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COMMITTEE ON ANTI-DUMPING PRACTICES

Draft Minutes of the Meeting held on 3-4 April 1978

Chairman: Mr. M. Lemmel (Sweden)

A. Issues in the anti-dumping field

1. The representative of the United States stated that it was in his view essential that the members of the Committee focussed on the technical details of anti-dumping procedures. He believed that through such discussions signatories to the Code could educate each other on how to apply anti-dumping procedures in a fair and equitable way and to place anti-dumping measures into its appropriate place in the arsenal of trade policy instruments. It was on that basis that his delegation was eager to start the work on this item of the agenda with a view to trying to establish a consensus as to how to interpret in an appropriate way various provisions of the Anti-Dumping Code. Referring to document COM.AD/W/75 he stated that his delegation had identified those issues that seemed to be of concern to the greatest number of signatories to the Code. His delegation had drafted an informal paper containing those sub-questions that in its view were the most interesting to raise in connexion with these issues (see Annex 1). He hoped that this paper would be used as a basis for the discussions of this agenda item.

2. The representative of the European Communities stated that the four issues taken up in the United States' paper were of essential importance and should be discussed by the Committee on a priority basis. He observed however that none of these issues concerned the problem of injury or procedural questions as e.g. reconsideration of proceedings. The United States' paper would in his opinion therefore have to be complemented. Referring to document COM.AD/W/75 he stated that he wanted to add "regional protection" to the list of issues contained in that paper.

3. The representative of Japan said that the United States' paper constituted a good point of departure for the discussions. He agreed, however, with the European Communities that the issues concerning injury were central and also had to be discussed on a priority basis.

4. The representative of Canada welcomed the paper of the United States which in his view would facilitate the discussion. He agreed, however, with the Communities and Japan that the paper should be complemented with issues concerning injury. The composition of a list of priority issues depended however on the question how the future work on this point should be organized.

5. The representative of Sweden stated that the aim of the deliberations under this item of the agenda should be to elaborate a basis for a future harmonization of laws and practices in order to create a greater security and transparency and to reach a better equilibrium of rights and obligations under the Code. While admitting that Sweden had not opened many anti-dumping cases during recent years and had thus a limited experience in this field, he stressed that his country, which was highly dependent on its exports, had nevertheless a keen interest in the elaboration of a uniform interpretation and application of the provisions of the Code so that arbitrary procedures

could be avoided. He hoped that the results of the work would take, if possible, the form of interpretative notes to the provisions of the Code.

6. The representative of the United States underlined that the Committee had to arrive at a common understanding as to which results were possible in this context. In his view, the members of the Committee could in their capacity of technical experts in the anti-dumping field usefully and with good result exchange ideas on technical questions such as price comparability and issues of similar type. Such an exchange of views could lead to a better administration of the national anti-dumping laws and regulations and thereby facilitate international trade. He stressed, however, that it was not possible, in a forum like this, to agree on extensive changes in national legislations. It was therefore not very useful to discuss in the Committee possible divergences of legislations that the Committee could not influence. He found it premature to believe that the Committee would be able to agree on interpretative notes or any binding commitments of that kind. He thought that the work of the Committee would be most useful and productive if issues were selected where there were possibilities for members of the Committee to educate themselves by learning from the experience of each other.

7. The representative of the European Communities supposed that no delegation was already now prepared to start drafting texts of interpretative notes or similar texts. What could be done at this stage, however, was to agree on a list of priorities and on a time-table for the discussion of those priority items.

8. The representative of Japan agreed with Sweden that the aim of the work would be to draft e.g. interpretative notes to the existing provisions of the Code rather than to revise these provisions. In his view, the discussions so far of the problems and issues arising under the Code and its application by the signatories indicated that there was a substantial scope for an arbitrary interpretation of the provisions of the Code. He referred also to the arrangement under the multilateral trade negotiations under which questions that could not be dealt with multilaterally should be taken up bilaterally under a request and offer procedure. He stated that a great number of items had been taken up under that procedure that concerned dumping. In his view, this proved the necessity of some sort of binding agreements in order to ensure a more equitable operation of the Code.

9. After some further discussion the Committee agreed on the following list of issues to be discussed on a priority basis by the Committee:

1. Sales at a loss (including "concept of dumping")
2. Allowances relating to price comparability
3. Definition of "material injury"
4. Causality
5. Regional protection
6. Price undertakings
7. Initiation and reopening of investigations
8. Explanation and reconsideration of decisions

The Committee also agreed that at its next regular meeting, to be held in the autumn, it would have a detailed discussion of topics 1, 2, 5 and 6 of the above-noted list, the remaining topics to be discussed at a subsequent meeting. It was understood that the topics to be discussed later were of no

less importance than the ones to be discussed in the autumn. The Committee requested the secretariat to establish, by mid-June, a background note containing information on the drafting history of the relevant provisions of the Anti-Dumping Code with regard to the four topics to be discussed at the next meeting. The secretariat was further requested to circulate a document which would contain the information of the Analytical Inventory of Problems and Issues (COM.AD/W/68) on the eight priority issues listed above and also include references to the discussions held at the February and October 1977 meetings of the Committee (COM.AD/42 and COM.AD/46). The Committee finally invited its members to submit to the secretariat, for circulation to the Committee, a description of their national systems and practices and any concrete proposals or questions relating to the four topics to be discussed at the autumn meeting; delegations would endeavour to make their submissions by mid-June.

