

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## COMMITTEE ON ANTI-DUMPING PRACTICES

### Note on the Meeting of the Committee on 25-26 February 1969

Chairman: Mr. A. LANGELAND (Norway)

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#### A. Examination of national legislation

1. The Chairman recalled that it had been agreed at the meeting of the Committee on 15 November 1968 that the main aim of the February meeting should be to review action taken by the parties to the Agreement on the Implementation of Article VI of GATT to ensure the conformity of their laws, regulations and administrative procedures with the provisions of the Anti-Dumping Code.

2. He noted that new legal texts had been received from the following parties to the Agreement: Canada (L/3169), European Economic Community (L/3033), Finland (L/3075), Japan (L/3182), United Kingdom (L/3176) and United States (L/3180). Denmark, Greece, Norway, Sweden and Switzerland had notified that the adoption of the Code had not necessitated any modifications of existing legislation. Czechoslovakia had replied that no anti-dumping legislation was in force for the time being.

3. The representative of Yugoslavia informed the Committee that the Agreement on the Implementation of Article VI had been ratified on 29 May 1968 by his country and had thus acquired force of law in Yugoslavia.<sup>1</sup> Any subsequent legal provisions designed to regulate and develop the matters concerned would be based on the Agreement.

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<sup>1</sup>The notification by Yugoslavia has been circulated in L/3188.

4. The representative of the European Economic Community said that it would be useful for the Committee to have available not only the laws of the countries concerned but also the relevant administrative regulations. It was agreed that the regulations should be circulated in the same way as the laws.

5. The representative of the EEC suggested that the countries which had notified that their legislation was already in conformity with the Code should nevertheless make their legal texts available for circulation. It was noted that Switzerland had already done so (cf. L/3173). The representatives of Denmark, Greece, Norway and Sweden undertook to transmit their legal texts to the secretariat for circulation.<sup>1</sup>

6. Several representatives pointed out that some long texts had been circulated only a few days before the meeting of the Committee. They had not had time for a detailed examination of the texts, and they wished to keep the possibility open to revert at a later meeting to the examination of any of the laws submitted to the Committee. It was agreed that the examination at the present meeting should not be considered as exhaustive and that it could be pursued at the September meeting.

Canada (L/3169)

7. The representative of Canada recalled that the text of the Canadian Anti-Dumping Act had been circulated in document L/3169. The corresponding Anti-Dumping Regulations had not been circulated before the meeting but copies were being distributed to the members of the Committee. (They have subsequently been circulated in L/3169/Add.1.)

8. The representative of the United States said that his Government had at various occasions expressed its concern that the provisions of the Anti-Dumping Code should be applied in such a way that anti-dumping practices in the countries parties to the Code did not constitute an unjustifiable impediment to international trade. Against this background it was particularly gratifying to see that the new law enacted in Canada - the nearest neighbour and the largest trading partner of the United States - contained a requirement of material injury for the imposition of anti-dumping duties. His Government expected that the interested parties be given timely notice and an opportunity to present evidence and information at each stage of the anti-dumping proceeding.

9. The representative of Sweden said that the new Canadian legislation seemed on the whole to be in conformity with the Anti-Dumping Code. It was, however, a matter of some regret that the Canadian authorities had not found it possible in drafting the Act to follow more closely the wording of the Code.

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<sup>1</sup>The provisions of the Danish Customs Act relating to Anti-Dumping and Countervailing Duties has subsequently been circulated in L/3189, and the Norwegian Legislation relating to Anti-Dumping and Countervailing Duties in L/3204.

10. With regard to particular provisions of the Canadian Act, the representative of Sweden made the following observations:

- (a) Article 2(f) of the Anti-Dumping Code stipulated that in order to effect a fair comparison between the export price and the domestic price in the exporting country, the two prices should be compared at the same level of trade. There did not seem to be any similar provision in the Canadian Act.
- (b) Article 10(a) of the Anti-Dumping Code stipulated that provisional measures might be taken only where there was sufficient evidence of injury. In Canada provisional measures could be introduced by the Deputy Minister of National Revenue for Customs and Excise as soon as a case had been referred to the Tribunal. How was it in such circumstances established that there was sufficient evidence of injury?

