the Code which stipulates that due allowances should be made for differences of various kinds affecting price comparability.

8. Article 3(a) and (e) (1975, Canada, photo albums)

While Japanese exports of photo albums to Canada had been decreasing since 1971, the Canadian authorities determined that material injury was foreseeable in future on the basis of an hypothetical price offered by a Japanese company which was not subject to the investigation to the Canadian maker who presented the case to the Anti-Dumping Tribunal and who actually never ordered to that Japanese company. It could not be argued that this determination of injury satisfied the required conditions, such as "that the dumped imports are demonstrably the principal cause of material injury" (paragraph (a)), and "a determination of threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility" and the changes in circumstances "must be clearly foreseen and imminent" (paragraph (e)).

9. Article 4(a)(ii) (1974, United States, expanded metal)

The determination of material injury by the United States Tariff Commission in November 1973 was based on injury found in the secluded market of some Western States. However, some members of the Commission were of the opinion that there were an interrelationship between the Western market and other regional markets and they did not find factual basis for treating these Western States as a separate market, and therefore, the determination could not be justified according to Article 4(a)(ii) of the Code. Furthermore, since the subsequent anti-dumping duties were imposed to the goods destined to other markets than the Western market without any differentiation, it is doubtful whether this determination based on the injury in a regional market could be justified in the light of the Code.

10. Article 5(a) (1975, United States, automobiles)

The report of the "summary" inquiry by the United States International Trade Commission did not present a valid evidence of injury and the American Automobile Industry itself expressed in the public hearing of the International Trade

Commission that the problem it faced did not arise from the imported passenger cars. It should also be noted that the appeal to include Japanese cars into the investigation did not present any positive evidence of injury. Under these circumstances, the initiation of the investigation was not supported by evidence of injury as is stipulated in Article 5(a) of the Code.

11. Article 5(a) (1975, United States)

The United States Trade Act provides that the preliminary investigation should be made with respect to the existence of injury. Nevertheless, it seems that there are great difficulties for International Trade Commission to obtain a rational indication of existence or non-existence of injury within such a short period of thirty days, and this investigation might not assure the evidence of injury required by the Code for the initiation of the investigation. The application of these provisions in conformity with the Code is desired.

12. Article 6(b) (1975, Canada, colour television)

Since the initiation of the investigation, the Government of Japan requested repeatedly the Canadian authorities to inform as clearly as possible the contents of the complaint, but the Government of Canada categorically refused to give any substantial information on the ground of confidentiality. This attitude on the part of Canada is against the provisions of Article 6(b) of the Code.

13. Article 7(a) (1973, 74, United States)

The practice of the United States authorities, which is finally incorporated in the proposed regulations published on 23 July 1975, limits the acceptance of voluntary undertakings to cases where dumping margins are minimal in terms of volume of sales involved. This practice narrows down the scope of application of Article 7(a).

14. Article 9 (1975, United States)

The United States anti-dumping regulations provide for assessment investigation for two years even with respect to those cases for which requests for the revocation of the finding have been made. It is desirable that this period for the assessment investigation should be shortened to a minimum length necessary in the light of the provisions of the Code.

15. Article 10(a) (1969, Canada)

The Code provides that provisional measures may be taken only when a preliminary decision has been taken that there is dumping and sufficient evidence of injury. While Canadian Anti-Dumping Act does require the existence of dumping, it does not mention specifically the existence of sufficient evidence of injury. The improvement is desired in this respect.

16. Article 10(d) (1974, United States, non-powered hand tools)

In the course of the investigation of this case, the Treasury Department modified the scope of product categories subject to the investigation. Consequently, the appraisement had to be withheld for a total period of seven months exceeding the maximum time-limit of six months provided for in the Code. It was due to the procedural error on the part of the investigating office, and imposed a heavy burden on the exporters concerned. Investigation should be conducted in such a way as to be in conformity with the Code.

17. Article 11 (1975, United States)

The United States anti-dumping legislations provide for the retro-activity of the withholding of appraisement. These provisions are not in conformity with the Code.

18. Others

When the investigation is to be carried out in the exporting country concerned and the prior notification to this effect is made in accordance with Article 6(e) of the Code, it is desirable that the questionnaire for the investigation should also be sent to the Government of the exporting country.