10. The representative of the United States stated that his delegation had prepared a paper on issue No. 8 in the list above (see Annex 2) on the lines with the paper mentioned in paragraph 1 above. He hoped that the sub-questions his delegation had subsumed under the issues contained in these two papers would be considered by the members of the Committee when preparing themselves for the discussions on the issues in question.

B. Anti-dumping practices of certain adherents to the Anti-Dumping Code

11. The representative of Japan recalled that at the previous meeting of the Committee his delegation had expressed its concern with the Gilmore case in the United States (c.f. COM.AD/46, paragraphs 50-73). Considering the importance of the case he had at that time suggested that the Committee be convened to an extra session in order to continue the discussions. The

Committee had also agreed that the iron and steel issues, including the Gilmore case, should be pursued on an appropriate occasion. He recalled that his delegation at the previous meeting had raised several important questions pertaining to the Gilmore case, such as regionality, proof of injury, sales at a loss and constructed value. Taking up the question of constructed value he appreciated that the United States had meanwhile made an improvement as regards the method of calculation. He pointed out, however, that other problems remained unsolved. Nevertheless, he refrained from raising these questions again in order to avoid a repetition of the arguments presented earlier. He wished however to emphasize that the Gilmore case had undergone major developments on two points since the previous meeting. Firstly, the United States had introduced its "trigger price mechanism" to be applied to steel imports, which had entailed a change in the situation of the steel industry of the United States. Secondly, the Treasury Department had determined on 9 January 1978 that there were sales at less than fair value and, consequently, the Gilmore case had now been referred to the International Trade Commission for its injury investigation. He underlined in this context that two factors should be taken fully into consideration in the injury investigation. First of all, it could in his view be expected that the dumping margin determined by the Treasury Department would cease to exist, since the trigger prices most likely would bring the import prices up at least to their level. Secondly, it could be expected, in his opinion, that the situation of the steel industries in the United States would be improved since the market prices would be stabilized by means of the trigger price mechanism.

12. The representative of the United States replied that the Gilmore case constituted the prelude to the more general recognition of the serious problems caused by the amounts of dumped steel on the world market. The Gilmore case was also one of the first major cases in the United States that concerned sales below the costs of production and it had confronted the authorities of the United States with the difficult administrative decision as to how to act when respondents declined to provide information requested in order to make the calculations required under the law. He recalled that the Japanese producers in question had contended that they did not have an obligation under the General Agreement and the Anti-Dumping Code to submit the type of information requested to the authorities of the United States, and that they were not obliged to provide it even to their own national authorities. In this situation, his authorities had been compelled to resort to other information available in order to carry out the necessary calculations as required by the law of the United States. He recalled that shortly before the October 1977 meeting of the Committee, a tentative determination based on secondary information had been made implying that there had been significant sales below costs of production and that the weighted average margins were in excess of 30 per cent. He agreed, however, with the Japanese representative that there had been major developments in the case since that time. Firstly, the Japanese respondents had at least partly changed their position in that they now recognized that it was in their interest to provide some of the data that had been requested. As a result, during the period before the final determination in January 1978 some information had been furnished by the Japanese companies in question

and one company had in fact furnished the cost of production information of the type requested and had also permitted the verification of these data by the United States customs agents. Secondly, the United States had introduced in the same period its trigger price mechanism. One of the elements of this mechanism was to determine the cost of production of carbon steel products by the industry that had the reputation of being the world's most efficient, i.e. the Japanese steel industry. The Japanese Ministry of Trade and Industry had at that time been asked by the United States Government for assistance in providing information of the costs for producing steel in Japan. The Ministry had been very co-operative and had provided aggregated data supplied by the six largest steel mills that were producing inter alia carbon steel plates and of which five had been respondents in the Gilmore case. It was essentially this information that had enabled his authorities to determine the production costs in a better way than had been the case in the tentative determination. It had, for instance, been established that there were some sales in the home market that had not been made at a loss and that the dumping margin in the other cases had ranged between 4 and 18 per cent. He concluded by saying that this case had proved that refusal of respondents to provide necessary information was unlikely to advance their own case, since the competent authorities were compelled in such cases to resort to secondary information as provided by Article 6(i) of the Code. He stated that firms in his country were told accordingly when they asked for advice whether or not to provide information to foreign governments in similar circumstances. Finally, he wanted to clarify that the Gilmore case

was not affected by the partly new procedures established under the trigger price mechanism, even if some information received for the composition of the trigger prices had been used. The normal statutory way of determining fair value had thus been followed.

13. The representative of Japan replied that the position of his delegation remained unchanged. He repeated that costs of production should not have been used in this case for price comparisons and that this was the reason why the Japanese firms had refused to supply the information requested. He intended to continue this discussion in connexion with the future deliberations concerning the list of priority issues, in particular under the item "sales at a loss".

