

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Limited Distribution

FIFTH REPORT BY THE COMMITTEE ON ANTI-DUMPING PRACTICES

1. Previous reports to the CONTRACTING PARTIES on the work of the Committee on Anti-Dumping Practices have been circulated in documents L/3333, L/3521, L/3612 and L/3748. The present report refers to the work of the Committee from the annual meeting of the Committee in September 1972 to the annual meeting held on 9-12 October 1973.
2. The parties to the Agreement on the Implementation of Article VI of the General Agreement are: Austria, Belgium, Canada, Czechoslovakia, Denmark, European Economic Community, Finland, France, Federal Republic of Germany, Greece, Italy, Japan, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain (adhered on 19 December 1972), Sweden, Switzerland, United Kingdom, United States and Yugoslavia. The Chairman of the Committee is Mr. M.J. Huslid (Norway).
3. Some members of the Committee have submitted legal texts modifying their national provisions on anti-dumping measures already examined in the Committee. These new legal texts and the legislation of Spain, which adhered to the Code in 1972, were discussed in order to examine their conformity with the requirements of the Anti-Dumping Code. The examination of the Spanish legislation will be continued at the next meeting of the Committee. The examination of the Austrian legislation, which was initiated at the 1972 meeting, was terminated after the Committee had heard additional explanations by the representative of Austria. The Committee noted that the legislations of Greece and Portugal were being amended to bring them into full conformity with the Code. The representative of Greece further assured the Committee that any anti-dumping measure would be taken in full accordance with the Code.
4. Some members of the Committee expressed regrets that the United States had not seized the opportunity, when revising its Anti-Dumping Regulations, to bring them into greater conformity with the Code, particularly with regard to the simultaneous examination of evidence of dumping and of injury. The representative of the United States referred to the discussion of the proposed changes at the Committee's 1972 meeting, and pointed out that some amendments had been made in the proposed Regulations to take account of views expressed by members of the Committee.
5. The Committee examined the reports submitted in accordance with Article 16 of the Agreement on the administration of anti-dumping laws and regulations in the member countries. A table summarizing the cases where investigations have been opened, provisional or final action taken etc., in the notifying countries in the year 1 July 1972-30 June 1973 is reproduced in the Annex.

6. Austria, Czechoslovakia, Denmark, Japan, Malta, Norway, Portugal, Spain, Sweden, Switzerland and Yugoslavia have notified that no anti-dumping cases were pending or initiated in the period under review.

7. As regards the practices of the United States Tariff Commission, some members of the Committee noted with satisfaction that the indications given by the United States delegation in 1972 had proved correct, namely that the Tariff Commission had abandoned the theory under which it would be sufficient for imposition of an anti-dumping duty to establish that the dumping constituted "a more than de minimis factor in contributing to an injury". They pointed out, nevertheless, that unless the rules of the Code in regard to injury were carried into the United States legislation or at least that country's regulations, there was no certainty as to what attitude the Commission might adopt in future.

8. These same members of the Committee expressed concern over recent determinations of the Tariff Commission that a threat of injury existed, on the basis of considerations that were either imprecise or remote. In that context they recalled that, in order to prevent any evasion of the relatively strict provisions concerning injury, the Anti-Dumping Code specifically stipulated that any determination of a threat of injury must be based on "clearly foreseen and imminent" circumstances.

9. The representative of the United States replied by reciting in detail and explaining excerpts from the challenged opinion of the Tariff Commission cited by the members who had raised this point and asserted that the decision of the Tariff Commission was fully consistent with the provisions of the Code relating to threat of material injury. This view was, however, not shared by the members of the Committee who had raised the point.

10. Referring to action by the Treasury Department, some members of the Committee noted with regret the lack of consistency with certain provisions of the Code, in particular those calling for simultaneous consideration of both dumping and injury. They cited a number of determinations by the Tariff Commission that no injury existed, in order to show that the action taken by the United States administration had caused protracted uncertainty for the business circles concerned, involved considerable expense for the legal defence of the firms accused, and caused the loss either of certain business transactions or of the United States market, despite the fact that the accusation had finally been found unjustified. In order to avoid any repetition of such consequences, which were neither fair nor equitable, there was a need for the strictest observance of the provisions of the Code under which adequate evidence of both dumping and injury was a prerequisite for initiation of an anti-dumping procedure and introduction of provisional measures.