11. The representative of Canada said, with reference to the remark concerning the language of the Act, that it had been found possible in some cases to use the very words of the Code; in other cases it had been necessary to adjust the wording to correspond to the established legal language of Canada. With regard to the observation concerning the level of trade at which the export and domestic prices should be compared, he explained that such a requirement was contained in Section 3(a) of the Anti-Dumping Regulations. With regard to the question on the establishment of evidence of injury when imposing a provisional measure, the representative of Canada pointed out that the requirement in Section 13(1) of evidence of injury for the initiation of an investigation also applied to preliminary determinations of dumping under Section 14(1) and the discretionary decisions under Section 15(1) that a provisional duty should be paid or a security posted.

12. The representative of the United Kingdom, speaking on behalf of Hong Kong, pointed out that the wording of Section 3 of the Canadian Act seemed to be less strict than the stipulation in Article 3 of the Code that a determination of dumping should only be made if the dumped imports were demonstrably the principal cause of material injury to a domestic industry. He wished to know if it was the intention of the Canadian authorities to follow Article 3 of the Code in the application of Section 3 of the Act. He also pointed out that the words "is likely to cause" in Section 13(1) of the Act seemed to give the Deputy Minister wider powers than had been foreseen in the Code. He finally asked whether the provisions relating to market disruption in the Canadian Customs Act had been affected by the new legislation.

13. The representative of Canada replied that the aim in drafting the Anti-Dumping Act had been - given the nature of Canada's customs procedure and jurisprudence - to ensure that the liability to pay anti-dumping duties stemmed from a finding of injury by the Tribunal. In its decision whether injury existed, the Tribunal would be guided by the principles of the Code. Although no appeal against the decision of the Tribunal was possible, the Governor in Council could,

the representative of Canada pointed out, exempt any goods from the imposition of an anti-dumping duty by virtue of Section 7 of the Anti-Dumping Act. The Government had furthermore authority under the Financial Administration Act to remit any imposed tax or duty. With regard to the question concerning market disruption legislation, the representative of Canada answered that anti-dumping and market disruption provisions were now separated and were to be found in different laws. It was agreed that questions regarding market disruption should be discussed in the Committee on Trade in Industrial Products rather than in the Committee on Anti-Dumping Practices.

14. The representative of the United Kingdom, speaking on behalf of Hong Kong, pointed out that Section 16(4) of the Act referred to Article 4(a) of the Code concerning the definition of "domestic industry". He asked why a similar reference to Article 3 of the Code had not been made in the sections of the Act dealing with the determination of injury.

15. The representative of Canada replied that Article 3 of the Code contained a number of provisions which were rather of the nature of guidelines and thus not suitable for incorporation in the text of the Act. Article 4(a), on the other hand, was an important part of the Code to which it had been found desirable to make a particular reference.

16. The representative of the European Economic Community said that he was only in a position to comment on the Canadian Anti-Dumping Act; he would revert at a later occasion to the Regulations which had just been made available to the Committee. He supported the views expressed by the representative of the United Kingdom on the importance of having the provisions of Article 3 of the Code relating to the determination of injury incorporated in the national anti-dumping laws.

17. The representative of Canada said that by accepting the Anti-Dumping Agreement his Government had undertaken to follow the rules of the Code, including those with respect to the determination of injury. The fact that the wording of the Anti-Dumping Act differed somewhat from Article 3 of the Code did not mean that Canada had not the intention to honour its obligations under the Code.