14. The representative of Canada referred to the measures taken by the European Communities and the United States since the October 1977 meeting of the Committee for the purpose of accelerating anti-dumping investigations under their respective anti-dumping laws for certain steel products. The implementation of the basic price system by the European Communities and the trigger price mechanism by the United States had, in his view, introduced a new element in the international trading environment for these products. This new approach could have a serious impact on the future operation of the Anti-Dumping Code, particularly if restraint were not exercised. The spawning and proliferation of new anti-dumping methods that departed from established practices and complied neither with the spirit nor with intent of the Anti-Dumping Code, was in his opinion a matter of great concern to the Committee. Canada recognized the difficult situation facing the world steel industry and the obvious need for some countries to take corrective action. Dumping of steel on world markets was clearly one of the major elements contributing to that situation. The measures which were taken by

the European Communities and the United States would not have been necessary if the dumping had not taken place or if those producers who were dumping had acted in a more responsible manner both in terms of their sales and investment decisions taking into account the world supply and demand situation for steel products. He stated that Canada was most concerned about the turn of events which had taken place. While the trigger price mechanism and basic price system might not be technically contrary to the Code, he believed it fair to say that the Code did not in any way envisage the introduction of mechanisms of that kind as a means of facilitating anti-dumping investigations. Such developments, in a time of growing protectionist pressures, could in his view lead to a severe erosion or disregard for international trade rules generally. Moreover, he was sure that each signatory to the Code would, from time to time, be confronted with requests from domestic industries for measures analogous to those now in place for steel products.

15. The representative of Canada explained that the United States trigger price mechanism presented concerns for the Canadian authorities in spite of the fact that it had been put forward as an adjunct to the United States anti-dumping system. He underlined that, traditionally, the anti-dumping remedy had been applied on a selective basis to those countries or companies that had been involved in injurious dumping practices. The United States scheme departed from that accepted norm. The requirement that steel exporters selling below trigger price levels demonstrate that they were not dumping was in his opinion an important new element in the United States system and one which could lead to harassment of exporters who were not dumping. Canadian steel exporters were being subjected, as a consequence of the trigger price mechanism, to the new and onerous documentation requirements of the Special Summary Steel Invoice and, on request, to an additional investigatory process. He

stressed that unlike Article XIX actions, which applied to all sources on a non-discriminatory basis, the measures and procedures under the Anti-Dumping Code were designed to deal with particular complaints of dumping against imports from specified sources with supporting evidence of dumping and injury. In the Canadian view, the trigger price mechanism should be operated on the same ground rules. Moreover, the trigger price mechanism as presently constituted discriminated against nearby suppliers such as Canada, because of the inclusion of the sizeable freight component from Japan to the United States in the calculation of the trigger prices. He assumed that if the special customs steel task force should find it necessary to conduct a preliminary review of a Canadian exporter's selling prices in the United States market, a comparison would be made between the domestic prices and export prices for the purpose of determining whether there was evidence of dumping. He concluded in this connexion that both the Code and the United States Anti-Dumping Act stipulated that in determining the existence of dumping, a comparison should usually be made between selling prices in the domestic and export markets taking into account appropriate adjustments.

16. Referring to the European Communities basic price system for iron and steel products the representative of Canada stated that there were some elements of the system which were causing worry and might need further examination as to their compatibility with the Code as the system was put into force. It was his understanding that the threat of anti-dumping measures was a factor leading certain exporters to negotiate bilateral arrangements. It was in his view questionable whether this was an appropriate use of such measures. It appeared to him that differential treatment

would be accorded to those countries which entered into bilateral arrangements with the Communities in comparison to those who did not. The use of anti-dumping procedures in this manner was not, in the Canadian view, appropriate. For example, the European Communities had sought and obtained from at least one Canadian exporter an undertaking with respect to volume of shipments. He stressed that even if the Anti-Dumping Code did contain provisions for accepting voluntary price undertakings, commitments regarding volume were not provided for. There were other questions which in his view required clarification. The Communities had, for example, not made adjustments to reflect changes in exchange rates. Canada had also received no indication whether allowances were being made for different credit terms. In the administration of these measures no provision appeared to have been made for differences in quality. It had been proposed that the importer pay provisional anti-dumping duties and apply for a refund. He underlined, however, that the Code normally placed the burden of proof of dumping and injury on the complainant. The approach of the Communities shifted the onus to the importer/exporter to demonstrate that goods were not being injuriously dumped. Another aspect which in his opinion needed to be clarified was the relationship between basic prices, negotiated prices and the prices which the Communities were trying to maintain on its domestic market. Furthermore, the retroactive cancellation of import licences had led to undue costs and delays for Canadian steel exporters. Also the threat of provisional anti-dumping duties had discouraged some Canadian exporters from continuing to ship steel to the Communities.

17. The representative of Canada concluded by saying that the lack of clarity as regards the administration of both United States' and the Communities' measures had caused Canadian exporters a variety of problems. He urged the Communities and the United States' authorities to ensure that these measures did not result in undue restrictions against the legitimate trade interests of countries selling in their markets. He urged the members of the Committee to consider the direct and indirect ramifications of these systems. Their implementations had led to a marked disruption in the international market and had indirectly forced other countries to take concurrent and similar action. As a direct consequence of the institution of the trigger and basic price systems, the Government of Canada had in fact put in place a monitoring system and accelerated anti-dumping procedures for steel imports to ensure that steel displaced by these measures were not diverted to Canada at disruptive prices. He believed that all signatories to the Code would agree that the Anti-Dumping Code had brought a welcome international discipline to the use of the anti-dumping duties that all had an interest in maintaining. It was most important that the signatories to the Code administered their respective anti-dumping laws in a manner consistent with both the spirit and letter of the Anti-Dumping Code. In this regard, the members of this Committee should in his view keep in mind the statement in the preamble to the Code that declared that "anti-dumping practices should not constitute an unjustifiable impediment to international trade". It was the responsibility of the Committee to ensure that the integrity of the Code was maintained.

