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COMMITTEE ON ANTI-DUMPING PRACTICES

Draft Minutes of the Meeting held on 24-28 October 1977

Chairman: Mr. M. Lemmel (Sweden)

A. Examination of national legislation

(a) Portugal (L/4516)

1. The representative of Portugal presented the revised anti-dumping legislation of his country contained in the Legislative Decree No. 247/77 and Implementing Decree No. 38/77, both of 11 June 1977.

2. Referring to paragraph 2 of Article 12 of the Implementing Decree No. 38/77 the representative of Japan questioned which time-limit was granted in practice for the submission of information and evidence.

3. The representative of Portugal replied that the legislation had been applied only once so far and that no praxis had therefore yet been established on this point. When the legislation had been drafted it had however been found essential to prescribe a fixed minimum time-limit on which interested parties could rely for submission of the information or evidence they might find relevant for a particular investigation.

4. The representative of Japan expressed the hope that a sufficient period of time would be granted in the future that took into account inter alia the difficulties to prepare in an elaborate way such submissions and to have them translated into an appropriate language.

5. The representative of the United States asked whether there were any requirements under the Portuguese legislation for the publication of actions taken at the initiation and at the final stage of the proceedings.

6. The representative of Portugal stated that a notice was published in the Official Gazette when an investigation was opened. If anti-dumping measures were imposed as a result of such an investigation a decree by the Minister of Finance to that effect was also published in the Official Gazette.

7. It was decided that the examination of the Portuguese legislation would be kept on the agenda for the next meeting of the Committee.

(b) United States (L/4407 and L/4409)

8. The representative of the United States stated that decisions in anti-dumping cases should in the view of his authorities be made public and that the procedures that were followed by countries signatories to the Code in applying their anti-dumping legislations should also be known in advance to the greatest degree possible.

He hoped that the Committee could be utilized in improving the collection of information on how anti-dumping legislations were implemented in practice by various countries members of the Committee. He added that the procedures in his country had been somewhat changed in that his Government had decided to make available all filed petitions to interested parties even before a formal initiation of an investigation had been made so that such parties could submit comments concerning the adequacy of a particular petition.

9. The representative of the European Communities agreed with the desirability of having open and public procedures. He also agreed that interested parties should get knowledge of petitions filed which concerned them. He expressed however a hesitation to publish petitions before a decision had been made regarding the admissibility of the complaint. Referring to the fact that his authorities received 50-100 petitions a year, out of which only a limited number were well-founded, he feared that the publication of all such complaints would have a snowball effect.

10. The representative of the United States replied that the petitions submitted to his authorities were not published as such but were merely made available to interested parties in case they would like to take advantage of this possibility to examine them. In addition, only such petitions were made available that had passed a cursory examination to determine whether they formally conformed with the requirements under the legislation of what a petition should contain. In his view, such a practice would rather discourage the filing of frivolous petitions.

11. Referring to Section 205(b) of the United States Anti-Dumping Act the representative of Japan stated that the problem of sales at a loss had been discussed in the Committee on a number of occasions. He recalled that it had first been discussed at the annual meeting in 1971 in connexion with a case concerning exports of transformers to Canada from inter alia the United Kingdom and Sweden. He pointed out that at that time the United States had agreed with the view of the exporting countries that sales at a loss in itself did not imply that the corresponding domestic price was inappropriate for price comparisons in anti-dumping cases (COM.AD/19, paragraphs 12-15). He recalled that this matter had been discussed again in 1972 (COM.AD/26, paragraphs 5-8) and that the United Kingdom supported by the European Communities had reiterated at that time that if sales below costs reflected the economic situation under which the company in question had to conduct business, domestic prices should be considered as appropriate for the purpose of price comparison. A further discussion had taken place in 1973 (COM.AD/30, paragraphs 9-10) when the Japanese delegation had supported the views expressed by the United Kingdom and shared by the European Communities, Sweden and the United States that sales, where the prices did not fully cover the cost of manufacture, could nevertheless be considered to have been made in the ordinary course of trade. He added that the same issue had been raised again in 1974 and 1975 (COM.AD/34, paragraph 16 and COM.AD/37, paragraph 46) when the United States Anti-Dumping Act was amended. On this occasion his delegation had pointed out that Article 205(b) of this amended Act could be administered in a way going beyond the interpretation of the Anti-Dumping Code.

12. Referring to the three different possibilities for price comparison prescribed in Article 2 of the Code, the representative of the European Communities stressed that the normal basis for price comparisons was the home-market price. Only when there was no such domestic price in the ordinary course of trade or when there was no reliable domestic price due to, for instance, the market situation in the country of origin, export prices to third countries or constructed values could be resorted to. He pointed out that price comparisons had to be carried out according to the circumstances in each particular case and that it was not possible to introduce mandatory and general rules in this area. From this point of view, the provisions of Section 205(b) seemed doubtful to him. He added that it seemed even more doubtful to make a free choice between the three possibilities for price comparisons under the Code as had been suggested in a petition filed by the National Steel Corporation which had proposed that the Treasury Department should base its consideration on the highest dumping margin that could be established through such comparisons. In his view, this petition underlined the problems which could be created if mandatory rules for price comparisons were introduced instead of making a decision on a case-by-case basis.

13. The representative of the United States said that systematic and continued sales below the cost of production could not in the view of his authorities, be regarded as "in the ordinary course of trade" for companies in free-market economies which were required to finance their operations from their own resources. Section 205(b) had been drafted to deal with the problem when a company was selling below costs of production over an extended period of time, in substantial quantities and at prices which did not permit the recovery of the costs within a

reasonable period of time. He stated that he would welcome suggestions by other members of the Committee as to how to interpret in a fair way the words "extended period of time" "reasonable period of time" etc., because his authorities were at the moment attempting to formulate a rational rule on this subject. He explained furthermore that Section 205(b) was not interpreted by his authorities to permit a choice between the different possibilities for price comparison e.g. in order to select the highest dumping margin. The intention of the drafters of the law was to emphasize that when there were systematic sales below costs of production, the sales prices in question were inherently suspect, should not be regarded as "in the ordinary course of trade", and would be disregarded in the establishment of the reference price against which either the fair value determination would be made or the dumping duties would be calculated. When such sales had been disregarded, the ordinary priorities of the statutes remained. If there were sufficient sales not below costs of production left over to establish an adequate home market value or third country export price these criteria were applied. Only if there was an insufficient data base for such price comparisons, constructed values were resorted to.

14. The representative of Japan agreed that the domestic price should be disregarded in cases where efforts were made to conquer home as well as foreign markets by sales below costs of production. He pointed out, however, that in several industries in many countries enterprises had to sell at a loss even over a rather extended period of time due to the economic situation that had arisen after the oil crisis. In consequence, due regard had to be taken in dumping investigations

to the recent economic situation in order to avoid a situation where major trading countries introduced new trade barriers in order to protect its own industry, forced to sell at a loss, from competition from abroad also made at prices below costs of production. From this point of view, Section 205(b) looked dubious and seemed to deviate from the provisions of the Code.