18. The representative of the European Economic Community pointed out that Section 9(2)(b) of the Canadian Act stipulated that, if there was not a sufficient number of sales of like goods made by the exporter by reason of the fact that the exporter sold goods solely or primarily for export, but there were sales of like goods for home consumption in the country of export by other vendors, there should be substituted for the exporter such one of any such vendors as the Deputy Minister might specify. He asked whether the representative of Canada could confirm that the goods referred to must be produced by the same manufacturer although sold by different vendors on the home market. It was clearly the intention of the Code that the comparison should be made with other prices quoted for like products manufactured by the same producer.

19. The representative of Canada replied that the comparison should in the first place be made with other prices quoted by the same exporter as could be seen from Section 9(1) of the Act. Only if there was not a sufficient number of sales in the home market by that exporter, the comparison should be made with goods manufactured by other producers and sold by other vendors. The main requirement under the Code was that the comparison should be made with other sales of a like product.
20. The representative of the United Kingdom agreed that the comparison should normally be made with prices of other sales by the same producer. The Canadian authorities might be correct in their view that the Code did not exclude comparisons with other vendors' prices. Nonetheless such comparisons would be unfair in cases where the exporter was in no way associated with the other vendors and was not in fact deriving any extra profit from domestic market sales.
21. The representative of the European Economic Community pointed out that there were provisions in Section 18, sub-sections 2(b) and 4(d), according to which any appraisal of the normal value or export price of any goods could in certain circumstances be re-appraised within two years. Those provisions seemed to open up a possibility for retroactive application of duties contrary to the rules of the Code.
22. The representative of Canada said that the rules relating to retroactivity were a central part of the Code. He was certain that there had not been any intention in the drafting of the Act to violate those Code rules; he was, however, not in a position to reply to the representative of the Community at once but he would revert to the matter at the next meeting of the Committee.
23. The representative of the European Economic Community pointed out that Section 34 of the Canadian Act contained certain rules relating to failure to submit evidence relating to the normal value and the export price of goods. Those rules were in conformity with Article 6(i) of the Code in so far as they related to findings based on the facts available where interested parties withheld necessary information; they seemed, on the other hand, to authorize the Deputy Minister to hinder the procedures of customs clearance in a manner that was not consistent with Article 5(d) of the Code. They also seemed to introduce a possibility for an imposition of provisional measures during an unlimited period.
24. The representative of Canada said that the aim of Section 34 was to create a balance between offering reasonable opportunities for the parties concerned to submit additional evidence and preventing abuse. He suggested that the questions could be discussed in more detail at a later meeting of the Committee.
- European Economic Community (L/3033)
25. The representative of the European Economic Community pointed out that the drafters of the Community Regulation had tried to follow the wording of the Anti-Dumping Code as closely as possible.

26. Several representatives said that the Community Regulation was being studied in their capitals. They reserved the right to revert to it at a later meeting and asked that any amendments to the Regulation be communicated to the Committee.

Finland (L/3075)

27. The representative of Finland pointed out that since the Committee on Anti-Dumping Practices had held its last session, the Finnish anti-dumping legislation had been completely amended. There were now two separate laws and one governmental decree regulating dumping. The aim of his Government was to facilitate international trade and to eliminate trade barriers and thus not to practise anti-dumping measures unless there was real necessity to do so.

28. The present Finnish anti-dumping legislation consisted of the Act on the Prevention of Dumping, given on 28 June 1968 (Finnish Statutes No. 375/68, GATT document L/3075) and of the Act concerning Approval of certain Provisions of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, given on 7 June 1968 (Finnish Statutes No. 448/68). The former, the so-called Anti-Dumping Law, gave the Finnish authorities somewhat wider power to act in dumping cases than the latter, which brought the Anti-Dumping Code into effect in Finland. Even if the title of the latter Law spoke about approval of only certain provisions of the Anti-Dumping Code, the Code would in fact be in force in its entirety. The Law stated that the provisions of the Anti-Dumping Code were in force in Finland as far as those provisions belonged within the range of legislation. There was also a governmental decree concerning dumping: the Decree concerning the Bringing into Effect the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, given on 7 June 1968 (Finnish Statutes No. 449/68). The Decree referred to the whole Anti-Dumping Code and was partially based - as far as legislation was concerned - on Law No. 448.