18. The representative of the European Communities agreed with Canada that there was a special situation in the steel sector characterized by extensive dumping on the world market, a situation for which almost all steel exporters were responsible. The steel industry of the importing countries, not least that of the Communities, was for that reason in an extremely serious state. The prices had been depressed to such a level in the Communities that almost all steel industries were making heavy losses. The decrease in employment in that sector varied between 50,000 to 100,000 persons. It was evident that such a special situation could not have been allowed to continue. It had to be prevented by special counter-measures. He agreed in this context with the representative of Canada that all major importers had had to take action after the new measures had been introduced by the United States. He pointed out that the trigger price mechanism of the United States had launched a wave of various anti-dumping measures, not only in the Communities but also in almost all major steel importing countries, such as Canada, Australia and Sweden. He was completely in agreement with Canada that in the situation that now had arisen, it was important to try to prevent that trigger or basic price systems spread to other product sectors. He underlined that such a development would be extremely dangerous for the international trade. Having said this, he wished to point out that the basic price system of the Communities was in conformity with Article 8(d) of the Code. The basic price system had been introduced in order to launch anti-dumping investigations and to shorten the time until provisional measures could be taken. He explained that anyone not satisfied with the decisions taken under the basic price

system could ask for a separate determination of dumping and of injury in each particular case. He stressed that steel producers exporting to the Communities, not least those in Canada, had reacted favourably to the introduction of the basic price system which in their view re-established a necessary order in the market. He recognized, however, that a number of particular problems might arise when the system was put into practice. He referred in this context to the problems concerning second qualities and burden of proof which had been mentioned by the representative of Canada. He assured that these problems were being studied with a view to arriving at a liberal solution. Referring to the particular question concerning the undertaking with respect to volume of shipments, he explained that the Canadian exporter had himself indicated that a technical distinction as regards second quality was too complicated and that the only solution was to agree on a certain quantity of second quality. He stated that the Code was in his view flexible as regards amicable settlements and that nothing in the Code prohibited a solution of the type reached with the Canadian exporter. He added that problems concerning credit terms and exchange rates had not been raised so far. In his view, solutions to such complicated problems must be arrived at that were practical even if some shortcomings could not be avoided as regards equity.

19. The representative of Japan referred to the trigger price mechanism introduced in the United States. He stated that the steel industries in all countries were facing great difficulties ensued from a world-wide imbalance between supply and demand. This situation had also led to an increasing number of petitions for anti-dumping measures. His authorities were very

much concerned with the fact that a proliferation of anti-dumping practices would impair the normal trade with iron and steel products. It was however his understanding that the trigger price mechanism had been introduced in order to withstand the accelerated recourse to anti-dumping practices. He welcomed the withdrawal of petitions filed by the United States Steel Corporation and the following termination of the cases by the Treasury Department. He emphasized, however, that the trigger price mechanism should be only temporary and of an emergency nature. It should consequently be maintained only to such an extent and for such a time as might be necessary in order to cope with the exceptional circumstances that the steel industries in the world faced at present. He was also of the view that the mechanisms should be operated in full compliance with the Code. He recalled in this context that Article 5(a) of the Code provided that "investigations shall normally be initiated upon a request on behalf of the industry affected, supported by evidence both of dumping and of injury". The initiation of an investigation on the initiative of the authorities concerned was according to that Article allowed only in special circumstances and on the condition that "they shall proceed only if they have evidence both on dumping and on injury resulting therefrom". He would like to be assured that the trigger price mechanism would be implemented in full compliance with Article 5(a) of the Code. He was also worried about the fact that one of the aims of the trigger price mechanism was to enable a tentative determination to be made "within a period substantially shorter than six months". In his opinion, this caused suspicion that investigations might be conducted in an arbitrary way. He would therefore like to be assured that dumping determinations would not be based upon an arbitrary and insufficient investigation and that an expedited investigation would not lead to the impairment of the interests of the parties concerned.

20. The representative of the United States replied that the trigger price mechanism was a device that his Government had adopted together with a number of other measures and programmes in order to help its industry to adapt to the prevailing conditions in the steel sector. He believed that the trigger price mechanism rightly understood would be recognized as the least disruptive, the least departing from the Code, the least inflationary measure to be resorted to under the prevailing circumstances and therefore the most beneficiary one for consumers as well as producers, exporters and importers in this area, provided that the principle was respected on which the Code was based, namely that injurious sales at less than normal value were not a fair trade practice. In the autumn of 1977 it had been established that imports of steel into the United States had risen dramatically, that unemployment in the steel industry had grown significantly, that price levels of imported steel products was markedly below the prices of the United States' steel industry and also below the price levels in other countries, and that there was an unprecedented number of anti-dumping complaints filed with the Treasury Department. In this situation it had been concluded that the existing anti-dumping procedures under the anti-dumping laws might not provide adequate and rapid remedies and that, consequently, other solutions had to be found. He assumed, however, that the trigger price mechanism, with its considerable allocation of resources for monitoring, information, collection and implementation purposes was not aimed at becoming a permanent instrument to deal with the problems in the steel sector, nor was it aimed at being used in other sectors. It was his hope that the trigger price mechanism could be limited to its present dimensions. Having said that, he wished to emphasize that the trigger price mechanism was not a minimum import price scheme. He underlined that all