15. The representative of the United States replied that Section 205(b) was part of a protective remedy in his country's legislation which could be resorted to in times of economic stress. What the United States was committed to internationally was a free but fair trade. Dumping practices were in his view unfair and remedies had to be introduced and maintained therefor. His authorities were prepared to consider the impact of the oil crisis and other economic factors in measuring the length of the "reasonable time"within which costs should be recovered. They could, however, not accept as normal continuing sales at prices which were insufficient for a private company to finance its own activities and still stay in business.

16. The representative of the European Communities disagreed with the view that sales at a loss should be tolerated in a more extensive way in times of recession. Instead, the problems in question had to be solved on a case-by-case basis in accordance with the provisions of the Code.

17. Referring to Section 206 of the Anti-Dumping Act the representative of Japan noted that a constructed value should include a sum of 8 per cent for profits. This figure seemed in his opinion unreasonably high in view of the profit margins normally existing today.

18. The representative of the United States replied that there was a permission under the Code to use a normal profit margin in computing constructed values. According to the Economic Report of the President of the United States transmitted to the Congress in January 1977 profits after income taxes of all manufacturing corporations including durable and non-durable goods industries in the United States had in each quarter, with exception of one or two, from 1947 to 1976 been consistently above 4 per cent of the total sales. Since the corporate income tax rate amounted to 50 per cent in his country, a minimum figure of 8 per cent profits seemed to him to be quite correct in this context.

19. The representative of Japan noted that these profit rates referred to the situation in the United States and not to the exporting country in question as prescribed in Article 2(d) of the Code. In his opinion, the addition for profit should be done on a case-by-case basis according to the circumstances in each particular case rather than by a fixed figure as in the Anti-Dumping Act.

(c) Poland (L/4339)

20. The representative of the United States asked what provisions existed in the Polish anti-dumping legislation concerning the publication of decisions to initiate investigations as well as of decisions taken with regard to provisional and final measures.

21. The representative of Poland promised to submit a reply to this question as soon as he received instructions from his authorities.

22. It was decided that the examination of the Polish legislation would be kept on the agenda for the next meeting of the Committee.

(d) European Communities (L/4540 and L/4541)

23. The representative of the United States suggested that in the future, when amended laws of major dimension were submitted to the secretariat for circulation, the changes or additions should be indicated e.g. by bracketing or underscoring.

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

(a) Australia (COM.AD/44 and Add.1)

24. The representative of the European Communities pointed out that Australia had notified more anti-dumping activities than any other member had ever done in any reporting period since the inception of the Committee. The report demonstrated furthermore a striking disproportion between the number of investigations opened and actual decisions taken. He questioned therefore whether all the cases which had been accepted for a formal investigation had been scrutinized with the care prescribed in Article 5 of the Code, or whether Australia also this year, as had been done the previous year (COM.AD/41, paragraph 2) had included in its return not only the cases which had been accepted for a formal investigation, but also all other cases where a petition had been lodged. Taking up a case concerning polyol imported from the United Kingdom he asked why the normal customs clearance for the product had been suspended without any formal opening of an investigation and without the exporter having been informed of the measures. He asked also whether there existed some sort of anti-dumping proceeding notices in Australia from which exporters could obtain knowledge about investigations opened.

25. The representative of Australia replied that all the cases reported this year had been accepted for a formal investigation after having been duly scrutinized. He pointed out that out of the 29 cases reported as terminated, 5 had been dismissed after the complaint had been withdrawn; in 9 cases it had been found that the alleged dumping was not substantiated; in 7 cases, the principal cause of material injury had not been substantiated; in 8 cases the petitions had been rejected for various reasons, inter alia, changed circumstances resulting from the Australian devaluation. As regards the particular case mentioned he noted that the action taken did not fall under the reporting period in question. He added however that the exporter in this case had not provided sufficient information for the goods to be cleared in the customs. Thus, the withholding of customs clearance had not been made for anti-dumping purposes. He added that a customs notice was issued when investigations were opened. These notices were always sent to all foreign governments represented in Australia as well as to the interested parties.

26. The representative of the United States asked whether the Australian anti-dumping authority participated in negotiations with a view to terminate investigations held between foreign exporters and the affected industry and whether it determined what kind of agreement would be acceptable for a termination.

27. The representative of Australia replied that his authorities preferred not to get involved in such negotiations and agreements. As soon as a formal notification had been received from a complainant that he did not want the investigation to proceed, the enquiry was terminated.

(b) Canada (COM.AD/44)

28. In an introductory statement the representative of Canada informed the Committee on the anti-dumping actions taken in Canada after its anti-dumping report had been transmitted. Since 1 July 1977, Canada had revoked anti-dumping duties on slide fasteners or zippers. Investigations had been terminated as regards the cases concerning acrylic sheets, air furnaces for mobile homes, and metal storage cabinets, while the investigation on photo albums with self-adhesive leaves from Hong Kong had been partially terminated. A final determination had been made in three cases, i.e. 12 hydroxystearic acid, industrial press-on tyres and ladies' handbags. Provisional measures had been taken in 4 cases, i.e. bicycles; wide flange sheet shapes, beams, columns or sections; hot rolled carbon steel bar size angles; and stainless steel plate or sheet. New investigations had been opened on imports of electric stoves and cookers, bicycles tyres, consumer adhesives, hermetic compressors, billiard tables, steel wire rope, forged steel valves, and strapping and tying machines.

29. Referring to the case concerning maleic anhydride the representative of Austria pointed out that the Austrian firm concerned had not exported the product in question since January 1976 and that the volume exported before that date had been negligible. Furthermore, the Austrian firm had declared officially that it did not intend to sell the product to Canada in the foreseeable future. He questioned therefore whether this case should not be terminated as soon as possible in view of the lack of material injury and in compliance with Article 5(c) of the Code.

30. The representative of Canada replied that a number of exporters from different countries were involved in this investigation and that all relevant information, including the one received from Austria, had to be taken into account before a preliminary determination could be made or a termination of the case could be decided upon.

31. The representative of the European Communities noted that no case in Canada had been terminated as a result of an amicable settlement. He asked whether no exporter had offered a price undertaking during the reporting period or whether the Canadian authorities had refused such undertakings. Referring to the provisional action taken in the case concerning wide flange steel shapes from Belgium he asked why the measure had been based on Section 11 of the Canadian Anti-Dumping Act. Taking up the case regarding nylon yarn from inter alia United Kingdom he noted that the total Canadian imports amounted to 13,000 tons, of which United Kingdom exported 2.6 tons. He understood that in cases where several countries were involved an investigation had to include all suppliers of some importance. He questioned, however, whether it was reasonable and rational to include also firms the exports of which were negligible seen in the context of the case in its entirety.

