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COMMITTEE ON ANTI-DUMPING PRACTICES

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Chairman: Mr. M. Lemmel (Sweden)

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A. Examination of reports submitted under Article 16 of the Anti-Dumping Code

(a) General

1. The representative of the United States stated that there were a number of additional facts that could with advantage be included in the Article 16 reports. Some facts already included therein would also be better presented if reorganized. He suggested that the number of cases under each heading be spelled out, that the estimated volume of trade affected in each case be indicated, that the cases be listed in a systematic manner, e.g. in an alphabetical or a chronological order, and that the name and address of the authority be spelled out where the official determination could be found. In his view, consideration should also be given to the question whether the reports should be submitted more frequently than once a year.

2. The representative of the European Communities agreed that efforts should be made to reach a greater transparency as to how anti-dumping practices were implemented in various countries. He found the proposals of the United States interesting in this regard. In addition thereto, he suggested that a summary justification of the dumping and injury findings in each case be added in the reports.
3. The representative of Canada recalled that the parties involved in each case were fully informed about the facts and questions under consideration. He pointed to the risk of establishing too voluminous reports. Even if improvements could be made in the reports he warned for going too far in this regard. In view of this, he wanted to reflect on the proposals made. He stressed, however, that the rôle of the Committee was to examine whether the provisions of the Code had been respected or not rather than to assess possible trade impacts of anti-dumping actions. This should be kept in mind when amendments of the reports were discussed.
4. The representative of Australia found the proposals to improve the reports valuable. Australia would for example be interested in having information about the proportion of the market under threat. He agreed however with Canada that further reflexion and discussion was needed before a new format for the reports was decided on.
5. The representative of Japan was also of the view that an improvement of the reports would be valuable. How this should be done needed, however, careful consideration.
6. The Committee decided that the question of the form and content of the reports under Article 16 of the Code be discussed further as a separate agenda item at the next meeting of the Committee.

(b) Australia (COM.AD/49)

7. The representative of the United States referred to the cases reported as terminated in paragraph 4(c) of the Australian report and asked for the reasons why so many cases had been terminated without any action taken.

8. The representative of Australia replied that two of the sixteen cases concerned had been terminated after the complaint had been withdrawn. In four cases, the alleged normal price in the country of export had not been substantiated. In four other cases, it had not been sustained that the dumping in question had been the principal cause of injury. Six cases had been terminated for other reasons, e.g. the domestic production had ceased, the dumping margin had been eliminated through the recent devaluation of the Australian currency, an agreement had been reached between the exporter and the complainant to settle the dispute.

9. The representative of Austria asked for the reason why the case concerning cheese (edam and gouda) was reported as still pending at the end of the reporting period.

10. The representative of Australia replied that it had been established that cheese was dumped on the Australian market by exporters in various countries. There was also no doubt that a part of the Australian producers had been injured thereby. The difficulty in this case was, however, to determine the injury suffered by the domestic industry as a whole.

11. The representative of Austria stated that it was desirable that this case be terminated as soon as possible.

(c) European Communities (COM.AD/49)

12. The representative of the United States noted the significant increase in investigations opened by the European Communities. Referring to heading 4(c) of the report he asked for clarification of the concept "cases concluded by price undertakings or similar solutions".

13. The representative of the European Communities replied that firms sometimes declined to sign a formal price undertaking but nevertheless increased their prices to a sufficient level or decreased significantly the quantities of their exports. This happened rather often, in particular when firms from State-trading countries were involved. In such cases, there was no reason to continue the investigation and the cases were reported under the heading referred to by the representative of the United States.

14. The representative of Canada stated that the measures introduced by the European Communities on steel at the beginning of the year did not appear to function in the way intended. It seemed difficult for the competent authorities to maintain a proper price discipline in the customs territory of the Communities. It seemed also apparent that accommodation had been found for the problems of certain suppliers but not for the problems of others. As a result, external suppliers of steel had been discouraged from competing in the market of the Communities. He urged the authorities of the Communities to ensure that the measures introduced on steel did not unduly restrict or counteract legitimate trade interest of traditional exporters to the Communities.

