

GENERAL AGREEMENT ON TARIFFS AND TRADE

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SEVENTH REPORT BY THE COMMITTEE ON ANTI-DUMPING PRACTICES

1. Previous reports to 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, L/3943 and L/4092. The present report refers to the work of the Committee from the annual meeting of the Committee in October 1974 to the annual meeting held on 21-24 October 1975.
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, Hungary (adhered on 18 November 1974), 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 Committee noted that Hungary had incorporated the Anti-Dumping Code in its national legislation and that it shortly would submit the relevant decree to the secretariat. The Committee also noted that the process of adaptation of the legislation of Greece and Portugal had been further delayed. 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 1974-30 June 1975 is reproduced in the Annex.
5. Austria, Czechoslovakia, Finland, Hungary, Japan, Malta, Portugal, Spain, Sweden, Switzerland and Yugoslavia had notified that no anti-dumping cases were pending or initiated in the period under review.

6. As regards the practices of Canada one member of the Committee stated that in one case, the mark-up of certain components exported to Canada, had been calculated in the same way as the mark-up on the final product. Thus, the normal value was, according to this member, not calculated in accordance with Article 2(d) and (f) of the Anti-Dumping Code. To avoid certain misunderstandings that had taken place in the past, he also suggested that all the products and components submitted to anti-dumping investigation should be defined as clearly as possible when the investigation was initiated. With respect to the identification of components on which there was a need to supply information, the representative of Canada quoted the relevant determination of the competent authorities, and concluded that the determination was sufficiently clear to judge for which components there was a need to supply information. In regard to the question of mark-ups the representative of Canada stated that the importing company in question had indicated that it would appeal the ruling of the mark-ups to the Tariff Board. The representative of Canada, therefore, refrained from making any comments that could prejudice these legal proceedings.

7. A member of the Committee said that the determination of injury by the Canadian Anti-Dumping Tribunal in one case did not comply with the provisions of Article 3(a) and (e) of the Anti-Dumping Code since the exports from his country to Canada had decreased since 1971 and since the determination of injury depended merely on a hypothetical price, supplied by the Canadian producer who had presented the case to the Tribunal. In reply, the representative of Canada stated that clear evidence had been presented to the Tribunal in this case that the foreign companies concerned had offered to Canadian customers the product in question in large quantities at dumped prices. Hence, the measures taken were in the Canadian view in full compliance with the provisions of the Anti-Dumping Code. In answer to another member of the Committee, he added that the provisional duties that were collected in this case during the provisional period had been remitted afterwards in respect of those imports where the Tribunal had found a future possibility of injury.

8. One member of the Committee pointed to the fact that in two cases of preliminary determination of dumping, the Canadian authorities had neither supplied sufficient information on the reasons for the measures, nor on the way of calculation of normal value. In his view, this constituted a contravention of Articles 6(b) and 10(c) of the Code. The representative of Canada answered that the problem in one of the cases pertained to the fact that the information submitted by the industry had been of a confidential nature. The Canadian Government had however supplied as much information of a general nature, as it reasonably could provide, to explain the reason for the decision. This question had however led the Canadian authorities to decide that preliminary determinations of dumping from now on should include more detailed information as to the basis for the decision. As regards the second case, the Canadian representative expressed the willingness of his authorities to provide further information bilaterally.

9. As regards the practices of Canada, the delegations concerned agreed, at the suggestion of the Chairman, to have further consultations bilaterally during the current meeting.

10. Referring to the report of the United States, one member of the Committee stated that in one case, where there were no domestic sales in his country and consequently no domestic sales price for price comparison, the authorities of the United States had requested submission of both production cost information as well as third market export prices. In his view, it was inappropriate to require production cost information, when this, as in this case, did not seem necessary, as such a request imposed a heavy burden on private firms. The representative of the United States recalled that the Anti-Dumping Code authorized the use of either method if there was no domestic market sales. In this case his authorities had been unable to determine if there had been sufficient third market sales. They had therefore asked for both kinds of information in order to comply with the stringent time-limits imposed in the United States on the making of anti-dumping decisions. Another member of the Committee pointed to the fact that the investigation as regards one case in the United States report had opened a new procedure that seemed likely to bring the United States practices closer to those rules of the Anti-Dumping Code that require simultaneity of examination of dumping and injury. He was particularly interested to learn more about the nature of this new form of investigation which determined whether or not a reference should be made to the International Trade Commission. The representative of the United States explained that the procedures in the Treasury Department, prior to a decision whether or not to refer a case to the International Trade Commission, consisted of an examination by means of a questionnaire, as to the question whether there was evidence of injury. If this examination raised substantial doubt of injury the case was referred to the International Trade Commission for a thirty days' summary enquiry as to whether there was any reasonable indication of injury. In answer to one member of the Committee, the representative of the United States confirmed that the regulation requiring submission of information in response to the questionnaire had not yet been promulgated but the questionnaire had been used as guidelines and that the Treasury had received sufficient evidence of injury in answer to it.

