

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Limited Distribution

SIXTH 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, L/3748 and L/3943. The present report refers to the work of the Committee from the annual meeting of the Committee in October 1973 to the annual meeting held on 30 September-4 October 1974.
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, Sweden, Switzerland, United Kingdom, United States and Yugoslavia. The Chairman of the Committee is Mr. M.J. Huslid (Norway).
3. The examination of the anti-dumping legislation of Spain was terminated after the Committee had heard additional explanations by the representative of Spain. The Committee noted that Denmark had adopted the EEC regulations pertaining to anti-dumping matters. It was noted that the process of adaptation of the legislations of Greece and Portugal had been delayed, and the Committee welcomed assurances from the representatives of these two countries that any anti-dumping measures would meanwhile be taken in full conformity with the Code.
4. 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 1973-30 June 1974 is reproduced in the Annex.
5. Austria, Finland, Japan, Malta, Norway, Portugal, Spain, Sweden and Switzerland have notified that no anti-dumping cases were pending or initiated in the period under review.

6. As regards the practices of the European Communities, one member of the Committee expressed the view that in some cases doubt existed whether the cases in question had been studied in sufficient detail. He also expressed concern that in one case a voluntary restraint on the volume of exports had been requested in addition to price assurances - an action which was not foreseen by the Anti-Dumping Code. The representative of the European Communities asserted that exporters were always given full opportunity to present their views. In the case involving quantitative self restraint, the exporters had had full freedom of choice and had opted for the self restraint as an alternative to other measures.

7. The Committee welcomed a statement by the representative of Canada to the effect that the Canadian Anti-Dumping Tribunal had stated in its Annual Report the intention to review all outstanding injury findings. One member of the Committee said that in one particular case exporters of his country had been discriminated against, contrary to Article 3 of the Code, when normal values for the product had been determined, as a result of which exports from his country had virtually ceased. He therefore urged the Canadian authorities to revoke the finding in question as early as possible, in accordance with Article 9 of the Code, in view of the lack of material injury, and in the meantime - upon request to determine new normal values, as well as to keep his authorities informed of progress in the case. The representative of Canada stated that new normal values had been determined earlier in the year upon the request of exporters, so that there was now some prospect of imports to Canada resuming. His authorities were always willing to consider review of a case if this was requested, but he could not see that they had acted contrary to Article 3 of the Code in this case. The member who had raised this point reserved the right to revert to the matter at the next meeting of the Committee if a satisfactory solution should not be found in the meantime.

8. Referring to the report of the United States, some members of the Committee welcomed the fact that the number of cases opened in the United States had continued to decline and that the Tariff Commission seemed to be moving away from the notion that anything which did not constitute negligible injury was therefore material injury. However, these members asserted that there were still several aspects of the United States administration of anti-dumping laws and regulations which were not in conformity with the provisions of the Code. The Code required simultaneous consideration of both dumping and injury; the Code stipulated that any determination of a threat of injury must be based on "clearly foreseen and imminent" circumstances and not just a remote threat or possibility thereof; investigations should be initiated upon complaints representative of a major proportion of the industry. In these areas, as well as those regarding price comparison practices, the use of provisional measures (withholding of appraisement) and revocation of dumping and injury findings, they looked forward to material improvement in the performance of the United States.

9. One member of the Committee pointed to the considerable concession granted by his country in acceding to the Code during the Kennedy Round negotiations, and said that the benefits expected from this in the form of changes in United States practices had fallen short of expectations. The United States Anti-Dumping Act had remained inconsistent with the provisions of the Code, and this member would therefore examine these issues in the course of the multilateral trade negotiations. Other members joined in pointing out that the success of future solutions to problems posed by other non-tariff measures would to a great extent depend on the degree to which the Committee could ensure respect for the provisions of the Code.

10. The representative of the United States said that, as had been noted by others, United States practice had improved considerably since its adoption of the Anti-Dumping Code. To illustrate this point he referred inter alia to the fact that information on the injury aspect was now required to be submitted by the complaining industry, that recently as much as 60 per cent of complaints had been rejected, that the Treasury provisions for withholding of appraisement had been revised, that the time to complete investigations had been halved in recent years, and that the United States did now notify foreign governments of anti-dumping actions. Noting that action was taken only when complaints were accompanied by evidence of injury, he pointed out that the Code did not require a full determination of injury before provisional action was taken. Furthermore, he asserted that likelihood of injury determinations were based on evidence that created far greater probability of injury than a "remote threat".

11. Other delegations were not convinced by the argumentation of the United States delegation and emphasized in particular that the Anti-Dumping Code required sufficient evidence of injury before provisional measures were applied; these delegations felt that such sufficient examination of injury had not taken place in all cases.

12. Some members expressed concern with the continued practice of comparing an alleged dumped price of a product of a company with those of other companies in the home market instead of with the price obtained in third country markets when sales in the home market of the company in question were non-existent or negligible. They also doubted the justification of the Tariff Commission for the existence of material injury when the imports accounted for only 4.3 per cent of the total consumption in the market.