rights of the parties concerned that had existed before were preserved under the mechanism. Consequently, there was no limitation for foreign exporters to sell steel to the United States at any price they chose. The United States industry maintained for their part the right to file anti-dumping complaints. The trigger price mechanism was only a means for the Treasury Department to identify imports that might be presumed to be at less than fair value. Since the Japanese steel industry taken as a whole was generally recognized as being the mose efficient in the world, the level of the trigger prices had been fixed as the sum of the costs of production in Japan and the costs of bringing the steel to the four principal importing regions of the United States. He underlined that if a foreign steel producer was able to sell at prices below the trigger price level in his home market and still cover his production costs, that producer was completely free to sell steel at such prices also in the United States. Referring to the comments made by the representative of Canada, he stated that his authorities had been explicitly asked by Canadian firms to send their experts to Canada in order to verify that these firms were able to produce at costs below trigger prices. He explained that such an investigation would be carried out shortly. If the Canadian firms were able to produce at costs below the trigger prices, it seemed to him, contrary to what had been alleged by the representative of Canada, that the relatively high trigger price levels in the area of the Great Lakes might favour Canadian steel industries; they could charge higher prices than were otherwise possible while being shielded to a certain extent from price competition because of the trigger prices, at the same time as they evidently could produce and deliver steel to that part of the United States at a profit while keeping those price levels. Referring to

the comments by the representative of Japan, he repeated that steel producers in the United States could continue filing anti-dumping petitions to the extent they felt needed. The steel industry had however indicated that it was pleased with the trigger price mechanism. The withdrawal of petitions as regards a variety of Japanese steel products by the United States Steel Corporation confirmed that. He underlined that the trigger price mechanism was aimed at shortening the time for anti-dumping investigations. He explained, however, that the mechanism had been in force only for a short time, since the date for the introduction of the Special Summary Steel Invoice had been postponed until 27 March 1978. No investigation had therefore been initiated so far under the trigger price mechanism. As regards the question of compliance with the Code, he stated that information on injury was obtained from the United States industry in monthly reports containing data on capacity utilization, employment, shipments, etc. i.e. information that indicated the extent to which the steel industry was recovering from the situation in 1977. Information was also assembled via the United States' diplomatic representations abroad on prices at which steel was sold and on costs for producing such steel in various countries. All this information was collected in a data bank in Washington to be resorted to in cases where no other evidence was made available by the producers in question, should an investigation be initiated. He also believed that this information as well as a gradually increased familiarity with the problems in the steel sector among the staff of the Treasury Department would make it possible to reduce the time for investigations from about thirteen months to perhaps six months without affecting negatively the equity of the decisions. He concluded by saying that the trigger price

mechanism was not aimed at reducing the imports from any country. A free market was being maintained for all who priced fairly. The trigger price mechanism had been introduced to support rather than destroy such a free market. He also believed that the trigger price mechanism was consistent in every detail with the provisions of the Code and he urged those countries which were contemplating to introduce systems similar to the trigger price mechanism to see to it that such systems were firmly based on the Code and that quantitative restraints were excluded.

21. Referring to the monthly reports on the situation of the United States' steel industry, the representative of Japan recalled that according to the Code an investigation should be initiated only when there was evidence of dumping and of injury resulting therefrom. He therefore stressed the need to establish whether injury had been created by the particular import in question.

22. The representative of the United States replied that the trigger price mechanism was not an automatic guillotine. A formal anti-dumping investigation was not initiated upon the mere receipt of an invoice indicating that a shipment had been made below the trigger price. He underlined that the invoice was first examined, inter alia, in order to find out whether the shipment in question constituted a part of a long-term contract within the framework of which future shipments could be expected. Other questions, such as the size of the margin, the quality of the product, the pattern of imports of the products in the past and the expected development in the future, were also looked into. After this examination it was considered whether the imports in question constituted a threat of injury as provided by Article 3 of the Code.

23. Referring to the basic price system of the European Communities the representative of Japan stated that on 18 January 1978 a dumping investigation had been initiated under the system on imports of hot rolled sheets and plates, inter alia, from Japan. Alleging that the exports in question had been made at prices below the basic price, the Communities had imposed provisional duties equivalent to the difference between the export price and the basic price. He explained that similar measures had also been introduced on Japanese sheet products such as steel coils for re-rolling, cold rolled steel and plates, galvanized sheets and plates, and angles, shapes and sections. In view of this, he expressed great concern of the introduction, and the operation, of the basic price system and explained that it had been creating an adverse effect on the exports of the Japanese steel industries. He feared that it would encourage a surge of protectionism in major developed countries. In addition, he saw a number of problems as regards the compliance of the basic price system with the requirements of the Anti-Dumping Code. Firstly, the grounds for the calculation of the basic prices were ambiguous. The European Communities had merely announced that the basic prices had been established on the basis of the lowest costs of production in the supplying country or countries where normal conditions of competition were prevailing, but they had given no concrete and explicit information as to how the basic prices to be applied to individual products had been calculated. He asked the European Communities to supply such information in accordance with Article 10(c) of the Code. The second question he wanted to raise concerned the level of the basic prices and the relation to the market prices in the