15. The representative of the European Communities agreed with the representative of Canada that the price discipline in the Communities had had certain shortcomings. While admitting that the task of maintaining such a discipline was extremely difficult to fulfil, he emphasized that this task was considered by his authorities as of fundamental importance. Consequently, his authorities did their utmost to get the domestic producers and sellers to respect such a discipline. He added that no anti-dumping duties had been introduced on steel imported from Canada under the new régime and that the problems of the Canadian exporters had evidently been accommodated in a reasonable way.

(d) Japan (COM.AD/49)

16. The representative of the United States pointed out that the reports to be submitted under Article 16 of the Code should not, in accordance with the guidelines agreed upon (COM.AD/9, paragraphs 51-54) be limited to state whether anti-dumping duties had been assessed definitively or not.

17. The representative of Japan explained that no investigation had been opened nor had any provisional or final action been taken during the reporting period.

18. The Chairman recalled that the same question seemed to have been raised also at the previous annual meeting of the Committee (COM.AD/46, paragraphs 82-83). He asked whether it would be possible for Japan to consider making its report more clear in the future in order to avoid a repetition of the discussion on this point.

19. The representative of Japan agreed that this should be done.

(e) Norway (COM.AD/49)

20. The representative of the European Communities asked for clarification what case was referred to in the Norwegian report.

21. The representative of Norway replied that the case referred to imports of steel from Spain.

(f) Canada (COM.AD/49/Add.1)

22. Updating the report of his country, the representative of Canada stated that the Department of National Revenue had since 1 July 1978 initiated formal anti-dumping investigations against allegedly dumped imports of asbestos cement pipe, bronze or brass valves, radioactive diagnostic reagents and polyethylene resin. Preliminary determinations of dumping involving the imposition of provisional duties had been made on imports of

stainless steel pipe fittings, refined glycerine, and integral induction motors. Two cases had been terminated after 1 July 1978. The case concerning metal utility shelving had been terminated by the Department of National Revenue on the grounds that there was no evidence that the dumped goods were causing or threatening to cause material injury. In the case concerning steel wire rope, the Anti-Dumping Tribunal had found that the dumping in question had not been the cause of the difficulties encountered by the domestic producers. The Tribunal had, however, found that the dumping of artificial graphite electrodes had caused or was likely to cause material injury and, as a consequence, definitive anti-dumping duties had been imposed. The Tribunal had re-examined and rescinded its previous findings concerning electrical can openers, vinyl-coated fibreglass insect screening and disposable glass culture tubes. In addition, the Tribunal was conducting a formal review of its findings concerning current high voltage circuit breakers.

23. Referring to heading 6(a) of the Canadian report, the representative of the United States said that in presenting the final determinations in some cases involving several countries it had been indicated that no anti-dumping duties had been imposed on goods from some of these countries. He asked for a clarification on this point.

24. The representative of Canada replied that the imports from the countries excluded from the imposition of anti-dumping duties had been found not causing injury to the Canadian industry.

25. The representative of the United States asked for clarification why the Canadian authorities in certain cases preferred to open investigations with regard to certain companies only instead of doing so with regard to the entire country exporting the goods in question.

26. The representative of Canada replied that his authorities initiated investigations vis-à-vis companies instead of countries in cases where out of a number of suppliers only one or a few were suspected of dumping.

27. Referring to a case concerning stainless steel pipe and tubing, the representative of the European Communities pointed out that the British firm involved, the British Steel Corporation, had been included in the investigation in spite of the fact that it had ceased to manufacture such products a long time ago. In addition, the Canadian authorities did not seem to have given a justification of the investigation to the British authorities in spite of the fact that the latter had requested such information. Thirdly, he alleged that the rules of the Code, which stated that on-the-spot investigations abroad could only be carried out after the suppliers in question had given their consent and the government in the supplying country had been notified thereof and had made no objection thereto, had not been complied with.

28. The representative of Canada replied that numerous contacts had been made with representatives of the United Kingdom which were fully aware of all details in this case. All information that was not confidential had been disclosed. Furthermore, before the investigation had been made in the United Kingdom, the British High Commissioner in Ottawa had been notified. He found therefore that the provisions of the Code had been fully complied with.