32. The representative of Canada replied that even if the possibility of accepting price undertakings was provided for in the Code, this option had never been included in the Canadian anti-dumping legislation. The reason for this was that the Canadian authorities wanted on the one hand to provide Canadian producers with a certain level of protection from dumped imports that were causing injury. On the other hand, it was recognized in the Code as well as in the General Agreement that dumping need not in all cases be wrong. If Canadian producers were not injured by dumping, he believed that the Canadian consumer should be able to benefit therefrom. In his view, however, the acceptance of a price undertaking would contradict this two-way approach to the problem of dumping. As he interpreted Article 7 of the Code, it was left to each country to decide whether or

not it wanted to accept the option of price undertaking, and Canada had chosen not to do so. Referring to the case concerning wide flange steel shapes, he explained that Section 11 had been relied on since relevant information had not been obtained in the time period available and since his authorities had to act during that period under the terms of law. As regards the case concerning nylon yarn he admitted that it was a difficult problem to make a reasonable limitation of the extent of an investigation. The approach of his authorities was, however, to examine, in cases where petitions fulfilled the criteria for being accepted, dumped imports of the product in question coming from all sources and it was on the basis of such a total examination that an assessment had subsequently been made whether or not injury had been caused.

33. The representative of the European Communities expressed the opinion that all signatories to the Code should at least provide for the possibility of accepting price undertakings in their legislations, since such a solution had expressly been included in the Code as a normal measure to terminate proceedings.

34. The representative of the United States asked whether the Canadian authorities considered an agreement between the Canadian industry and the exporters sufficient to terminate an investigation, as their Australian counterparts did.

35. The representative of Canada reiterated that his authorities did not accept price undertakings.

36. The representatives of the United States and Canada stated that their anti-dumping authorities were engaged in discussions with the aim of establishing a procedure for the exchange of information concerning the administration of their anti-dumping laws on a systematic basis. They hoped this would be a useful precedent which might eventually be followed by other members of the Committee.

37. Referring to the case concerning plate and sheet of stainless steel, the representative of Japan stated that the Japanese firms had given extensive replies to the enquiries made by the Canadian authorities, with exception for the questions relating to production costs. He noted that provisional duties had subsequently been imposed covering the margin between the actual export prices and values that had been arbitrarily decided upon under Section 11 of the Canadian Anti-Dumping Act. In this connexion, he questioned whether there had been sufficient reasons for making a price comparison based on production costs. He pointed out that in the course of their enquiry the Canadian authorities had never made any explanations with a view to justify their contention that both domestic sales in Japan and exports therefrom were made below costs. He was of the opinion that the price comparison should have been based on prices prevailing in the Japanese market, since the Japanese firms had provided the Canadian authorities with such data. Consequently, the Canadian action appeared in his view to be incompatible with Article 2(d) of the Code. Furthermore the Canadian authorities had never supplied any concrete explanations as to the reasons for and the criteria used in the decision to impose provisional duties, which should have been done according to Articles 6(f) and (g) and 10(c) of the

Code. He underlined that even if some information had to be withheld for reasons of confidentiality, the requirement of the Code to provide for equitable and open procedures had to be met.

38. The representative of Canada explained that the Counsel for the Canadian exporters and importers had raised in the Canadian courts the question of the procedures followed by the Department of National Revenue in this case. He also confirmed that a preliminary determination of dumping had been made, and accordingly the case was now before the Anti-Dumping Tribunal. In view of the fact that the case had been brought before various courts of justice, he limited himself to say that cost of production information had been requested by his authorities for the establishment of the normal value since they were not prepared to accept domestic sales made at a loss over an extended period of time as a basis for the price comparison. Section 11 of the Anti-Dumping Act had been applied, because cost of production information had, despite repeated exhortations from the Canadian side, not been supplied within the time-limits prescribed in the Canadian legislation. He stressed that his authorities had provided as much information they reasonably could that was not confidential, and therefore the provisions of the Code had in his view been complied with. His authorities were however not prepared to supply information of a confidential nature.

39. The representative of Japan reiterated the view that even if the domestic price was below the costs of production, it should be used for the establishment of the normal value in cases where the economic situation necessitated such sales and when there was no intent to conquer the foreign market in question. He repeated that the reasons for the provisional measure as well as the criteria

used in the calculation of the dumping margin had not been sufficiently explained. He therefore asked whether such information, even if part of it was confidential, could be supplied by means of aggregations or summaries.

(c) European Communities (COM.AD/44)

40. The representative of the United States questioned as to how prices were determined for anti-dumping purposes in the Communities in cases involving imports from State-trading countries. He also asked for the standards used for dismissal of such cases and for acceptance of arrangements.

41. The representative of the European Communities replied by referring to interpretative note 2 to paragraph 1 of Article VI of the General Agreement which dealt with such matters. This text had been included in the legislation of the Communities. When the domestic price in question was deemed to be unreliable, comparisons were normally made with the export prices and in some circumstances with the domestic prices of a suitable market economy country, with due allowance for possible differences in standards of living. He added that investigations were most often terminated in such cases as a result of price undertakings.

42. The representative of Japan referred to the final anti-dumping measure imposed by the Communities on 26 July 1977 on ball-bearings and tapered roller bearings. Recalling the discussions on this point at the previous meeting of the Committee (COM.AD/42, paragraphs 4-17) he explained that the Japanese enterprises concerned had held consultations with the Commission after the imposition of the provisional measures in February 1977 in order to reach an amicable settlement. These efforts had eventually resulted in a price undertaking

by the Japanese firms submitted to a responsible official in the Commission who had assured them that the undertaking would be accepted pending the decision by the Council. In spite of this, the Council had decided to impose a final anti-dumping duty of 15 per cent, that the provisional duties should be collected but that the final duty should be suspended in so far as a price undertaking was in force. He noted that Article 7(a) of the Code gave the option to accept price undertakings and to terminate anti-dumping proceedings or to reject such undertakings and to continue the proceedings. Article 7 did, however, not allow the option to accept a price undertaking and still continue the proceedings, with exception of course for the injury investigation under Article 7(b) of the Code. This was, in fact, evident from the very wording of paragraph (b) of Article 7, which provided only for a continued investigation of injury but not for a subsequent determination of dumping or for other actions to protect the domestic industry from the exporters that had made the price undertaking. He pointed out that the price undertakings of the Japanese companies covered not only future transactions but also past transactions since February 1977 and that these undertakings had been faithfully executed. He asked for the reasons why the imposition of the provisional duties had not been terminated upon the acceptance of the price undertakings and questioned as to how the Council's final determination was justified and under which provisions of the anti-dumping legislation of the Communities it was based. He stated furthermore that the information so far provided by the Communities in this case regarding the basis for the calculation of dumping margins, the evidence of material injury and the causal link between

the imports and the injury to the industry of the Communities, were clearly short of fulfilling the obligations under Article 6(h) of the Code. He recalled in this context the preamble of the Code where it was stated that "anti-dumping practices should not constitute an unjustifiable impediment to international trade" and that "it is desirable to provide for equitable and open procedures as the basis for a full examination of dumping cases". He added that the case had now been brought before the European Court of Justice and he asked the representative of the European Communities for information about the present state of the Court's consideration of this matter.