29. The representative of Finland explained that the existence of two different legal frameworks on anti-dumping had been considered useful from the point of view that one thereby had a safeguard concerning imports from non-members of the GATT. In the latter case, it could for example be difficult to find out the normal price or other relevant facts. He stressed that the Finnish anti-dumping law (Law No. 375) was in conformity with the Code in almost all essential respects. It was drafted after the Kennedy Round negotiations had been finished. In a way it was a kind of an abridgement of the Code, and with regard to the GATT countries, the Code had priority in every instance.

30. The representative of the European Economic Community asked a number of questions relating to the Act on the Prevention of Dumping of 28 June 1968:

- (i) He pointed out that the definition of material injury in Article 5 was not very elaborate and asked for confirmation that the criteria of the Code were to be used in the case of imports from countries having accepted the Code.
- (ii) He said the meaning of the expression "just cause" in Article 7 was not fully clear and he asked which criteria were to be used in such cases.
- (iii) He asked if there was any time-limit fixed for the retroactive imposition of a special duty under the second paragraph of Article 8.
- (iv) Referring to the time-limit of ten years in Article II after which certain kinds of information were no longer kept secret, he inquired whether the evidence was then made public or destroyed.

31. The representative of Finland underlined in his reply to the questions put by the representative of the Community that in examining the provisions of the Act on the Prevention of Dumping one had to keep in mind that the Act concerning Approval of certain Provisions of the Anti-Dumping Agreement applied as well in the case of imports from the signatories to the Agreement.

- (i) He said that the wording of Article 5 represented an attempt to express the ideas of the Code in Finnish legal language.
- (ii) The same criteria would be used for the imposition of a security and of an anti-dumping duty.
- (iii) He confirmed that no time-limit was fixed in Article 8. The Code limits would, however, apply under the general rule referred to earlier.
- (iv) After the expiry of the time-limit stipulated in Article II, the information was made public. A ten-year limit was normally considered sufficient to safeguard the interests of the parties concerned; it could, however, be extended if need arose.

32. The representative of Finland undertook, in reply to wishes expressed by members of the Committee, to transmit to the secretariat for circulation the legal texts referred to in his introductory statement, to the extent that they had not already been made available.<sup>1</sup>

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<sup>1</sup> The texts have been circulated in document L/3075/Add.1.

Japan (L/3182)

33. The representative of Japan referred to the measures taken by Japan since the Code had been opened for acceptance. Firstly, his Government had tabled before the Diet the Anti-Dumping Code as an international convention, for its approval. The approval by Diet had been given on 17 May 1968. Subsequently, his Government had accepted the Code on 21 May 1968 and had put it into force on 1 July 1968, in accordance with the provisions of Article 13 of the Code. As a result Japan was under the obligation not to take any anti-dumping measures which might be inconsistent with the relevant provisions of the Code. He wished to draw the particular attention of the members of the Committee to that fact.

34. Secondly, the legal basis for Japanese anti-dumping actions, i.e. Article 9 of the Customs Tariff Law, had been amended through the parliamentary approval. The amendment had been put into force as from 1 July 1968, and the text of Article 9, as amended, was contained in document L/3182. The main points of the amendments were:

- (i) The provisions regarding the provisional measures were newly introduced.
- (ii) The provisions regarding retroactive application of anti-dumping duties were modified so that the conformity of these provisions with the Code might be secured.
- (iii) New provisions were introduced so that the Government was in a position to initiate an anti-dumping investigation on its own initiative, if it was deemed particularly necessary.
- (iv) The authority was given to the Government to establish a Cabinet Order which might prescribe any necessary matters relating to domestic procedures for anti-dumping investigations, etc.