29. The representative of the United States stated that notices in Canada concerning the initiation of investigations were normally not very explicit as regards the facts that were considered material in each particular case.

(g) United States (COM.AD/49/Add.1)

30. Referring to a case concerning sugar, the representative of the European Communities stated that the petitioner in question was the Florida Sugar Marketing and Terminal Association. He asked which approximate proportion of the United States sugar production this Association represented. He asked also whether this proportion in the opinion of the United States authorities constituted a major part of the United States production of sugar as prescribed by Article 5 of the Code for the admissibility of a complaint.

31. The representative of the United States said that the decision in the sugar case had been made after the termination of the reporting period. He was therefore only in a position to make some general comments. He recalled that when the Secretary of Treasury received evidence of sales at less than fair value, he was required to state if he had "substantial doubt" of the existence of injury resulting from such sales. In the sugar case, such doubt had been expressed and the matter had been referred to the International Trade Commission for its determination to be made within thirty days whether there were any reasonable indication of injury resulting from the sales in question. He pointed out that the European exporters could have submitted evidence during the proceedings of the Commission, which had been notified to the parties involved and which were open to the public. However, no representative of the European exporters had attended the proceedings. The result had therefore been a default finding. In view inter alia of the significant margins of dumping found and in view of the fact that a previously initiated countervailing duty investigation might not be sufficient to deter the imports of the sugar in question, the International Trade Commission had not been able to determine that there was no reasonable indication of

injury. Because of this, the case had not been terminated at that juncture. The case would therefore proceed through its normal course and if dumping margins would be found in the final dumping determination, the case would once more be referred to the International Trade Commission for a full injury investigation, which would constitute a new possibility for the parties involved to supply evidence. He added that the United States market for sugar could by no means be regarded as a single one due to the regional marketing orders promulgated by the Department of Agriculture. The regional producers, in the case, i.e. the South East Sugar Producers, on behalf of which the petition had been made, supplied 85 per cent of the consumption in the area and the imports in question represented 6 per cent of such sales.

32. The representative of the European Communities pointed out that a decision to initiate an investigation had to be made ex officio, based on the criteria prescribed in Article 5 of the Code. An investigation could not be initiated merely on the grounds that respondents had not supplied evidence of no dumping. As to the particular question of regionality, he asked whether the requirements of Article 4(a)(ii) had been met. He questioned in particular whether there was a sufficient market isolation for the South East Sugar Producers.

33. The representative of the United States recalled that in the United States the authority to determine whether there was a sufficient indication of injury in order to initiate a full-scale investigation was delegated to the International Trade Commission. In this case, the Commission had found evidence of significant dumping margins which had led to a rapid growth in imports entailing a substantial price depression. The imports of sugar into the area in question had increased from 50,000 to 75,000 short tons from the period January-July 1977 to the same period in 1978. It had also been found that 200,000 short tons of sugar were available for export to this area. These

were factors that in his view met the so-called "reasonable indication test". As regards the question of regionality, he stated that the marketing of sugar in the United States was extensively controlled by the Department of Agriculture and that therefore the regional marketing orders in question had had to be taken into account both by the Treasury Department and by the International Trade Commission. He added that the Florida Sugar Marketing and Terminal Association represented the industry of the area in question and was therefore fully entitled to file a petition on behalf of the individual producers.

34. Noting that the sugar case was subject both to anti-dumping and countervailing proceedings, the representative of Canada asked how this fact complied with Article VI:5 of the General Agreement.

35. The Representative of the United States stated that it had been found that exports of sugar had been heavily subsidized by the European Communities. As a consequence, a countervailing investigation had been initiated leading to a final determination that a countervailing duty would be imposed. It had however subsequently been found that not all sugar exported from the Communities was being subsidized. There were three separate quotas, of which only two benefited from subsidies. Since it could not be excluded that the imports of sugar referred to in the complaint might come from the third, unsubsidized quota, an anti-dumping proceeding might be the only way to offset the injury occurred. It could also be possible that the margin of price discrimination exceeded the amount of subsidy, in which case an anti-dumping duty would be the better remedy. The question whether anti-dumping or countervailing duties would finally be imposed depended therefore on factors such as the amount of the countervailing duty, the manner in which the particular subsidies were granted and the size of the price discrimination.