11. The representative of the United States noted earlier criticism regarding the large number of affirmative injury determinations by the Tariff Commission, and the fact that during the past year there were more negative than affirmative determinations. He denied that either these negative decisions or the practices of the United States in initiating anti-dumping investigations implied a lack of regard for the requirements of the Code. Noting that the United States had not proved insensitive in the past to comments made in the Anti-Dumping Committee, the representative of the United States stated that his Government was taking, and would continue to take a pragmatic approach to any disagreement that existed, and he urged that members of the Committee should take this into account.
12. Some members of the Committee were concerned that, in their view, in some of the cases discussed, investigations in the United States had been initiated upon complaints not representative of the major proportion of the industry, as provided in the Code. The representative of the United States maintained that investigations had been opened only on the basis of complaints by firms representing an industry in the sense of the Code.
13. Some members of the Committee noted that, although the trend towards a quicker resolution of cases initiated in Canada and the United States must be welcomed, continuing efforts should be made to reduce the length of time needed to settle a case, because delays created considerable uncertainty and had a serious effect on exporters both in terms of costs and loss of market share. Some members also expressed concern with the practice of comparing an allegedly dumped price with that prevailing in the domestic market of the exporting country instead of with the price obtained in third country markets, when sales of the exporter in the home market were negligible.
14. The representatives of the countries concerned pointed to the reduction in the average number of days taken to complete investigations and said that efforts would be made to further shorten the investigation period, always bearing in mind the necessity of keeping the decision-making process strictly fair. The representative of Canada stressed that the price comparison normally foreseen in the Code was with the domestic price in the exporting country. The representative of the United States stated that his Government always used home market price, except in situations where sales in the exporting country were inadequate for comparison purposes.
15. One member of the Committee expressed satisfaction that remarks made at the previous meeting that special care should be taken, where export control agreements existed, in observing the injury requirements as provided for in the Code had been taken into account by the country concerned. The same member stated that, where dumping findings were made on a country basis, as was frequently the case in the United States, a revocation of the dumping finding should be made for companies selling at not less than fair value after a much shorter period

of time than had hitherto been the case. The representative of the United States said that the revocation period had been shortened in such situations. Furthermore, any company now had the opportunity to disclose all of its sales; if, on such a basis, it was found, before issuance of the dumping finding, that the company concerned had not engaged in sales at less than fair value, the company would be excluded, in such circumstances, from the anti-dumping measures applied.

16. The Committee welcomed the decision of Canada to eliminate anti-dumping duties in one case that had been the subject of considerable controversy in the Committee. Nevertheless, some members of the Committee voiced serious concern that the Canadian authorities had in this case been applying its anti-dumping legislation for the purposes of protecting what they considered to be uncompetitive domestic industries. One of these members pointed out, in addition, that sales of its exporters had been substantially reduced as a consequence of an anti-dumping duty in this case, which this member and other members considered to be unjustified under the Code, and expressed the fear that this might not remain an isolated case. The representative of Canada stated that the decisions to impose as well as to eliminate the anti-dumping duties in question had been taken in the light of the particular situation at different points of time, in conformity with the provisions of Article VI and the Code. In reply to observations by members of the Committee and with reference to the discussion at the 1972 meeting, he said that in principle Canada would make allowance for rebates of indirect taxes on materials and components incorporated in the exported products for the purpose of determining normal value. This practice would be implemented in cases currently under investigation. Replying to observations made on the interpretation by Canada of the "like product" provisions of the Code, the representative of Canada said that in his country's interpretation of Article VI and the relevant provisions of the Code, there could be a case of "like product" even if a substantial part of the imported product was not produced in the importing country.

17. With regard to the question of the examination of questionnaires used in price investigations, it was generally felt that since this question had been discussed at length at the previous meeting, it would be advisable not to discuss this subject in detail at this meeting. One member stressed the importance of the harmonization of the questionnaires in view of its numerous advantages in improving investigation procedures.

18. With regard to the question of the adherence of further countries to the Code, the Committee noted that an interdepartmental committee had been established in Australia *inter alia* to examine the feasibility of Australia adhering to the Code and to report to the Australian Government by 1 December 1973. The hope was expressed that the work thus initiated would lead to an early acceptance of the Code by Australia. The Committee noted with satisfaction that, on the question of the adherence of developing countries to the Code, the work of the special Working Party had resulted in agreement, on an *ad referendum* basis, on a text that was now under consideration by member governments.

ANNEX

Summary of Anti-Dumping Activities

	<u>Canada</u>	<u>EEC</u>	<u>Finland</u>	<u>Greece</u>	<u>United Kingdom</u>	<u>United States</u>
1. Cases pending as of 1 July 1972	10	6	1	8	3	44
2. Investigations opened	10	4	--	2	7	27
3. Cases on which provisional action taken	6	--	--	--	1	23
4. Cases on which final decision reached:						
(i) anti-dumping duties imposed	3	--	--	--	2	9
(ii) cases settled through prices undertakings	--	8	--	--	2	6
(iii) cases dismissed	8	--	1	1	3	26
5. Revocation of anti-dumping duties	1	--	--	--	1	1
6. Cases pending as of 30 June 1973	11	3	--	8	3	31