43. The representative of the European Communities replied that the final determination of the Communities in this case was extremely generous to the Japanese exporters. He recalled that his authorities had in January 1977 tried to get a price undertaking from these firms. When they had refused, the provisional measure had been imposed and the investigation continued. In the course thereof, very high dumping margins had been found as well as substantial injury to the Community industry. Moreover, it had been established in July 1977 that the dumped imports from Japan was the principal cause of that injury. At that point of time, the Japanese firms had declared that they were prepared to offer a price undertaking. It had however taken as long a time as four weeks in July to complete the negotiations for such an undertaking, in spite of the fact that undertakings normally should be given voluntarily by the exporters. Referring inter alia to Canada's position to price undertakings as outlined in

paragraph 32 above and to the position of the United States to accept such undertakings in principle only in cases involving minimal dumping margins, he underlined that the national competent authorities were always free under the Code either to accept a price undertaking or to reject it and continue the proceeding. He pointed out that an acceptance of the price undertaking would have involved a reimbursement of the provisional duties collected, which would have been remarkable in a case where clear evidence of dumping and of injury resulting therefrom had been found. Because inter alia of this fact and of the unco-operative spirit of the Japanese firms, the Community had made an exception from its liberal practice to accept price undertakings and had decided to collect the duties provisionally imposed while suspending the final measure as of the date of the decision. He underlined that Article 7 of the Code required a termination of a case as of the moment a price undertaking was accepted. The problem in this case was that the undertaking had been given and accepted five months after the imposition of the provisional duties. He stressed that the Code was silent as to what to do with such duties in a case like this and that consequently, his authorities had been free to collect them. He added that for obvious reasons price undertakings could neither produce retroactive effects nor afford retroactively a guarantee of protection equivalent to an anti-dumping duty. What had happened, as a matter of fact, was that some Japanese firms had in certain cases increased somewhat their prices after the provisional duty had been imposed. This was however a normal reaction of firms having got already a provisional duty and anticipating that this duty might be transformed to a final one. On the other

hand, other Japanese firms had assured in letters to their European clients that the old prices would continue to be applied during the time of the anti-dumping proceeding. He added that a justification in accordance with the Code on the findings of dumping and of injury had been included in the Communities' regulation in which the anti-dumping measure had been published. He stressed however that the justification could only be made in a general way presenting the criteria for the determination, due inter alia to the problem of confidentiality. He pointed out that 80,000 workers were employed in the ball and roller bearings industry in the Communities. The imports from Japan of these products amounted to 100 million dollars a year. These imports had risen sharply since 1974 when the latest Japanese attack on the Communities market in this sector had been initiated. The imports of bearings from Japan in the period 1974-76 had in fact increased by not less than 53 per cent. The Japanese share of the market of the ball bearing sector amounted to 15 per cent. The main problem was however that the Japanese firms had concentrated their exports on some so-called high turn-over items, e.g. bearings for car-wheels and electrical motors, which were sold in a very large quantity every month. The Japanese share of the market of these items was in many cases more than 50 per cent and in some cases even 80-90 per cent. The price undercutting on these items, based on weighed averages, had been established to range between 30 and 50 per cent. As a result of this dumping, the market share of the European industry had declined, its production and employment had decreased and nearly all firms were now making losses. In the proceeding, his authorities had established, after having weighed the effect of

the dumping against all other relevant factors as prescribed in Article 3(a) of the Code, that the dumped imports from Japan was quite clearly the principal cause of the injury affecting the industry. Finally he confirmed that the case had been brought to the European Court of Justice by the Japanese firms. It was however not possible at the moment to estimate when the decision of the Court would be taken.

44. Referring to the question of retroactivity of the price undertaking the representative of Japan explained that the Japanese exporters had promised to raise their prices by 10 per cent in February 1977 just after the imposition of the provisional measure, an action which had been implemented immediately A price undertaking had consequently been made already at that point of time. In view both of this fact and of the new undertaking agreed upon by both sides in July 1977 he made a reservation as to the compatibility of the action taken by the Communities with the provisions of Article 7(a) of the Code.

45. The representative of the European Communities reiterated that a price undertaking could not be made retroactive. An undertaking gave a guarantee only from the moment it was signed. He confirmed that the Communities had got a price undertaking only in July 1977 which involved a price increase of 10 per cent at that point of time and a further increase of 10 per cent at the end of the year. Consequently, the dumping margin of 15 per cent had only been partially eliminated in July. In view of this, he found the determination of the Communities generous in that it implied a collection only of the duties provisionally imposed while the final duties were suspended as of the date of the decision.

(d) United Kingdom (COM.AD/44)

46. Referring to the case concerning non-alloy steel sections and flats the representative of Japan stated that the British authorities had on 7 July 1977 proceeded to a final determination imposing an anti-dumping duty of 11 pounds per ton on the products in question. He explained that his Government had on a number of occasions expressed its concern as to the actions taken in this case, asking for a justification for the initiation of an investigation as well as for the imposition of the anti-dumping duties. He regretted however that the replies received had been general and superficial and were insufficient to justify the contention that a dumping margin and material injury existed in the case. He recalled in this context that the signatories to the Code had undertaken the obligation under Articles 6(h) and 10(c) of the Code to notify representatives of the exporting country of the reasons for the decision to impose provisional or final duties and the criteria applied in the decision. He underlined that in this case an explanation should have been given in particular as to what domestic and export prices had been used in the calculation of the dumping margin and which adjustments had been made to those prices. In their injury determination the British authorities seemed also to have calculated the profit level of the domestic industry much too high in view of the present market situation.