Communities. He said that out of approximately 140 products under the basic price system, there were forty-one products for which the basic prices were set above the levels of the corresponding market prices in the Communities (guide prices, minimum prices). Even if the imports of those forty-one products caused material injury or threat thereof, it was in his opinion sufficient in order to remedy the injury to impose an anti-dumping duty of the amount corresponding to the difference between the market price in the Communities and the price of the imported products. Accordingly, if an anti-dumping duty were imposed on any of the forty-one products by an amount equivalent to the difference between the basic price and the import price, that would constitute an excessive protection in contravention with the latter part of Article 8(a) of the Code. Taking up the third problem, he pointed out that Article 8(d) of the Code defined the basic price as the "basic price established for this purpose, not exceeding the lowest normal price in the supplying country or countries". The regulation in question of the Communities based the definition of the basic price upon the concept of "the lowest normal price or costs", thus deviating from the wording of Article 8(d) which referred only to the lowest normal price. Furthermore, the Commission of the European Communities had stated in the Official Journal No. L-353 that the basic prices had been "established by reference to the lowest normal costs". In his view, Article 8(d) excluded the possibility of an arbitrary calculation of basic prices. Therefore, the basic prices of the Communities were not justifiable under Article 8(d) of the Code. Passing on to a fourth problem, he stated that the aim of basic price system under Article 8(d) of the Code was only to

provide another way to impose anti-dumping duties. No one was in his view allowed to employ that system for determining the dumping margin which should be made after a careful examination in accordance with the relevant provisions of the Code. Information available to him indicated however that the Communities had dealt with the basic prices as if they were trigger prices for an initiation of an investigation. The Communities had also determined that there was dumping in those cases where the export price had been found to be below the basic price. In addition, the Communities had introduced the basic price system to simplify the procedures for determination of dumping and injury. To operate a basic price system in such a manner was not, in his view, consistent with Article 8(d) of the Code.

24. The representative of Japan pointed out that there were further questions in connexion with the basic price system of the European Communities. These questions referred to the initiation and conduct of investigations as well as to the imposition of anti-dumping duties. Referring to the decision of the Communities to impose provisional duties on inter alia hot-rolled sheets and plates from Japan, he explained that his authorities had not been duly informed of the reasons for the decision or the criteria applied as provided for in Article 10(c) of the Code. He requested the Communities to supply information on the grounds for the determination of dumping as well as on the evidence on injury that had been considered "sufficient". He added, that the Communities had decided to impose provisional duties simultaneously with the decision to initiate an anti-dumping investigation on the same products. Such a simultanity seemed to him to imply, if the rules of Article 5 of the Code had been followed, that some kind of preparatory investigation had been conducted prior to the

publicly announced decision to initiate an official investigation. However, if such a preparatory investigation had been carried out, it had not been known to the parties concerned, thus permitting no one to make any presentation for the defence of his interests. He added that it was normal after a notification of an initiation of an official investigation in accordance with Article 6(f) of the Code that the parties concerned were informed that a case had been opened. He therefore questioned whether the actions of the Communities had been in conformity with the spirit of the preamble of the Anti-Dumping Code which stated that "it is desirable to provide for equitable and open procedures as the basis for a full examination of dumping cases". Referring to Article 6(i) of the Code which provided for the possibility of applying provisional measures he believed that provisional duties should not be imposed simultaneously with the initiation of an investigation. He stressed that a proper investigation had to be conducted under Article 5 of the Code before provisional duties could be imposed in accordance with Article 10 of the Code.

25. The representative of the European Communities repeated that he shared the concern of others of the danger of a snowball effect of the basic price systems introduced. He underlined again that the steel industry all over the world was in a special situation, that there was widespread dumping in that sector, that in every major steel producing country the industry was being seriously injured by the dumping, and that this special situation had to be remedied by special countermeasures. He stressed that the basic prices according to Article 8(d) of the Code had to be based either on the normal prices or on the normal production costs in the exporting countries. Certain calculations were therefore needed. He regretted in this

context that no co-operation and no information had been supplied by Japan that could have assisted his authorities in making such calculations. In this situation his authorities had been obliged to carry out the calculations themselves on the basis of available information. He stated that the results of those calculations were by coincidence similar to the trigger prices in the United States where the authorities had got Japanese co-operation for their calculations. For this reason, he concluded that the calculations of his authorities would seem to be essentially correct. In addition he emphasized that the basic price system was only triggering off investigations during the course of which the calculations could be contested by the parties concerned. He added that the first investigation under the basic price system on imports of steel from Japan had been opened already in mid-January 1978 but that no such contestation had been received so far from the Japanese producers. He saw therefore no reason for the complaint on this point by the representative of Japan. Passing on to the question concerning the possible relation between the European prices and the basic prices he explained that the prices in Europe had been depressed during a long period of time and that they did not cover the production costs. The import prices had in consequence had to be brought up to a higher level than the prices prevailing in the European market in order to restore acceptable conditions. Referring to the question concerning the simultaneous opening of investigation and imposition of provisional duties he replied that there were two different stages of the procedures under the Code. There was first the opening of investigation and, secondly, the imposition of provisional measures. For each of those two measures, there were different conditions, as provided in Articles 5 and 10 of the Code.

He explained that there were, however, two different approaches among the signatories to the Code for dealing with these matters. Some opened formal investigations upon receipt of every complaint of dumping. Others, among them the European Communities, applied stringent criteria for the opening of investigations. He mentioned in this context that detailed and lengthy questionnaires had been elaborated which had to be filled in by the complainants and which constituted the basis of a decision to open a proceeding. He stated that it depended on which approach was taken whether there would be a short or a longer time between the opening of an investigation and the application of a provisional measure. When the United States announced its trigger price mechanism at the end of 1977, the industry of the European Communities requested similar action to be taken in their customs territory. His authorities had as a consequence investigated the situation as regards dumping and injury in this sector. After weeks of preliminary investigation and discussions with the industry, the basic price system had been introduced on 1 January 1978. All exporters were then given a chance to adapt to those basic prices and it was first on 18 January 1978, when it had been established that the basic prices had not been respected in some particular cases, that provisional duties had been imposed. He added that if the other approach would have been followed, fifty to sixty formal investigations would have had to be opened when the industry first approached his authorities in October and November 1977. His authorities had however preferred to carry out further preliminary investigations before initiating formal investigations. In doing so he believed that his authorities had acted in accordance with the spirit and the letter of the Code.