35. The representative of Japan said that some important provisions of the Code relating to, for instance, a determination of dumping and injury and a definition of industry, did not appear in the text of the new provisions. In that connexion, he drew the particular attention of the Committee to the fact that the lack of some provisions of the Code in the Japanese legislation did not mean that his Government would be free to take an action which was not consistent with the Code. On the contrary, the Government was required, even in such cases, to take measures in conformity with the relevant provisions of the Code, as an international obligation.

36. Thirdly, a Cabinet Order had been promulgated and put into force on 4 July 1968, the main purpose of which was to prescribe the domestic procedures for anti-dumping investigations, etc. The text of the Cabinet Order was also reproduced in document L/3182.

37. The Japanese representative, in conclusion, once more wished to make it clear that, as far as his Government was concerned, all steps had in fact been taken in order to ensure the conformity of its domestic legislation with the provisions of the Anti-Dumping Code.

38. In reply to questions concerning the legal status of the Anti-Dumping Code in Japan, the representative of Japan explained that an international agreement, which had been approved by Parliament and officially promulgated, had the force of law in his country. When such an international agreement contained provisions which created rights and obligations of Japanese nationals and when it was necessary, in order to put the agreement effectively into force, to define more exactly the resulting modalities and procedures, an internal legislation was elaborated for that purpose. That procedure applied to the Anti-Dumping Code, which had been approved by Parliament and officially promulgated through publication in the Official Gazette. A part of the provisions of the Code had been transferred into national legislation, i.e. the bare minimum necessary to permit the Government of Japan to take the measures required to ensure the effective entry into force of the Anti-Dumping Agreement.

39. The representative of the European Economic Community, referring to the explanation given by the representative of Japan in paragraph 38, asked whether a Japanese importer could, basing himself on the text of the Code, appeal against a decision by the Japanese authorities taken in accordance with domestic legislation. He also asked if the words in paragraph 3 of Article 9 of the Customs Tariff Law of Japan "deemed necessary in order to protect the industry in Japan" were intended to correspond to the injury criteria of the Code.

40. The representative of Japan confirmed that an appeal on the grounds mentioned by the representative of the Community would be possible. With regard to the wording of paragraph 3 of Article 9, he said that the intention was to apply fully the criteria established in the Code.

41. The representative of Canada said that the Japanese Government could in accordance with paragraph 3 of Article 9 take certain measures "even before completion of the investigation". He wished to know whether preliminary findings according to Article 10(a) of the Code were a prerequisite for such action. He also pointed out that the provisional measures could be applied during a period not exceeding six months while the Code limited the application to three months.

42. The representative of Japan replied that a decision taken at the level of Council of Ministers was required for the imposition of provisional measures; he considered that the requirements of the Code were thus met. With regard to the time-limit, he pointed out that Article 7 of the Cabinet Order stipulated - in conformity with Article 10(d) of the Code - that the period should not be longer than three months unless the exporter or importer applied for an extension of the period up to six months.

United Kingdom (L/3176)

43. The representative of the United Kingdom said that in the view of his Government there were two important features to anti-dumping action in the context of the Code. The first was that the legal text in each signatory country should be fully consistent with the Code. However, his Government did not consider that they had necessarily to introduce into their legislation the full wording and text of the Code. The Code was designed "to interpret the provisions of Article VI of the General Agreement and to elaborate rules for their application". Where countries already had in existence anti-dumping legislation of comparatively recent date which was based directly on Article VI of the GATT, what mattered was how they interpreted and applied the legislation. The second important feature was that in their anti-dumping investigations and action, countries should operate in a way fully consistent with the spirit as well as the letter of the Code. For that reason the United Kingdom memorandum, while covering the legal position, also gave firm information on the practices and procedures.