36. The representative of Japan stated that before an investigation was initiated a request should have been made on behalf of the domestic producers as a whole of the like products or of those producers whose collective output of the products in question constituted a major proportion of the domestic production as prescribed by Article 4(a) of the Code. He recalled that this question had been raised also in the Gilmore case (COM.AD/46, paragraphs 50-73, COM.AD/48, paragraphs 12-14). He noted that the United States neither at that occasion nor in this case was in a position to give a satisfactory explanation as to how this question had been considered.

37. The representative of the United States pointed out that the International Trade Commission had taken the national industry as a whole into account when considering whether the import of carbon steel plate from Japan had caused injury. Even if the petitioner in the Gilmore case had represented steel producers in the north-western part of the United States, the carbon steel plate from Japan had been imported into all parts of the United States market. He pointed out that a petitioner needed not to be a principal producer of the product in question, but he had in his petition to present the case taking into account the domestic industry as a whole.

38. The representative of the European Communities referred to the case concerning staple fibres from, inter alia, Belgium. He stated that according to the injury determination of the International Trade Commission, imports from Belgium of rayon staple fibres had decreased substantially during the period of investigation. Those imports had amounted to 6.5 million pounds in 1973-1976. In 1978, they amounted to 1.4 million pounds. In 1977, the imports from Belgium had constituted 1.4 per cent of the total United States consumption and in the first quarter of 1976 they constituted 1.1 per cent of

that consumption. According to the determination of the International Trade Commission there had been a drop in the consumption of rayon staple fibres in the United States. There had also been a severe price competition in the United States market between the domestic producers as a result inter alia of problems relating to product quality. He noted, however, that the question of causality between the imports from Belgium and the injury caused to the domestic industry had not been mentioned in the injury determination. He found this noteworthy, since it was self-evident from the above-mentioned figures that injury could not have been caused by the imports from the Belgian firm.

39. The representative of the United States stated that this case too had been decided after the termination of the reporting period and that, therefore, his replies would have to be of a summary nature. He pointed out that the dumping margins found were as high as 57.6 per cent and that even small volumes of sales could in such circumstances cause injury. A variety of factors had been taken into account in the injury determination, including lost sales to the Belgian exporter and substantial excess capacity of that exporter to enlarge sales.

40. The representative of Japan stated that if a firm in the United States filed a complaint in respect of a product constituting only a part of a tariff item in the TSUS, the Treasury Department initiated an investigation concerning all products falling under the particular tariff item. He said that Japan had experienced this in the recent cases concerning nylon yarn and steel wire. He questioned whether extensions of investigations in such a way was in conformity with paragraph 5(a) of the Code.

41. The representative of the United States replied that his authorities were required in connexion with the initiation of an investigation to describe as exactly as possible the "class or kind" of the product referred to in a complaint. An indication was also made of the tariff item number of the product in question. This did not mean, however, that other products falling under the same tariff item number but not being covered by the description of the "class and kind" would be subject to investigation. He concluded therefore that the question raised by Japan was due to a misunderstanding.

(h) Other reports

42. The Committee noted that no reports had been received from Greece, Malta<sup>1</sup> and Yugoslavia.

B. Examination of national legislations

(a) Portugal (Anti-Dumping Legislation 1977, pages 140-151)

43. The representative of the United States asked where anti-dumping decisions and reasons for such decisions were published in Portugal.

44. The representative of Portugal replied that when an anti-dumping investigation was opened or when a provisional action was taken a notice thereof was published in the Official Gazette. When final anti-dumping duties were imposed, a decree had to be issued which was also published in the Official Gazette. He added that professional organizations usually and on their own initiative gave publicity to decisions once they had been published in the Official Gazette.

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<sup>1</sup>A report from Malta was subsequently received on 6 November 1978 and circulated in document COM.AD/49/Add.3.

45. The representative of the European Communities stressed the importance that a justification of anti-dumping actions were made public, in Portugal as well as in other countries. This was necessary in order to safeguard a reasonable security of justice.