13. The United States representative replied that comparison with the prices of a different manufacturer in the circumstances of the case raised was in full conformity with the Code. Other delegations could not agree to this argumentation. The United States representative added, with regard to the question raised concerning the determination of injury when imports accounted for less than 5 per cent of consumption, that factors such as rapidly rising imports made determinations of material injury valid even where the volume of imports was at the level indicated.

14. In the view of the representative of the United States part of the reason for criticism directed at United States practices in the anti-dumping field was to be found in the structure and openness of the United States system, which allowed for a large measure of publicity and dissent in anti-dumping proceedings. As a result, disagreements over interpretations of fact within the United States Government became public. This did not mean that the determinations finally arrived at were incorrect. This was a period of transition in the administration of the Anti-Dumping Act, and further changes and improvements were envisaged in addition to those he had mentioned earlier. Nevertheless, he felt that United States practices were basically in conformity with the Code.

15. Welcoming these assurances, some members of the Committee nevertheless stressed that, in spite of the progress made, the Code did require full conformity with its provisions by all participants, adding that other governments had, at the time, to change fundamentally their national legislation in order to bring it into conformity with the Code.

16. The representative of the United States reaffirmed that his country did take the Code seriously and that efforts were constantly being made to improve on the various aspects of its application. Furthermore, the United States firmly believed in the idea of codes as a valid and worthwhile type of solution, both in the field of anti-dumping and in other non-tariff problem areas.

17. The Committee had an exchange of views on the question of United States policy with respect to voluntary price undertakings, basing its discussion on written comments submitted by Japan and the United States. Some members of the Committee could not agree with the view expressed in the United States submission that a government was free to pursue anti-dumping proceedings even after a price undertaking had been offered and export prices had been revised in order to avoid any further dumping. Articles 5(c) and 9 of the Code clearly required a government to terminate action in these cases, as the sole purpose of anti-dumping proceedings was to offset the injurious dumping effects and not to penalize exporters. The United States practice in this respect was therefore asserted to be in violation of the relevant provisions of the Code. Some members reserved the right to make further comments on this question because the shortness of time did not permit full examination of the comment by the United States delegation. It was agreed that this question would be discussed at the next meeting.

18. The representative of the United States replied that investigations with respect to exporters with insignificant dumping margins were terminated in accordance with Article 5(c) of the Code, and that even in cases with significant margins no dumping duties were collected, in accordance with Article 9, once price revisions had been made. The United States representative pointed to the discretionary nature of Article 7, stated that Article 5(c) should not be read to

modify the provisions of Article 7, and stressed that the practice of his authorities was in full conformity with the provisions of the Code. There was no need for a uniform application of discretionary provisions of the Code by all adherents; rather, there was some flexibility in the Code's application.

19. Referring to certain provisions in the pending Trade Reform Bill of the United States, some members expressed concern that proposals relating to the requirement of detailed information on possible dumping on customs invoices and to certain dumping transactions by multinational companies might if enacted create serious problems for exporters. More specifically, they feared that given the provisions of Section 153.25 of the Anti-Dumping Regulations, which required customs authorities to supply the Treasury with information relating to dumping, the proposed required information on the customs invoices might result in a spectacular increase in the number of anti-dumping actions initiated by the United States administration.

20. In reply the representative of the United States emphasized that the customs invoice provision was only a matter of writing existing regulations into the law. He reassured the Committee that the information thus provided had not and would not be used as a basis for the Treasury to initiate anti-dumping actions on its own initiative. No case had been opened under the cited section of the Anti-Dumping Regulations, which merely reflected the flexibility permitted by the law of the United States. Complaints submitted by the industry affected would continue to be the sole basis for the opening of anti-dumping proceedings.

21. The Committee noted that the Working Party on the Acceptance of the Anti-Dumping Code had continued its work in respect of a solution which could facilitate the adherence of developing countries to the Code.

22. It was generally felt that since the question of the examination of questionnaires used in price investigations had been discussed at length at a previous meeting, it would be advisable not to discuss this subject in detail at this meeting. Some delegations reiterated their interest in having this question dealt with with a view to harmonizing the practices of the signatories of the Code. Thus they expressed the wish that the question should remain on the agenda.

23. The Committee had a first exchange of views on suggestions to increase the efficiency of the Committee and to emphasize in the discussions questions of principle and the trade policy context within which national anti-dumping practices were pursued. The Committee generally felt that some of these suggestions merited further study and agreed to proceed to those studies at a special meeting, which should take place before the next regular meeting of the Committee.

ANNEX

Summary of Anti-Dumping Activities

	Canada	EEC	Greece	United Kingdom	United States
1. Cases pending as of 1 July 1973	11	3	9	3	31
2. Investigations opened	7	2	1	..	10
3. Cases on which provisional action taken	2	--	--	--	12
4. Cases on which final decision reached:					
(i) anti-dumping duties imposed	2	--	--	--	12
(ii) cases settled through "arrangements"	--	3	--	--	6
(iii) cases dismissed	10	1	1	1	14
5. Revocation of anti-dumping duties	1	--	--	--	2
6. Cases pending as of 30 June 1974	7	1	9	2	9