11. The Committee had an exchange of views on the question of anti-dumping investigations in the United States as referred to it by the Council on 25 September 1975. Several members of the Committee stressed their views that now, eight years after the Anti-Dumping Code had been adopted, the United States had not yet brought its laws, regulations and administrative procedures in conformity with it. These members pointed to the fact that even if some improvements had taken place in the practices of the United States, in their view there still existed substantial discrepancies with the provisions of the Anti-Dumping Code in a number of important respects. By way of example, as regards the

latest developments in this field the following regulations and practices were mentioned specifically: the provisions of the Trade Act relating to multinational companies and relating to sales at a loss, the deficiency of simultaneity of the examinations of injury and dumping, as well as the provisions of the anti-dumping regulations, at present being modified, according to which dumping findings could not be revoked upon request unless there was proof that no dumping had taken place for at least two years and according to which dumping findings must be in force for at least four years before they could be revoked at the initiative of the United States' authorities. It was further pointed out that the provisions relating to the retroactive application of withholding of appraisement and the provisions relating to the range of allowances for, inter alia, national commercial practices were not revised in the proposed amendments to the United States regulations and that the problems in these fields still remained.

12. As regards the question of the United States anti-dumping investigations on imported cars, several members of the Committee stressed the impact of this investigation upon world trade. This investigation was considered, in view of the trade involved, as the largest in the history of anti-dumping investigations. A number of members stated that this investigation had been initiated in contradiction to several articles of the Anti-Dumping Code. According to these members, the investigation was incompatible with Article 5(a) of the Code, since the investigation had not been initiated upon request of the industry affected which had even expressed the view that imports had not caused injury, but instead had been requested by a congressman and the UAW (the union representing automobile workers). Even if the Code provided that anti-dumping procedures could be initiated ex officio, this could only be done if the administration was convinced that there was sufficient evidence on both dumping and injury resulting therefrom. Instead, the Treasury Department had, in its advice to the International Trade Commission, stated that it had concluded from the information available that there was "substantial doubt" whether an industry in the United States was or was likely to be injured. In addition, several members of the Committee questioned the compatibility of the preliminary decision by the International Trade Commission with Articles 3(c), 3(d) and 5(b) of the Code, and stressed that even in making a preliminary determination this body should have taken account of the fact that the Code provided that in any determination of injury the impact of imports should be measured in relation to the production of like products, i.e. compact cars, and that dumping must be the main cause of injury. One member of the Committee drew the conclusion that the problems discussed were at least in part due to the fact that the Anti-Dumping Code itself was in some respect unclear and in the course of time had become out of date. He felt that the time had come to review the Code and noted that his country had suggested that this matter should be taken up in the Multilateral Trade Negotiations.

13. The representative of the United States stressed that prior to the accession of the United States to the Anti-Dumping Code, his Government had made it clear that it could not change its existing anti-dumping law. His Government had

declared that it would ensure that its anti-dumping procedures, policies and practices conformed fully with the provisions of the Code. He found, for his part, a tendency among certain members of the Committee to underestimate or even ignore the evolution of his country's procedures to meet concerns expressed by others regarding the United States' compliance with the Code. He would have preferred to hear comments by members of the Committee based on definitive actions taken by his authorities rather than on language differences which existed between the present United States legislation and the Code. He stressed that the United States practices were in full conformity with the spirit and letter of the Anti-Dumping Code and that its system was as equitable and objective as that of any other adherent to the Code. He also recalled that no new dumping findings had been made by the United States during the period under examination. As far as the automobile case was concerned he underlined that it had not yet been determined that injury was present and that it therefore was premature to state that a violation of the provisions of the Code had taken place. He pointed to the fact that according to Article 5(a) of the Anti-Dumping Code, investigations could be initiated upon a request "on behalf of" the industry affected. As the industry in this case was also a major importer, he expressed the opinion that trade unions or other spokesmen for the workers in the domestic industry concerned could, according to Article 4(a)(i) of the Code, speak "on behalf of" the industry. Quoting the heading of Article 3 of the Code he underlined that only an initiation of an investigation and no determination of injury or dumping had taken place. At any rate, information submitted on behalf of the industry provided ample evidence of both dumping and injury so as to justify the initiation of proceedings. He also stressed that it was premature to raise questions concerning the affected segment of the United States automobile industry, since determinations as to like products, which should be properly compared in making injury determinations, could not be expected to be made at the initiation of an investigation, but must be based upon information developed in a formal injury investigation, an event which had not yet occurred.