46. The representative of the United States pointed out that Article 12:1 of the Implementing Decree No. 38/77 did not require that the reasons for decisions to initiate investigations should be published. Furthermore, there did not seem to be any provision obliging the Portuguese authorities to explain actions, once an investigation had been initiated. He hoped, however, that Portuguese anti-dumping determinations would contain, for transparency reasons, a description inter alia as to how anti-dumping duties had been calculated and which degree of injury had been found, even if such descriptions were not at present required by Portugal's anti-dumping legislation.

47. The representative of Portugal replied that Article 12:3 of the Implementary Decree No. 38/77 prescribed that an "opportunity may be given to the parties concerned to familiarize themselves with the information and evidence obtained in the course of the investigation".

48. The representative of the United States, supported by the European Communities, underlined that information should not only be given to the parties involved but also to the public, so that transparency would be obtained.

49. The representative of Portugal recalled that his authorities had not yet applied the Portuguese anti-dumping legislation. This legislation was in his view fully in conformity with the Code and he was sure that the application thereof would be sufficiently transparent.

(b) Poland (Anti-Dumping Legislation 1977, page 133)

50. The representative of Poland stated that there was no specific anti-dumping legislation in Poland at present. If a specific legislation would be issued in the future, such a legislation would be based upon the provisions of the Code. The competent authority for the conduct of customs policy in Poland was the Ministry for Foreign Trade and Shipping. He stated that anti-dumping proceedings were considered in Poland as administrative proceedings. Thus, any anti-dumping action in Poland would be conducted in accordance with the Polish Code of administrative procedures, published in the Journal of Law, No. 30 of 1960, under item 168. He recalled, however, that up to date no anti-dumping actions had been taken in Poland. The probability that the Polish authorities would initiate any anti-dumping action was at present remote.

51. The representative of Canada asked whether or not there existed any form of anti-dumping legislation in Poland based on the Code.

52. The representative of Poland replied that when Poland acceded to the Anti-Dumping Code, the provisions of the Code became automatically a part of Polish legislation. His Government did not, however, feel a need for issuing specific anti-dumping regulations at present.

53. The representative of the United States said that the way in which the provisions of the Code had been incorporated in Polish national legislation was an illustration of the more general issue of adherence of State-trading countries to codes of the same nature as the Anti-Dumping Code. He recalled that all imports into countries with the same economic and social system as Poland were controlled by governmental organs and that it would therefore hardly ever be a need for such countries to use the anti-dumping remedy.

Polish importers would rather try to get products as cheaply as possible, once they had decided to buy them, and would thereby disregard the question whether the home market prices were higher. If an investigation was made, it would in his view instead tend to find out whether home market prices were lower, rather than higher than the export price. He wanted to call this matter to the attention of the other members of the Committee, since other codes were at present negotiated in the multilateral trade negotiations and since the question of the adherence of State-trading countries to these codes were of great concern to his authorities. He would not exclude that there was a place for such countries in the codes. He gave in this connexion an example by referring to Article 12 of the Anti-Dumping Code. He questioned, however, whether attention should not be given in the future to the question whether State-trading countries were in general proper parties to such kinds of agreements.

54. The representative of Poland stated that Poland as a contracting party was not deprived of any rights under the General Agreement. Poland was consequently entitled to accede to any code negotiated in the GATT.

(c) United States (L/4596, L/4628 and Add.1-2)

55. Referring to document L/4628 the representative of the United States stated that the proposed regulation on additional requirements for anti-dumping petitions had not been put into effect. Most of the additional information requested in this proposed rule, which concerned particulars on injury, was normally supplied by petitioners anyway. If such data were not submitted and if there was "substantial doubt" of the existence of injury, the case was anyhow referred to the International Trade Commission which looked into the matter. There were no plans at present to put the proposed rule into effect, neither had it, however, been formally withdrawn.

56. Referring to the regulation concerning merchandise from State-controlled economies the representative of the European Communities stated that interpretative note 2 to Article VI:1 of the General Agreement contained a very clear definition of what was meant by the term State-trading countries. He asked for confirmation whether or not exports from State-owned firms in market-economy countries could be subjected to the new legislation.