44. With regard to paragraph 1 of the memorandum, the representative of the United Kingdom explained that the 1968 Amendment Act had not been designed to change the 1957 Act to any great extent since the 1957 Act was already consistent with Article VI and the Code. The 1968 Amendment Act was a very short one and had been designed only to give the authorities two powers which were consistent with the Code but which they had not possessed in the 1957 Act. Secondly, in one or two minor places it had been thought that there might have been doubt whether the wording of the 1957 Act had been fully consistent with the Code. In those cases, the new Code wording had been introduced in Article 3(1) of the Amendment Act. On the subject of legislation, he wished to add a point not contained in the memorandum, namely, that a Consolidation Bill was being presented to Parliament which would consolidate the 1957 Act and the 1968 Amendment Act into a single legal document, which would make it easier to follow the United Kingdom legislation. Because it would be subject to the special Consolidation Bill procedures, no change in law might be contained in it although the Parliamentary Counsel was making considerable changes in the arrangement of the various clauses.

45. With regard to the Code the United Kingdom representative pointed out that the administration of the anti-dumping legislation was the responsibility of the Board of Trade and the Board of Trade had made plain their intention to abide strictly by all the terms of the Code. Board of Trade Ministers had so informed Parliament when introducing the 1968 Amendment Act and they had made repeated references to the commitments under the Code in debates since then. The Guidance Note which the Board of Trade issued to all applicants seeking action against dumped or subsidized imports referred to the legislation and went on: "The Board of Trade administer this legislation in accordance with the rules set out in the GATT (Article VI of which deals with action against dumping or subsidized goods) and the Anti-Dumping Code which was agreed as part of the Kennedy Round of Trade Negotiations."

46. The United Kingdom representative drew the attention of the Committee to the administration of the anti-dumping powers as described in the memorandum. In accordance with the Code, investigations were normally initiated only after an application from the United Kingdom industry concerned. In practice, all investigations so far had been only after such an application from industry. Secondly, before it undertook a full investigation, the Board required the applicants to satisfy it that there was prima facie evidence both of dumping and of material injury, or the threat of material injury, resulting therefrom. On the issue of a threat of material injury the Guidance Note to which he had referred earlier specifically defined it in the terms of Article 3(e) of the Code; he thought that other countries would agree that it was very important to abide strictly by that Article. Thirdly, when the Board of Trade considered that a prima facie case had been made out for a full investigation, it informed the governments of the exporters concerned and, through those governments or with their consent, the exporters themselves. In its communication, the Board of Trade provided details of the alleged dumping prices, of the industry alleged to be injured, in accordance with the definition of industry in the Code and of the nature of the alleged injury. He believed that the Committee would agree that it was important that those details of the prima facie case should be given to the governments and exporters concerned so that they could prepare an adequate defence. Fourthly, in assessing whether there was material injury or a threat of it resulting from the dumping, professional accountants of the Board of Trade normally made a detailed investigation of the financial records of the British firms making up the bulk of the industry so as to establish whether or not the alleged injury was serious in character and demonstrably due to the dumping: the effect on the United Kingdom industry of all other factors was excluded from the assessment.

47. With regard to provisional action, the representative of the United Kingdom stressed that although it was not spelt out in the Code, Board of Trade Ministers had made it clear in Parliament, both when introducing the 1968 Amendment Bill and subsequently in relation to actual cases, that it was the Board of Trade's intention to take provisional action only sparingly and only in cases where serious damage might otherwise result. His Government considered that it would cause unnecessary and undesirable disruption to trade and hence introduce uncertainty, if provisional action were taken in all or most cases where a prima facie case had been made out.

United States (L/3180)

48. The representative of the United States pointed out that the amended Anti-Dumping Regulations had entered into force on 1 July 1968. The Anti-Dumping Act of 1921 had not been changed. He recalled that it had been made clear in the group that had drafted the Anti-Dumping Code that the negotiating authority of the President of the United States in the Kennedy Round had not comprised authorization to amend the Anti-Dumping Act. With respect to the question whether the provisions of the Renegotiations Amendments Act of 1968 would impair the ability of his Government to adhere to the Anti-Dumping Code,

the representative of the United States referred to the answer his delegation had given at the November 1968 meeting of the Committee (COM.AD/1, paragraph 10); the situation had not changed since then.