14. Concerning the anti-dumping provision on multinational corporations, the representative of the United States indicated that the Code did not deal with this matter. He added that the provision in question had never been used and he expected that it would be applied very rarely. As far as the question of sales at a loss was concerned, he gave an extensive explanation why these rules, in his view, were in conformity with the Code, and in particular its Article 2(d). On the rules for revocation of dumping findings he stressed that although the findings might remain in force for some time, anti-dumping duties were imposed only on an entry-by-entry basis and that no dumping duties were assessed for those imports where no dumping margin was found. If no request had been made for revocation, the authorities could on their own initiative after four years revoke a finding, if no sales at less than fair value had occurred. Nevertheless, the United States hoped to evolve a better revocation procedure in the future regarding

changes in circumstances affecting injury determination. The representative of the United States noted that regulations regarding retroactive application of withholding of appraisement were not proposed changes from current regulations, and that those regulations were in complete conformity with Article 11. Regarding allowances made, the representative of the United States stated that a study of this area would be made but that present practices were in full conformity. Some other members said that they were not convinced.

15. Members of the Committee recalled that the United States guidelines with regard to voluntary price undertakings had been discussed at several earlier occasions. They expressed the hope that their views in this respect be taken into consideration in the elaboration of revised regulations in the United States.

16. The Committee felt that the question of the examination of questionnaires used in price investigations should remain on the agenda.

17. The Committee noted that the Working Party on the Acceptance of the Anti-Dumping Code had been unable to reach a solution that could be acceptable to all countries concerned. A report to this effect would be transmitted to the Council.

18. Australia, which was represented at the meeting in observer capacity, stated that it would accept the Code in the very near future. One member of the Committee stated that, while welcoming the acceptance of the Code by Australia, he expected that the Australian Government would operate its anti-dumping measures in conformity with the Code. The Australian representative stressed that his Government had, in fact, already introduced on 20 June 1975 a new legislation which was in full conformity with the Anti-Dumping Code.

19. The Committee noted and agreed to revert to a suggestion that members of the Committee as a matter of routine should accept that adherents would have the right to request written clarifications from importing countries on problems relating to the implementation of the Code during the reporting period in question. Such requests as well as replies should be circulated to members by the secretariat sufficiently in advance of the meetings of the Committee.

20. The Committee agreed that the Anti-Dumping Code represented a unique effort to give a necessary greater precision to certain provisions of the General Agreement, for the purpose of creating fairer trading rules capable of uniform application. After some discussion the Committee agreed to draw up an analytical inventory of problems and issues arising under the Code and its application by the parties to the Code. To this effect, the secretariat was requested to prepare a systematic inventory, article by article of the Code, of problems and issues that have been raised by adherents to the Code since the inception of the Committee. The Committee decided to meet again approximately six weeks after the report had been circulated which was foreseen by the end of the year. It invited its members to provide any written contribution they might wish to make in preparation for this meeting.

ANNEX

Summary of Anti-Dumping Activities

	Canada	EEC	Greece	Norway	United Kingdom	United States
1. Cases pending as of 1 July 1974	7	1	9	-	2	9
2. Investigations opened	7	-	12	1	6	10
3. Cases on which provisional action taken	6	-	-	-	2	5
4. Cases on which final decision reached:						
(i) anti-dumping duties imposed	4	-	-	-	1	-
(ii) cases settled through "arrangements"	-	-	-	-	3	-
(iii) cases dismissed	4	1	-	-	-	7
5. Revocation of anti-dumping duties	2	-	-	-	1	5
6. Cases pending as of 30 June 1975	6	-	12	1	4	10