47. The representative of the United Kingdom explained first why his authorities had taken an action on 7 July 1977, i.e. after the end of the transitional period for the accession of the United Kingdom to the European Communities. This action had been taken under Article 71 of the Treaty of Paris forming the European Coal and Steel Community. He said that this Article continued to apply

in the future and therefore the possibility remained for the member States of the Communities to take anti-dumping actions under their national legislation on products covered by the Treaty of Paris originating in third countries in cases where no Community investigation had been undertaken. As to the case raised by the representative of Japan, he stated that the problem involved was how to interpret Articles 6(h) and 10(c) of the Code. He said that the criteria applied in a decision to impose anti-dumping duties were in his view the standards whereby the authorities concerned had measured the material injury on the one hand and dumping on the other. As regards material injury, the criteria were e.g. import penetration, price depression and decline in production. In the case of dumping, they contained e.g. comparisons of export price and domestic price, comparisons of the export price and the price on sales to a third country and comparison on the basis of constructed values. These were substantial points that should be brought out in any anti-dumping case and so was always done in the United Kingdom. Even if his authorities in some cases had gone further than this in their information, he was convinced that an indication of the reasons and the criteria as he had described them was all that the Code required. He added that in many cases it was in fact impossible to inform further due to the requirement of confidentiality of the information used both for the calculation of the dumping margin and for the determination of material injury. Another factor that in his view might influence the discretion as to how much information additional to what the Code required could be passed on, was the atmosphere in which the entire investigation had been conducted, e.g. the degree of co-operation afforded to the investigating teams, the

likelihood of an offer of a price undertaking, etc. He added that in this particular case, his authorities had in fact supplied information on which allowances had been made both to the domestic price and to the export price.

48. The representative of the United States stressed the importance of the publication in an as extensive way as possible of all relevant criteria by which anti-dumping decisions were taken. He recalled in this context that the United States had adopted a procedure for that purpose under which firms submitting confidential information were required to submit also non-confidential summaries of this information (cf. COM.AD/37, paragraph 7). Referring to the final determination of the cases reported by the United Kingdom involving imports from State-trading countries, he asked for an indication of how the dumping margins had been calculated.

49. The representative of the United Kingdom replied that under the legislation of his country his authorities were obliged to seek, if possible, an analogue product in another country to be used as a reference point for this purpose. In the case concerning alarm clocks from the People's Republic of China, the product selected was a clock of the same type produced in Germany whereafter appropriate adjustments had been made. He explained that his authorities had had an enquiry from their American counterparts some time ago as to the policy of the United Kingdom in this respect and he undertook to clarify this point further when answering this request.

(e) United States

50. The representative of Japan made a statement concerning the provisional measure imposed on carbon steel plate.[1]

51. The representative of the United States said that while his authorities had acted in full conformity with the spirit and letter of the Code, the Japanese firms had been totally unforthcoming in supplying information that was deemed essential in this case. He wanted to make it absolutely clear that such an attitude of total lack of co-operation could never lead to a more favourable result from the exporters point of view. He stressed that the reasons for the decision and the criteria applied had been spelled out in a complete and comprehensive way in the Federal Register, where the provisional determination had been published. In addition, his authorities had on a number of occasions informed representatives of the Japanese firms and the Japanese Government of each element of the decision. He assured the Japanese representative that his authorities scrutinized injury allegations in a serious way before the initiation of a formal investigation. For instance, such factors as market price suppression, reduced profitability, increased market share for the imported product, reduced market shares for domestic producers, and lower employment in the United States were always examined in this context. In addition, it was required that a petition indicated a relationship between the alleged less than fair value sales and the alleged injury in order to be accepted for a formal investigation. In the Gilmore case, all those criteria had been found to be met. He added that since only a provisional action had been taken so far,

[1] The statement has been circulated in document COM.AD/W/72.

additional evidence as to the injury issue could still be considered by the International Trade Commission if the matter was referred to it and if such information was supplied from the Japanese side. His authorities were consequently examining "all factors having a bearing on the state of the industry in question" as prescribed by Article 3(b) of the Code. As to the scope of the domestic industry he admitted that the complaint in the Gilmore case had been filed by a regional supplier. He recalled however the position of his authorities on this point, namely that when a significant regional industry was injured, this was regarded as prima facie case of injury to the industry of the country as a whole, sufficient for an initiation of an investigation and for the imposition of provisional measures. He pointed out that the only barrier between different regions in the United States' market was the transportation costs, since no linguistic or other indirect trade barriers existed. Taking up the question of the principal cause of injury he stated that an enquiry of the injury created by the dumped imports had been made in connexion with the provisional action. It had then been established that the injury was more than sufficient for the proceedings to continue. As to the question concerning the determination of the dumping margin he admitted that the Japanese exporters had submitted information on their home market prices. His authorities had however concluded that these data could not be used in this case, since the sales in question had not been conducted "in the ordinary course of trade". In fact, his authorities had found consistent sales below costs of

production in the home market for the whole time-period they had looked into the matter. This was evident not only from the extensive economic studies supplied by the petitioner which had been prepared for them by independent and highly esteemed consultants. The conclusions of these studies were also supported by an enquiry made by his authorities on this subject based on the published financial statements of the Japanese companies concerned. He added that a few days after the preliminary determination had been made in the Gilmore case, the President of the United States had received a report from his Counsel on Wage and Price Stability, in which a group of economists had analysed available data to determine what the costs of steel production in Japan might be. The conclusions of this completely independent report coincided very closely with the results of the enquiry of his authorities. He pointed out that the Japanese firms had never used the opportunity of supplying evidence contradictory to the allegations of the petitioner. They had merely limited themselves to criticizing the economic study he had submitted. This criticism had only led to the petitioner's submission of minor amendments to his original study. He underlined that a criticism of the evidence submitted could never in itself constitute a substitute for evidence. He stressed that it was the burden of the Japanese firms to supply evidence contradictory to what had been earlier submitted in the case. It could never be held against his authorities to use what evidence had been made available. He added that since the Japanese firms had declined to supply information on export prices to third countries, his authorities had concluded that not only the sales on the home market but also the

third country sales were made at a loss. Those were the reasons why constructed values had been resorted to. He repeated that the profit margin of 8 per cent included in the value was reasonable and defensible. While admitting that the steel industry had had particularly low profits margins he underlined that the anti-dumping legislation of his country had been drafted not only for steel products but for all goods traded internationally. For the sake of clarification he added that profit margins were never included in the constructed values in cases when his authorities made investigations whether sales in the home market were made below costs. Profits were only included when dumping margins were determined.

52. The representative of the European Communities stated that according to Article 5 of the Code anti-dumping proceedings should be initiated on the initiative of the industry. This rule was in his opinion derived from the general principle that no action should be taken without evidence of the existence of dumping and of injury resulting therefrom. His authorities had from this point of view been surprised by certain recent speeches made on a political level in the United States encouraging the filing of anti-dumping petitions in the steel sector and urging the administration to be more aggressive in taking anti-dumping actions. He stressed that there was no reason whatsoever to be aggressive in the anti-dumping field, since the initiative should come from the industry. The rôle of governmental authorities should in his view be limited to examine such petitions in order to find out whether they could be accepted for an investigation.