26. The representative of Japan asked for further clarification as to how the basic prices had been calculated. He asked in particular for information as to which countries had been subject to examination in this context, and which period and what products had been selected for that purpose.

27. The representative of the European Communities replied that the steel calculations had been carried out with the help of some eighty experts on production. The information used had been obtained from public studies and other public sources containing data on Japanese production costs of steel carried out by the United States industry, the United States Government, and by Japanese firms. Japanese figures had been used for most products. Other figures had only been used for products not made in Japan, e.g. pig-iron for which Canada and South Africa were the major producers. The results of the calculations had been somewhat lower than what had been arrived at in the United States. In view of this he found it odd that the Japanese authorities were not satisfied with the calculations of his authorities in particular since they had no objections to the calculations made in the United States.

28. The representative of Japan stated that he had got the impression that the European reference prices were based on production costs. He asked whether the reference prices were not normally fixed at such a level as to avoid sales at a loss on the European market. He asked also whether a basic price fixed above the level of the reference prices would not remove all threat of injury to the industry.

29. The representative of the European Communities replied that the level of the basic prices corresponded to the level of the lowest normal prices or the lowest normal production costs in the exporting countries, i.e. in most cases Japan. The European prices might in certain cases have been below these normal prices or costs as a result of the price depression that had taken place during the recent years due to dumped imports. He recalled however that the production costs in Europe were as a rule higher than those in Japan and that therefore the basic prices would normally be lower than production costs of European firms.

30. The representative of Japan recalled that according to Article 10 of the Code "provisional measures may be taken only when a preliminary decision had been taken that there is dumping and when there is sufficient evidence of injury". Before taking a provisional measure, an estimation of the dumping margin would consequently have had to be made. In doing such an estimation a price comparison would in his view be needed and for that purpose the cost of production criteria should be resorted to only in the last instance. Since the basic prices were based upon costs of production, they could in his view not be automatically used in the estimation of the dumping margin.

31. The representative of the European Communities replied that in establishing prima facie evidence for the opening of an investigation or for the imposition of provisional duties, there was a different situation when the exporters co-operated and when they chose not to do so. In the Japanese case such a co-operation had been refused. Consequently, a decision had to be taken on the basis of the facts available, i.e. inter alia published

studies on Japanese production costs. Referring to the allegation that a comparison should have been made with the Japanese home market price, he stated that the Code prescribed that a comparison should be made that was the most favourable to the exporters. Since the home market price in the normal course of trade had to be higher than the production costs, the latter could then be used for this purpose. Passing on to the basis to be established for the final determination in the Japanese case, he explained that questionnaires had been transmitted not only to the domestic industry, but also to the exporters concerned which had been asked to supply information on prices and production costs. However, no reply had been received so far from the exporters. If the exporters would insist in giving no information, the provisions of Article 6(i) would be applied, i.e. the final finding would be made on the basis of the facts available. Those facts would in his view probably be the basic prices and the calculations on the basis of which these prices had been established. He recalled, however, that the basic prices had been used so far only for the calculation of provisional duties.

C. Other business

(a) Liquidation of anti-dumping duties on TV receivers imported into the United States from Japan

32. The representative of Japan explained that the United States authorities had in March 1971 made a final determination to impose anti-dumping duties on various types of television receivers imported from Japan. The authorities concerned had however suspended the liquidation of the duties during a very long time, i.e. from January 1972 until March 1978. Japan had then been

notified that the duties would be liquidated on those receivers that had been imported from January 1972 to December 1973 and that anti-dumping duties would be imposed also for the time thereafter, however, with a grace period until the end of June 1978. He stressed that during the six-year period of suspension of the liquidation the Japanese firms involved were put in such a position of uncertainty that it was difficult for them to pursue their marketing activities in the United States since they had no knowledge of the size of the duties to be imposed and since those duties would affect the profitability of their export sales. It was evident to him that such a long period of suspension had constituted an unjustifiable impediment to international trade, not compatible with the spirit of the Anti-Dumping Code. In addition, he found that the way in which the duties had been liquidated gave rise to other questions in the light of the Code. He pointed out that the United States had adopted, in that context, a new method of calculating the dumping margin which differed from the one used in 1971. No Japanese exporter had however been given appropriate opportunity to express their views on the new method of calculation which they, in his view, were entitled to under Article 6(g) of the Code. Furthermore, the Code did not in his opinion permit any change in the method of calculation of the dumping margin between the final determination and the subsequent liquidation, with exception of the special procedures under Article 8(d) of the Code. He added that in the final calculation sales promotion expenses had been included in the domestic price while similar expenses had not been included in the export price. He believed that the calculation made on this point was not in accordance with Article 2(f) of the Code.