57. The representative of the United States recalled that the question of State trading was addressed in Section 205(c) of the United States Anti-Dumping Act, where it in his view was clear that State trading referred to a country as a whole. The new regulation reproduced in L/4628/Add.2 made clear, in its introductory part, that the rules referred to countries and not to individual firms that might be State-owned in otherwise free market economies. The practice had also been in the administration of the United States anti-dumping legislation to apply the rules on State trading to countries, the economy of which could as a whole be regarded as State controlled. He would not exclude, however, that in particular circumstances firms in otherwise State-controlled economies might be permitted to conduct business under sufficient liberal circumstances and would therefore not be subjected to the legislation under discussion. On the other hand, there could also be cases where a part of the economy of a country was State controlled to such an extent that the sales in question did not permit a determination of the normal value in accordance with the general criteria, while a free market system was prevailing in other parts of that economy. The administration of the legislation concerning State-controlled economies would therefore have to be carried out on a case-by-case basis. Normally, however, a State-owned firm in market economy countries would not be subjected to that legislation.

58. The representative of the European Communities pointed out that the GATT anti-dumping rules on State trading were clear and unambiguous.

59. The representative of Czechoslovakia said that the interpretative note 2 to Article VI:1 of the General Agreement, which had originally been drafted on the initiative of Czechoslovakia, was a result of a compromise that had been justified at that time by the lack of experience in the dealing with the question of State trading in the anti-dumping area. He pointed out that the text of the note only stated that a strict comparison with the domestic prices might not be appropriate, when special difficulties existed in determining price comparability due to a State monopoly of the trade of a country. The text did not state, however, with what kind of prices the export prices should be compared in such cases. The answer to that question had consequently been left to each contracting party to decide. Since there were no internationally agreed rules in this area, the representative of Czechoslovakia did not feel entitled to make any judgement of the United States regulations on State-controlled economies. Therefore, he limited himself to making some remarks. He could accept comparisons with prices of third countries as provided for in paragraph (a) of Section 153.7. He could also accept the use of a constructed value. He welcomed that allowances should be made for the level of economic development and that due account should be taken of the relative comparative advantage, as provided for in paragraphs (b) and (c) of Section 153.7. He had, however, serious doubts as regards the use of domestic United States prices, as foreseen in paragraph (b) 3 of Section 153.7, even if such a comparison should be made only in the absence of any other possibility. This provision was in his view to a certain extent similar to the American Selling Price in the field of customs valuation and he was afraid it might be misused in such a way

that all imports at prices below the United States domestic prices were regarded as dumped. He considered that the provision was contrary to the philosophy of free trade, because in most cases the main reason for imports was in fact the lower price of the imported merchandise. He found therefore that at least some penetration margin should be allowed for by the United States authorities.

60. The representative of the United States agreed that the level of domestic prices were in general not an appropriate measure to determine the existence of dumping. A standard for the determination of normal value ought to be sought outside the importing country. This consideration was in fact the reason why his authorities had reviewed this regulation. He underlined, however, that the national authorities must always be able to resort to some basis of evaluation in cases where the ordinary means of comparison were precluded or not available. It was the intention that domestic United States prices would only be used if other price or cost information could not be verified.

61. Even if he shared the doubts of Czechoslovakia, the representative of Poland felt that the new regulation concerning merchandise from State-controlled economies constituted a step in the right direction to bridge the gap between countries with different economic and social systems.

62. Referring to Section 153.52 of the United States Anti-Dumping Regulations, the representative of Japan stated that conversion of foreign currencies for determinations of differences between the exporter's sales price and the fair value was usually made at the date of the shipment of a product. In his view, the rate of exchange should instead be calculated on the basis of the date of the export contract in cases of transactions between non-related persons.

63. The representative of the United States replied that the problem raised by Japan related to transactions between related parties. Such transactions did not provide a reliable basis for the calculation of sales values for anti-dumping purposes. Since transactions between related parties could be fixed in a way suitable to these parties, the date of the contract could not be used for the selection of appropriate exchange rates. Consequently, in such cases the date of shipment was preferred, since that date was easier to verify.

C. Adherence of further countries to the Code

64. The Chairman informed the Committee that following requests from a number of countries, South Africa had tabled on 23 May 1978 an offer within the framework of the multilateral trade negotiations to adhere to the Code.

