

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

COM.AD/W/75

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## Committee on Anti-Dumping Practices

### LIST OF ISSUES IN THE ANTI-DUMPING FIELD

#### Note by the Secretariat

1. At its October 1977 meeting, the Committee on Anti-Dumping Practices invited 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 (L/4587, paragraph 30).
2. The secretariat has until 31 December 1977 received communications from the following members of the Committee: Australia, Austria, European Communities, Japan, Sweden and the United States. Some members have indicated that their suggestions contain only issues which they consider should be given a special priority in the discussions and that further issues might be raised by them at a later stage.
3. The following is the list of issues communicated to the secretariat. In order to facilitate the deliberations of the Committee, reference is made where possible to the relevant headings or sub-headings of the Analytical Inventory of Problems and Issues arising under the Anti-Dumping Code (COM.AD/W/68).
  - A. Dumping
    - (1) Concept of dumping (United States<sup>1</sup>).  
Dumping by State-controlled-economy countries (United States<sup>1</sup>).
    - (1) (a) Goods manufactured by different producers of the exporting country (Sweden).
    - (1) (b) Like products - high degree of sophistication/products made to measure (Sweden) - adjustments for differences in the merchandise (United States<sup>1</sup>).
    - (2) (a) Sales at a loss (Australia, European Communities, Japan<sup>1</sup>, Sweden, United States<sup>1</sup>).
    - (2) (d) Dumping by transnational corporations (Australia, United States<sup>1</sup>).
    - (3) Allowances relating to price comparability (Austria<sup>1</sup>, European Communities, Sweden, United States<sup>1</sup>).
    - (3) (d) Exchange rates (Austria<sup>1</sup>, European Communities).

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<sup>1</sup>Austria, Japan and the United States have commented on the issues they have suggested. These comments are reproduced in the Annex.

B. Injury

Valuation and determination of injury (Japan<sup>1</sup>).

- (1) Definition of "material" (European Communities).
- (1) (a) Market penetration (Sweden).
- (2) Causality (European Communities, Japan, Sweden).
- (3) Criteria (Sweden).

C. Procedures

- (1) Initiation of an investigation (Sweden, United States<sup>1</sup>).
- (2) Simultaneous consideration of both dumping and injury (European Communities, Sweden).
- (4) Provision of information to parties concerned (United States<sup>1</sup>).
- (6) Investigations in other countries (Austria<sup>1</sup>).
- (8) Notification about imposition or non-imposition of anti-dumping duties (Japan<sup>1</sup>).
- (10) Price undertakings (Australia, European Communities, Sweden, United States<sup>1</sup>).
- (11) Imposition and collection of duties (Australia).
- (12) Review and revocation of anti-dumping duties (European Communities).
- (13) Provisional measures (Australia, Sweden).
- (14) Retroactivity (Australia, European Communities).

D. General problems

Transcription of the Code into national law (European Communities).

- (1) Failure to ensure the conformity of national legislation (Sweden).
- (2) Rôle and functioning of the Committee on Anti-Dumping Practices (Australia, Sweden).
- (3) Judicial or administrative review (United States<sup>1</sup>).
- (4) Use of informal and coercive procedures (United States<sup>1</sup>).

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<sup>1</sup> Austria, Japan and the United States have commented on the issues they have suggested. These comments are reproduced in the Annex.

ANNEX

Comments by Austria

1. Article 2(f) of the Anti-Dumping Code (COM.AD/W/68, pages 12-15)

The Committee should discuss those circumstances which influence the comparability of prices, in particular with respect to the identification and the treatment of allowances to be made for differences in technical quality and/or commercial practice, as well as the effects of exchange rate fluctuations.

2. Article 6(e) in conjunction with Article 6(b) of the Anti-Dumping Code (COM.AD/W/68, page 33)

In particular, the modalities of the investigations carried out in other countries in order to verify information provided or to obtain further information should be discussed.

Comments by Japan

1. Sales at a loss (Article 2(d) of the Code; A(2)(a) of the Inventory)

On this question, no clear interpretation of the Code has been established and the implementation of the Code in importing countries are based on vague criteria, sometimes contributing to judgements disadvantageous to exporting countries. A clear interpretation needs to be established on this question.

2. Valuation and determination of injury, determination of causality between dumped imports and injury, etc. (Article 3 of the Code; B of the Inventory)

There are cases where the determination of injury and other factors in importing countries are not necessarily clearly proved. It is of importance to clarify the views of participating countries on this question.