53. The representative of the United States replied that the politicians referred to had merely wanted to point out to the industry that there was a remedy under the United States law in case of competitive sales from abroad at prices at less than fair value. He added that according to Article 5 of the Code investigations should "normally be initiated upon a request on behalf of the industry affected". Since the situation of the steel industry could hardly be described as normal, a government could in his view initiate proceedings and still comply with the provisions of the Code. His authorities had, however, never so far seen themselves obliged to take such an action.

54. The representative of Japan underlined the danger of resorting to the anti-dumping instrument in times of serious stagflation. He stressed also that anti-dumping actions should never be used for protective purposes. As to the Gilmore case he stated that his authorities and the firms in his country had received an inadequate explanation of the injury found which had led to the initiation of the investigation. He recalled that Gilmore Steel Corporation was a comparatively small firm situated in the north-western part of the United States and that its domestic sales amounted to less than 1 per cent of the total supply of iron and steel products in the United States market, while its share of the total production of carbon steel plate in the United States amounted to about 4 per cent only. In view of the small market share of the firm he questioned whether the injury examination had been limited to its local market or whether it comprised the whole of the United States market. He also asked for clarification as to what extent the increased imports from Japan could have been the principal cause

of injury in this case. He added that Gilmore Steel Corporation was also an importing company buying part of its requirements of iron and steel products in Japan. He questioned therefore whether in fact the imports from Japan had not been beneficial to that company rather than injurious. He stated also that it was the producers, not the importers, that were entitled under the Code to request an investigation.

55. The representative of the United States confirmed his country's commitment to transparency in the governmental decisions and explained that these decisions were now being expanded in order to give the interested parties as well as the public better information on how and why the authorities were acting. He stated that in addition to the official notices of the initiation of this investigation and of the provisional determination the Japanese firms would be given access to the files of the Treasury Department for further information concerning, inter alia, the injury determination, if they wished to use this opportunity. He pointed out that the actions of his authorities had never been contested on a single point by Japan by means of contradictory facts or evidence but merely by questions. With this in mind he found it remarkable that the Japanese had raised a dispute about the adequacy of the initiation of the investigation.

56. The representative of the European Communities stated that the Code did not require a detailed notice containing an exhaustive presentation of the reasons for the initiation of an investigation. Such a notice could even be harmful to the exporters concerned, provoke further petitions of a frivolous nature and give rise to political lobbying. The difficulty in verifying the information in a petition was in his view another reason to limit the extent of such a notice. He underlined however that the only entity having a right under the Code to file a petition was the domestic industry, i.e. all domestic producers concerned or

a major part thereof but not a producer having only a few per cent of the market. In his view, the competent authorities were obliged to obtain at least a rough idea of the market share of the complainant before accepting a petition for investigation.

57. The representative of the United States explained that under the law, the Secretary of Treasury had to conclude from the information contained in a petition whether there was substantial doubt whether the industry was being injured. If this were the case, he had to refer the matter to the International Trade Commission for determination whether injury existed. If there was no doubt about the existence of injury, the Treasury Department was to proceed with its investigation of the margin of dumping. If it determined that sales at less than fair value had taken place, the case was referred to the International Trade Commission which then had to make an injury determination within three months. He stressed that with the information contained in the petition filed by Gilmore Steel Corporation, which appeared to be representative for the industry as a whole in the region where it operated, the Secretary of Treasury could not have had "substantial doubt" of the injury in this case. The evidence presented indicated substantial losses in sales, dramatic decline in employment, lack of utilization of capacity, increased imports and substantial decline in prices. The preliminary injury investigation could of course not be so far-reaching as the one made before preliminary or final determinations. It was however an examination made both on a regional and a national-wide basis. The evidence of injury found in this case was sufficient to pass the relatively low threshold permitting an investigation to be initiated. He underlined that the initiation of the investigation and the preliminary determination neither prejudged the

results of the proceedings by the Treasury Department nor barred a possible subsequent injury investigation of the International Trade Commission.

58. The representative of the European Communities supported the Japanese view that the question concerning the geographical extent of the injury determination was very important. According to the Code, a major part of the entire industry had normally to be suffering injury, if anti-dumping proceedings were to be initiated at all. He admitted that there were special rules in the Code for regional protection but stressed that those were even stricter. It was therefore important that the injury examination in such cases took place to the extent possible from the very beginning rather than being referred to the International Trade Commission much later in the proceeding.

59. Referring to Article 4 of the Code the representative of Switzerland agreed that investigations could only be opened when firms, whose output constituted a major proportion of the total domestic production concerned, had been injured.

60. The representative of Japan stated that the complaint made by Gilmore Steel Corporation must be interpreted to apply only to the north-western part of the United States due to the company's comparatively small-scale operations limited mainly to that part of the United States market. If the injury investigation had been made on a national basis, this broader investigation must have been initiated by the governmental authorities. He asked for a clarification on this point.

61. The representative of the United States reiterated that his authorities had never so far initiated an investigation without the receipt of a petition even if the legislation as well as the Code permitted such a possibility. In their fact-finding in order to create a sufficient basis for a determination, his authorities had however in many cases to obtain additional and complementary information to what was contained in the petitions.

62. The representative of the European Communities disagreed with the view that the competent authorities were entitled to assemble any sort of information in a case regardless of whether they were taking the initiative to an investigation or not. He stressed that a choice had to be made whether a petition should be admitted or whether an investigation should be initiated by the authorities themselves. If a petition were to be admitted for investigation, it must be filed on behalf of firms whose output constituted a major proportion of the total domestic production in question. If this was not the case, the authorities had of course the possibility of opening an investigation on their own initiative. Such an investigation had, however, to take into consideration that injury must have been caused to a major part of the industry to lead to an affirmative determination.

63. The representative of Japan pointed out that the provisional measure applied to imports to the whole market of the United States, while the alleged injury pertained only to a limited part thereof. He asked therefore whether all factors having a bearing on the state of the industry in question as prescribed by Article 3(b) of the Code had been examined sufficiently before the provisional measure had been taken. He also asked whether this examination had been made on a nationwide or regional basis. He also questioned whether the imports from Japan were considered the principal cause of injury to the industry in the north-western part of the United States or to the national market as a whole. He added in this context that the question of principal cause of injury had to be duly examined also before the imposition of provisional measures in accordance with Article 10(a) and (e) as well as with Article 8(a) of the Code.