33. The representative of the United States considered that it was important that the members of the Committee would feel free to bring up matters that they believed merited the attention of the Committee. Having said this, he stated that it had been decided to discuss at this special meeting of the Committee only a limited number of agreed issues, which had been indicated in the airgram convening the meeting. He regretted that the Japanese delegation in this way and without prior indication had raised this particular issue for which his delegation had not briefed itself sufficiently nor brought the necessary files and background papers. He therefore limited himself to commenting upon a few points raised by the Japanese representative. The reason for the delay in collecting the anti-dumping duties in this case related to the problem of comparability of merchandise and of making price comparisons. This case concerned imports of a great variety of models from almost all Japanese television producers. The case was also one of the largest in the United States in terms of import volume. In order to make comparisons of the merchandise sold in the United States and Japan, a voluminous amount of data had to be produced and examined. He regretted that this procedure had taken such a long time, but underlined that it had been necessary in order to arrive at equitable conclusions. He added that there was in his opinion no obligation under the Code to follow previous methods of calculation if better means of comparison would be found after closer examination. If the Japanese exporter found that the final calculations were inaccurate there were under the United States law, possibilities of judicial review of the determination that they could avail

themselves of. He concluded by saying that the delay in the liquidation of the duties seemed to have had no effect in limiting the Japanese exports of television sets to the United States, which had increased substantially during the period in question.

34. The representatives of Japan and the United States agreed to pursue this matter further on a bilateral basis.

(b) Questionnaires used in anti-dumping investigations

35. The representative of the United States referred to the Australian questionnaire that had recently been circulated in document COM.AD/47. He urged those signatories to the Code who used such questionnaires to submit them to the secretariat for circulation to the members of the Committee. He invited in this connexion the European Communities to make available the questionnaire that had been referred to in paragraph 25 above.

36. The Chairman pointed out in this connexion that the members of the Committee were under permanent instruction to submit questionnaires used in price investigations abroad (c.f. COM.AD/19, paragraph 84).

ANNEX 1

UNITED STATES DELEGATION

PAPER ON SUBJECTS FOR DISCUSSION

(Anti-Dumping Committee Meeting, April 3-4, 1978)

I. Principal issues for discussion should be those as to which the most delegates agreed in Paper COM.AD/W/75 (12 January 1978).

A. Sales at a loss. (5 delegations: Australia, EC, Japan, Sweden, U.S.)

2 problems: how does one determine
what does one do.

1. In determining whether there are sales at a loss:
   a. what are the elements of "cost"?
   b. how does one allocate fixed costs to units of production in periods of slack demand?
   c. how does one deal with differences between countries in financing companies?
   d. acceptability of local accounting standards on issues such as inventory valuation, allocation of overhead.

2. In determining what one does:
   a. as code speaks of "sales in ordinary course of trade," in what cases are sales at a loss not to be disregarded;

b. what amount of sales not at a loss suffice to establish a viable home market (or third country market) for purposes of comparison;

c. is more than a single "normal" value for a period of investigation appropriate if during the period sales at a loss were concentrated in a particular segment.

B. Allowances relating to price comparability (4 delegations: Austria, EC, Sweden, U.S.)

1. Selection of most comparable merchandise:

a. physical characteristics, use, value or other criteria;

b. bases for determining no comparable merchandise exists.

2. Quantifying adjustments:

a. are adjustments based on costs, prices or market values;

b. if "costs" are used, d they relate solely to direct labor and material or include overhead and profit;

c. if "market value" is used, which market, how is it measured.

3. Circumstances of sale/level of trade adjustments:

a. must "circumstances" be "directly related" to the merchandise sold (e.g. warranty, credit terms and selling expenses);

b. are functional discounts for different levels of trade to be cost justified;

c. methods and burdens of proof for claims to adjustments.

4. Quantity discounts:

a. must they be cost justified;

b. methods and burdens of proof.

C. Price undertakings (5 delegations: Australia, EC, Japan, Sweden, U.S.)

1. Policy behind price undertakings:

a. remedial approach vs. "no free bite";

b. antitrust constraints;

c. logic of acceptance assurances when small margins exist due to lack of precision.

2. Timing of undertakings.

3. Monitoring of undertakings:

a. type and frequency of information to be provided;

b. consequences of violations.

D. Initiation of investigations (2 delegations: Sweden, United States)

1. Adequacy of petitions from the affected industry of the importing country:

a. price and cost information to be furnished;

b. injury allegations;

c. representativeness of the petitioner (labor unions, regional industries, political representatives, suppliers to or customers of foreign exporters).

2. Criteria for self initiation:

a. what are "special circumstances";

b. data collection procedures appropriate to enable self-initiation.

ANNEX 2

UNITED STATES DELEGATION

PAPER ON SUBJECTS FOR DISCUSSION

(Anti-Dumping Committee Meeting, April 3-4, 1978)

EXPLANATION AND RECONSIDERATION OF ANTIDUMPING DECISION

A. Explanation

1. Requirement of publication of decisions.

2. Nature of explanation:

(a) extent to which specific issues and resolution of each needs to be set forth;

(b) problem of confidential business information

(i) need to avoid disclosure of confidential data, balanced against (ii) need to provide interested parties with basic understanding of nature and scope of determination.

B. Reconsideration

1. Amendment of decisions:

(a) correction of mistakes or supplying of additional data within short time after decision:

(i) need to insure clarity and basic equity of decisions,

(ii) need to limit amendment process to insure certainty.

2. Review and Revocation of Decisions:

(a) Dumping:

(i) whether minimum time requirements before reconsideration are appropriate,

(ii) extent to which review and revocation process needs to parallel initial investigation in both procedure and substance,

(iii) whether dumping findings should lapse automatically, whether review for purposes of revocation be automatic, or whether it should occur only upon application of interested importers or exporters.

(iv) nature of assurances appropriate.

(b) Injury:

(i) whether minimum time requirements before reconsideration are appropriate,

(ii) difficulties in judging injury questions when dumping duties in effect and, by definition, no injury by virtue of dumping can exist.