3. Notification about imposition or non-imposition of anti-dumping duties (Article 6 of the Code; C(8) of the Inventory)

In many cases the contents of notifications on "the reasons and the criteria applied" for the decisions regarding imposition or non-imposition of anti-dumping duties that are required to be given to representatives of the exporting country and the directly interested parties are insufficient due to confidentiality of information or other circumstances. It would be desirable to indicate as clear an interpretation of the Code as possible on this point.

4. Price undertakings (Article 7 of the Code; C(10)(iv) of the Inventory)

It would be necessary to consider clarification of the interpretation and implementation of Article 7 of the Code, inter alia discontinuation of investigations and other anti-dumping proceedings upon acceptance of price undertakings by the authorities of importing country, and whether the cases should be limited where price undertakings can be accepted.

Comments by the United States

(Items listed in order of priority)

1. Allowances relating to price comparability

In discussing this issue, consideration should be given both to the types and to the methods of making appropriate adjustments for circumstances affecting price comparability. Frequently a considerable number of adjustments are claimed for differences in conditions and terms of sale and other differences affecting price comparability. Even where it can be substantiated that differences exist, and such differences are directly related to the sales under consideration, it is often necessary to allocate costs in a reasonable manner. (Section A(3), C(1) and (2), and (D))

2. Adjustments for differences in the merchandise

In discussing this issue, consideration should be given to the appropriateness of making adjustments based upon component costs versus market value of the different products sold in the two markets. Under United States procedure, preference is given to making adjustments based upon cost differences in the merchandise, though adjustments based upon market value differences may be used if appropriate. In addition, when adjustments appear to represent a large percentage of the value of the export article, it must be considered whether that article is sufficiently comparable to an article sold in the home market (or to third countries) so comparisons with prices are meaningful. (Section A(1), (B))

3. Price undertakings

In discussing this issue, consideration should be given to those circumstances under which steps can, or should, be taken to remedy a dumping situation short of the imposition of either provisional measures or dumping duties. Under United States procedures, investigations are discontinued generally when the dumping margins are only minimal and assurances to terminate dumping sales are received. (Section C(10))

4. State-controlled-economy countries

In discussing this issue, consideration should be given to any appropriate criteria which could be used to determine whether sales in the home market of a state-controlled-economy country can reliably be used to determine normal value. In the absence of reliable home market (or third country) sales, consideration should be given to other bases upon which normal value could be based. (Section A(2) (c))

5. Initiations

In discussing this issue, consideration should be given to minimum standards imposed upon those filing complaints, as well as the administrative review each of the signatories should make available for consideration and discussion of their current guidelines for complaints. (Section C(1))

6. Provision of information to parties concerned

In discussing this issue, consideration should be given to the procedures of the signatories to make information available to all persons interested in an investigation, and to provide such persons with an opportunity to present views. Under United States procedures, any interested person has a number of opportunities to present views prior to determinations being made. (Section C(4))

7. Judicial or administrative review

In discussing this issue, consideration should be given to the time lines and adequacy of any judicial and/or administrative review procedure. Each of the code signatories should make available for consideration and discussion current procedures as they apply to judicial and administrative review. (Section D(3).)

8. Use of informal and coercive procedures

In discussing this issue, consideration should be given to the use of informal, non-public, procedures for resolving trade problems most suitable for application of each signatory's anti-dumping laws. This issue may overlap with the discussion of other issues noted above, but should focus on the uniformity of application of dumping laws. (Section D(4))

9. Sales at a loss

In discussing this issue, consideration should be given to a discussion of the circumstances when resort should be had to cost of production and the cost elements to be included. It would also be appropriate to include a discussion of the extent to which the accounting principles in the country of exportation can be

utilized to adequately reflect costs associated with producing the article under investigation. Under United States procedures, the accounting principles generally utilized in the country of exportation will be used if such principles reasonably reflect the variable and fixed costs of producing the merchandise. (Section A(2)(a))

10. Dumping by transnational corporations

In discussing this topic, consideration should be given to the method for determining normal value when sales by one segment of a transnational corporation in the exporting country's home market are inadequate to determine such value. It may be necessary in such a context to consider whether the code requires amendment to establish appropriateness of dealing with international pricing practices of transnational corporations. (Section A(2)(d))

11. Concept of dumping

While not previously considered, other issues have been raised and appear worthy of consideration by the code signatories. For example, it should be considered whether products which use materials obtained at prices below cost may be considered as being dumped. Even if it appears as though prices in all markets are equivalent, should a cost of production be utilized when, for example, the exported article has only a modest value added component (e.g., 20 per cent) and sufficient allegations are made that the materials from which the article is fabricated are obtained at prices below cost? (Section A(1))