64. The representative of the United States replied that according to the legislation of his country a petitioner had to supply information as to the industry affected i.e. all the firms producing the product in question. A nationwide investigation had also been carried out before the initiation of the investigation. In the course of this investigation, a variety of factors had been considered as to whether the carbon steel plate industry both regionally and nationally had been affected by the sales at less than fair value. He underlined that no determination as to the principal cause of injury had been made so far in accordance with Article 3(a) of the Code. What was required in Article 10(a) of the Code was that there had to be "sufficient evidence of injury", i.e. a threshold type of test. He pointed out that the reference in Article 10(e) to Article 8 concerned only the size of duties and similar matters and not a particular quantum of evidence necessary to establish injury. According to the procedures of his country, tentative steps were taken upon prima facie evidence of dumping and injury. Opportunity was thereafter given interested parties to present relevant facts which were then considered before final actions were taken. In his view, these procedures were consistent with the spirit and the letter of the Code.

65. The representative of Australia saw a great deal of similarity between the procedures followed by the United States and Australia in initiating and conducting investigations. He stated that when the competent authorities were requiring, obtaining and examining information from all relevant sources, they had to decide

at some stage whether or not to impose provisional measures. He recalled that Article 10 of the Code by no means required a conclusive decision that there was dumping as well as injury. He stressed that there was a clear distinction between the requirements of the evidence of injury under Article 10(a) and Article 3. In his view, the United States procedures seemed fully in compliance with the Code.

66. The representative of the European Communities underlined that the question of causality between the dumped imports and the injury affected was of fundamental importance in the application of the Code. He stressed that no determination of injury could be made at any stage of a proceeding before account had been taken of this causality. He agreed that a distinction should be made between the prima facie injury examination made before the imposition of provisional measures and the in extenso injury examination to be made before a final determination. The crucial point in this case was however whether the prima facie examination had resulted in a conclusion that a major part of the industry had been injured.

67. The representative of Japan stated that carbon steel plate was the major steel product in the iron and steel industry. He asked therefore whether the United States investigation did concern Japanese iron and steel producers in general rather than producers of carbon steel plates. Referring to financial statements of Japanese iron and steel producers he stated that sales had been made at a profit up till 1974 and 1975 and that losses started occurring only as of 1976. In view of this, he questioned the allegation that sales at a loss had been made over an extended period of time.

68. The representative of the United States replied that the investigation concerned prices and costs of production of carbon steel plate in the Japanese home market. He reiterated that the Japanese firms were welcome to submit any evidence they could produce in this case.

69. Recalling the discussion of the use of the domestic prices in price comparisons reflected in paragraphs 11-16 above, the representative of Japan stated that this price should be disregarded only in clearly abnormal situations, e.g. in cases of a monopoly control of the domestic market or where the domestic demand was insufficient to provide an appropriate price level as the case often was in developing countries.

70. The representative of the United States replied that the domestic price had been considered by his authorities in the Gilmore case and that it was the preferred reference point under the United States law. It had however not been possible to use it in the calculation of the dumping margins for the reasons he had spelled out above. He added that the aim of Section 205(b) was not to prohibit e.g. sales of obsolete items at the end of the year or to require the immediate recovery of excessive development costs. Its aim was to prohibit the consistent use of the United States market to recover costs in the exporter's home market when the producer elected or was directed to sell there below costs.

71. In summarizing his position the representative of Japan stated that he had not been convinced by the explanations of the representative of the United States on a number of points, in particular the questions whether Gilmore Steel Corporation was representative for the industry concerned as a whole, whether the investigation and

the preliminary determination had been made under consideration of the situation of the industry as a whole or of a regional part thereof, whether the imports, especially those coming from Japan, were the principal cause of the injury, whether the basic price used in the price comparison was selected correctly, and whether the calculation of the constructed value and the inclusion therein of a profit margin of as much as 8 per cent was made in a correct way. Considering the importance of this case he suggested that the Committee be convened to an extra session in order to continue the discussion on this point before the end of the year.

72. The representative of the United States replied that he could not be required to convince his Japanese counterpart. The obligations of his authorities were to adhere to the provisions of the Code which in his view had been done in this as well as in other cases. He stated that the principal issues that the Japanese representative had raised related to the question of injury to the United States industry. He reiterated in this context that a through-going investigation was still to be undertaken in this case. A preliminary injury investigation had been carried out with results conclusive enough for his authorities to take provisional measures. All the arguments concerning regionality, the scope of the industry as a whole, causality of the less than fair value sales to the injury to the industry etc., would be considered by the International Trade Commission if and when a final determination of sales at less than fair value was made.

73. The Committee decided that it would reconvene in order to continue the discussion on the Gilmore case, if and when it would be deemed appropriate and that an actual date of the meeting should be left open for the time being.

74. The representative of Austria referred to a communication from his Government concerning the investigation on railway track maintenance equipment imported from Austria which had been circulated in document COM.AD/45.

75. The representative of the United States stated that the question of how to determine differences in merchandise of dissimilar qualities and character in connexion with price comparisons had not been fully explored in the discussions in the Committee. He suggested that the Committee might give this issue attention in the course of its future work. His authorities had however followed established practices in this case in dealing with this problem. When comparing the technically more sophisticated machines sold to a third country with the simpler machines sold to the United States they had made due allowances for direct material and labour cost differentials. In addition, an adjustment could have been made in this case for directly relevant overhead costs, if it had been shown that such costs were directly related to the sales of the more sophisticated machines. He stressed that evidence of such costs must be taken from the exporters' records to be considered. What could not be accepted as evidence, however, was mere arithmetic projections of various expenses. His authorities had decided not to make an allowance for a general overhead or profit attributed by the exporter to the more sophisticated machines. He added that his authorities found it improper to give direct advice to a particular party to provide certain types of evidence which

might influence the outcome of a case. It was entirely an affair of the Austrian firms to defend their case and to present the evidence they found essential. He added that paragraphs 4-7 of the Austrian communication were related to misunderstandings of statements made by personnel of the Customs Service in the course of the investigation. Referring to paragraph 8 of the communication he admitted that a trade barrier would be established in case anti-dumping duties were imposed, but he underlined that such a barrier would, in that case, of course not constitute an unfair impediment to trade. As to the dumping margin of 32 per cent, he pointed out that this figure had been established on the basis of sales where margins had been found and not on the weighed average of all sales. If the latter method had been used, the dumping margin would have amounted to 25 per cent. He assured the Austrian representative that this problem would be further considered shortly by his authorities when fixing the bonding requirement.

76. The representative of Austria stressed the view that all costs as well as profits should be taken into account when comparisons were made between products that differed in technical and economic respects. He asked whether the Austrian exporters would have a possibility of submitting further information and evidence before a final determination was made in case the International Trade Commission would arrive at an affirmative injury finding.

77. The representative of the United States confirmed that new evidence could be presented to the Customs Service before anti-dumping duties were finally assessed.

78. The representative of the European Communities agreed that allowances for differences in merchandise was an important subject and that the Code was rather silent on this point. He consented to the idea of discussing this issue further in the Committee in order to establish proper guidelines for the future. Referring to the weighted average of the dumping margin in the case discussed he found it unreasonable that only positive margins had been taken into account by the United States authorities.