D. Examination of anti-dumping questionnaires

65. Referring to the Australian questionnaire reproduced in COM.AD/47, the representative of Australia pointed out that this questionnaire was not intended for price investigations abroad. It was a questionnaire for use in the domestic market for the determination whether there was a prima facie case of dumping. His authorities had examined the possibility of establishing also a standard questionnaire for price investigations abroad, but had found this unfeasible due to the diversity of information which was required in each particular case and which varied from country to country. He hoped that other signatories to the Code would submit to the secretariat, for circulation to the members of the Committee, all kinds of questionnaires that were used for anti-dumping purposes and he was eager to hear from others experience gained from the use of such questionnaires.

66. The Chairman recalled that the Committee at its 1971 meeting had decided that its members should notify changes in their practices and questionnaires in price investigations abroad (COM.AD/19, paragraph 84).

67. The representative of the United States said that his authorities had prepared questionnaires which to some extent had been modelled upon the Australian questionnaire. These questionnaires would be submitted for circulation shortly<sup>1</sup>. He agreed with the representative of Australia that the members of the Committee should circulate all questionnaires used in anti-dumping investigations, not only those used in price investigations abroad. Referring to COM.AD/47, he asked why the Australian authorities believed it necessary to obtain unit cost of production information. He would also like to know the experiences of the Australian authorities in getting such information which was very difficult to persuade United States enterprises to disclose since it was usually deemed by those firms that such data was irrelevant for establishing whether dumping or injury existed.

68. The representative of Australia replied that the reason to ask for cost of production data was to check the amount of profit and the degree of injury. The industry had not hesitated to supply such information, evidently due to the strict rules of the Australian authorities concerning confidentiality.

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<sup>1</sup>The questionnaires were subsequently circulated in COM.AD/50.

69. Referring to the penultimate paragraph of page 2 of document COM.AD/47, the representative of the United States asked whether companies had been reluctant to complete questionnaires when they had not been a party to a complaint. He also asked whether petitioners would have to review a complaint with the major part of the industry before a complaint was filed.

70. The representative of Australia replied that in most cases the major part of the industry had not hesitated to join a complaint due to the strict rules of confidentiality. In those cases where the major part of the industry had declined to join a complaint, the latter had usually not been admitted.

E. Issues in the anti-dumping field

71. As agreed at its previous meeting (COM.AD/48, paragraph 10), the Committee initiated a discussion of four of the issues that were to be examined on priority basis, namely "sales at a loss", "allowances relating to price comparability", "regional protection", and "price undertakings". The Committee took note of the documentation that had been circulated as a basis for the discussion under this item of the agenda (COM.AD/W/79, COM.AD/W/80 and COM.AD/W/81 and Add.1-2). It was agreed that these four priority issues needed further examination and would be discussed at a special meeting to be convened by the Chairman in consultation with members of the Committee. It was decided that the two priority issues concerning "initiation and reopening of investigations" and "explanation and reconsideration of decisions" should also be examined at that special meeting. The Committee invited its members to submit by 1 December 1978 a description of their national systems and practices and any concrete proposals or

questions relating to these two priority issues. It was agreed that the discussion of the two remaining priority issues concerning "definition of material injury" and "causality" be initiated when negotiations relating to injury aspects in relevant areas of the multilateral trade negotiations had reached a more advanced stage.

F. Other business

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

72. Referring to the case concerning the liquidation of anti-dumping duties on TV receivers imported into the United States from Japan discussed at the previous meeting of the Committee (COM.AD/48, paragraphs 33-35), the representative of Japan recalled that the United States had made public, in March 1978, the intention to carry out the liquidation and to apply a new method to calculate the dumping margin, which differed from the method employed in the final determination of 1971. In September 1978, it had been decided that this liquidation would be carried out shortly. The representative of Japan stated that the method used to calculate the dumping margin was not in conformity with Article 2(f) of the Code. When comparing the home market price and the export price, the United States had employed as the home market price a hypothetical price which did not exist in the ordinary course of trade in Japan and which was computed by the multiplication of a "listed price" with a constant coefficient. The "listed price" was however merely employed within the purview of the Commodity Tax Law by the option of the tax-payers themselves with a view to simplifying the procedure to pay commodity taxes. Consequently, the prices at which the Japanese consumers actually purchased the products in question were quite