79. The representative of the European Communities referred to the case concerning water circulating pumps which had already been discussed at the annual meeting the previous year (COM.AD/41, paragraphs 14-16). He asked whether the American authorities had reconsidered the case in the light of this discussion and whether a settlement of the case by amicable means was now possible. Taking up the provisional action taken in the case of pressure sensitive tape, inter alia, from Italy, he said that the imports from that country amounted to $4.5 million while the total production in the United States amounted to $800 million. The Italian share of the United States market of this product was insignificant, i.e. 0.55 per cent. Even if an aggregate injury examination had to be made, he found the Italian exports so limited that they should have been disregarded.

80. The representative of the United States replied that a change in ownership of the firm in question was not in itself a factor that warranted an automatic reopening of the investigation under Article 9 of the Code. When the ownership of a firm was changed, the new owner took over the business with its assets and

liabilities. In his view, the existence of an anti-dumping finding in an export market was one of the liabilities in question. He pointed out, however, that several opportunities existed in his country under which firms might secure a discontinuance or a termination of an anti-dumping proceeding. The Department of Treasury could discontinue a case upon application, if no sales of less than fair value had taken place for a specified time and if price assurances were given. In addition, the International Trade Commission could reconsider an injury determination after one year, if adequate reasons were put forward to support such an action. He added that anti-dumping duties were assessed in his country on an entry-by-entry basis and thus limited to sales at less than fair value. As to the case concerning pressure sensitive tapes he questioned the figures mentioned by the representative of the European Communities. According to his authorities, the less than fair value imports from Italy had gained in 1976 one quarter of the total United States market. He added that when the initiation of an anti-dumping investigation was published in his country, suppliers were given the opportunity to request an exclusion from the proceeding as well as the finding. This opportunity had however not been used by any Italian producer.

81. Referring to the case concerning water circulating pumps the representative of the European Communities said that there were clear provisions in the Code for review of anti-dumping cases. These provisions did not include rules, as in the American law, of a two-year limit for the admission of review petitions. He had stressed already at the annual meeting in 1975 that this rule was unsatisfactory (COM.AD/37, paragraph 35). He underlined that according to the Code a review should be made when there was a reason to do so, i.e. when new circumstances had occurred. In his view, a change in ownership of a firm might be such a circumstance.

(f) Japan (COM.AD/44/Add.1)

82. The representative of the European Communities asked whether the Japanese report should be interpreted to say that no anti-dumping actions had taken place during the period.

83. The representative of Japan confirmed that this was the case.

C. Adherence of further countries to the Code

84. The Chairman said that he had nothing to report on this point.

D. Examination of questionnaires used in price investigations

85. The Committee noted that no changes in practices or questionnaires in price investigations abroad had been notified during the reporting period.

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

86. The representative of the European Communities expressed his satisfaction with document COM.AD/W/68. He said that this document was extremely valuable in assessing the concrete results the Code had had on the anti-dumping policies and legislations of its signatories. He underlined that such an assessment was important at a moment when negotiations were going on with a view to establish codes for other non-tariff barriers. In the view of his authorities, new codes could be signed only if the experience with old ones were good. He underlined that the experiences of the Anti-Dumping Code were far from satisfactory. He referred in this context particularly to the different practices of assessing injury and to the question of causality between dumping and injury which in his view were the most serious problems as regards the application of the Code. In

addition he mentioned other problems for which a more precise understanding between the members of the Committee was required, e.g. how to deal with allowances and with changes in currency rates, how to interpret the concept of "material injury", how to formulate conditions for the admissibility of a complaint and how to conduct simultaneously investigations of dumping and of injury. He stated that the insufficient harmonization of practices and legislation on these points undermined the equilibrium of rights and obligations agreed upon in the Kennedy Round. In order to improve the situation he proposed that the Committee should explore the possibilities of reaching a better understanding as regards the application of various provisions of the Code. He suggested that this work should be based on lists of priorities submitted by the members of the Committee to be discussed at a special meeting early next year.

87. This proposal was supported by the representatives of Japan, Sweden, Switzerland and Canada.

88. The representatives of the United States stated that the principal utility of the inventory as contained in document COM.AD/W/68 was for reference purposes. The inventory could in his view aid national authorities in the administration of their legislation by presenting in a clear way the discussions and the different points of view concerning the interpretation of various provisions in the Code. He suggested that this inventory should consistently be brought up to date by the secretariat. He could not share the concern expressed by the representative of the European Communities. In his view, differences of interpretation of smaller details in the text of the Code did not decrease the value of the Code itself. He said that the provisions of an instrument of that kind must necessarily be broad

but provided nevertheless a framework for a fair administration which in his view had not been evaded by any member of the Committee. He declared however that he did not oppose to discuss issues that any signatory would find to be of common concern. If there were particular deficiencies in the Code, he was prepared to consider how they should be corrected.

89. The Committee agreed to invite its members to submit, if they so wished, by 15 December 1977, lists of issues in the anti-dumping field which they wished to be discussed at an early meeting of the Committee.

F. Other business

90. The representative of the United States referred to a press release issued by the Japanese delegation concerning the deliberations of the Committee on the Gilmore case (cf. paragraphs 50-73 above). The release which reflected the Japanese position had given rise to articles in the press. When he had been asked by the press to comment on the Japanese release he had refused to do so with the explanation that he felt that this would be contrary to the spirit of the meetings of the Committee which took place to give governments a chance to express their views on a frank and candid basis. He had also expressed his disappointment that the Japanese delegation saw fit to release a statement in the midst of the deliberations. This would, in his view, hardly promote the successful conclusion of the Committee's work. He had pointed out to the press that each of the issues raised by the Japanese had been considered and discussed in detail during the meeting of the Committee and that in the opinion of the United States all anti-dumping actions addressed by the Japanese had been in complete conformity with the provisions of the Anti-Dumping Code.

91. The representative of Japan replied that his delegation had been under heavy pressure from representatives of Japanese news media during the recent days to supply information on the discussions in the Committee concerning the Gilmore case. In view of this, his delegation had made a short explanation to the Japanese journalists which had been translated into English and transmitted as a press statement to be used also by journalists from other countries. He admitted that in general it would be better to issue press releases after the conclusions of the discussions in the Committee. He noted however that in many areas the discussions were themselves more important than the conclusions reached. From that point of view he found it reasonable to inform the press about the subjects discussed. He added that the information contained in the press release had been limited to the absolute minimum possible.

92. The Chairman stated that there had been a tradition in the Committee to have a frank and open discussion. He hoped that this tradition could be kept in the future. A condition for this was, in his view, that restraint was used by delegations in their contacts with the news media.