different. The United States had therefore failed to use an appropriate home market price in their price comparisons as prescribed in Article 2(a) of the Code. Furthermore, the United States had applied the same coefficient to all the products in question, disregarding the varieties of the types of transactions in the domestic market. For instance, the United States had not deducted from the domestic price those expenses which varied according to the difference in the conditions of the sales, such as advertising expenses, warranty costs, etc., although such expenses had been deducted in the previous method of calculation. Secondly, the United States had disregarded the differences in the costs of production for various types of the commodity in question. In doing so, the United States had failed to make due allowances in the price comparison, thus acting in contravention of Article 2(f) of the Code. In response to the United States request for price information, all the exporters concerned had supplied such information. Nevertheless, the verification conducted by the United States had covered just three firms, and only information from one firm had been accepted. The United States had not indicated the reason why the information from the other firms had been unacceptable, nor the criteria applied in the liquidation, and had therefore violated the provisions of Article 6(h) of the Code. In their determination of the like product, the United States had also disregarded factors such as material of the cabinet and performance of main components. The United States had thereby in the Japanese opinion not fulfilled the requirements of Article 2(b) of the Code. The representative of Japan pointed out that no liquidation of the anti-dumping duties had taken place during six years after the final determination. This delay had entailed serious difficulties for the Japanese exporters to continue their

marketing activities in the United States due to the uncertainty of the amount of the duties to be imposed and their effect on the profitability of the sales in the United States. In addition, they had been obliged to deposit bonds throughout the period of suspension and they had had to submit a huge volume of documents containing price information. The good names of their enterprises had also been damaged by the United States action. The representative of Japan underlined that the long time, during which the liquidation had been suspended, constituted an unjustified impediment to international trade, in contravention with the spirit of the Code and in particular its preamble. Furthermore, the United States authorities had now decided to collect the total amount of anti-dumping duties within an extremely short time-limit, which entailed an unjustified burden on the exporters concerned incompatible with the spirit of the Code.

73. The representative of the United States replied that the statement of the Japanese representative gave an erroneous impression of the basis for the action of his authorities. He recalled that the case involved billions of dollars of trade value and an extraordinarily large volume of transactions. The dumped imports from Japan had led to a situation where a significant part of the United States production had been closed down. Consequently, the Japanese industry had prospered rather than suffered from the delay of the liquidation, to the detriment of the United States industry. His authorities were at present taking steps to find appropriate procedures in order to overcome the problems that had caused the delay. He pointed out in this connexion the great variety of models involved in the case and the entailing difficulties to make appropriate allowances. There had also been

difficulties in obtaining within a reasonable time from the exporters complete and appropriate evidence that could be verified, since the exporters had shown little interest to contribute in those efforts. He maintained that the costs of posting bonds were more than offset by the advantage of continuing to export substantial quantities of goods without the imposition of anti-dumping duties in a time when inflation was high. One of the most difficult tasks to solve in this case and one of the main reasons for the long period of suspension of liquidation had, however, been the allegations of rebates and other benefits flowing to the importers in order to offset the anti-dumping duties that might be assessed. Criminal aspects of such possible efforts to evade the consequences of the application of the customs laws were still being considered in various courts. The representative of the United States pointed out that in their efforts to find a reliable guide to establish a home market value, his authorities had found a tax in Japan, requiring Japanese manufacturers to report the wholesale price for their merchandise. His authorities had concluded that these commodity tax data provided such a reliable guide, in the absence of other reliable information that could preferably have been provided by the Japanese firms. Thus, his authorities were no longer prepared to continue the discussion of circumstances of sales but would go ahead with the liquidation of the duties. He added that the Japanese firms were free to take the case to court, if they felt that the provisions of the United States Anti-Dumping Act had not been complied with.

(b) Concept of dumping

74. The representatives of Australia and the United States pointed to a question not directly covered by the Code, which they wished to be discussed at the next meeting of the Committee. The question related to the extent to which a signatory might apply anti-dumping duties on merchandise produced from materials that had been acquired at prices which were less than the normal value of such or similar goods.