49. The representative of the United States said that on the date the Anti-Dumping Code had entered into force for the United States, 1 July 1968, there had been fourteen anti-dumping investigations under way of which six involved withholding of appraisement. Two of those investigations, of which one involved withholding of appraisement, had been closed; in both cases the determination had been negative. All the other twelve investigations were in the final stage.

50. The representative of Japan said that it was to be hoped that the Government of the United States would apply the Code criteria for the determination of injury in cases of provisional measures under Section 53.34, although that section did not contain any such rules. He said, with reference to Section 53.48(a), that the fixing of the effective date seemed to open up possibilities for a retroactive application of provisional measures that was not allowed in the Code. Finally, he wished to voice the concern of his Government with regard to the views on the determination of injury expressed in the report of the Tariff Commission of March 1968. The Japanese Government expected that in determining injury the United States authorities would follow the rules of the Code.

51. The representative of the United States said that the evidence of injury required under the Anti-Dumping Regulations in his opinion met the requirement in Article 10 of the Code that there should be "sufficient" evidence of injury for provisional measures to be taken. He referred to the provisions of Sections 53.27(e) and 53.28. With regard to the retroactive application of provisional measures under Section 53.48(a), the representative of the United States pointed out that Article 11(iii) of the Code foresaw that the duty might be assessed on products which had been entered for consumption not more than ninety days prior to the date of application of provisional measures. He underlined that nearly all entries were appraised very promptly. With regard to the third point raised by the representative of Japan, he pointed out that the report of the Tariff Commission should be regarded as a statement of opinion only. It was correct that according to the Renegotiations Amendments Act the Anti-Dumping Act should take precedence if it were in conflict with the Anti-Dumping Code, but such cases were not likely to arise. Should a case nevertheless come up, it would be discussed in the Committee on Anti-Dumping Practices.

52. The representative of Sweden said that the fact that the United States Government under the Renegotiations Amendments Act of 1968 was obliged to give the Anti-Dumping Act precedence if it were in conflict with the Anti-Dumping Code was causing some concern. He asked if the United States representative could clarify how this conflict was looked upon from the legal point of view by his Government. The representative of Sweden also said that it was regrettable that it had not been possible to follow the wording of the Code more closely in the United States Regulations.

53. The representative of the United States referred to the explanations he had given in reply to earlier questions regarding the relationship between the Act and the Code. He recalled that it had been made clear in the course of the Kennedy Round that the President had no authority to amend the 1921 Anti-Dumping Act. In reply to the observation concerning the language of the United States Anti-Dumping Regulations, he said that the drafters of the Regulations had been bound by the language used in the Act; it had therefore not been possible for them to follow more closely the Code language.

54. The representative of the European Economic Community said that he shared the concern expressed by the representatives of Japan and Sweden over the fact that in some cases the United States Government might be obliged to violate the provisions of Article VI of GATT and the Anti-Dumping Code because it had to give precedence to the Anti-Dumping Act. He recalled that the United States had signed the Code without any reservation and expressed the hope that the Government would find itself in a position to apply it fully.

55. The representative of the Community recalled that it had been agreed at the previous meeting of the Committee that at the present meeting the Committee could discuss the ways in which the participating governments dealt with anti-dumping cases the investigation of which had begun but had not been terminated at the entry into force of the Code. He regretted that the Government of the United States considered that such cases should be dealt with throughout under the pre-Code procedure. In his opinion it was an internationally accepted principle that account was taken in legal proceedings of new more lenient legislation introduced in the course of the proceedings. He had in mind particularly a case of provisional measures taken against imports of potash in accordance with a decision of 16 June 1968. He felt that there were strong reasons for applying the Code rules on time-limits for provisional measures in such a case where the decision had been taken only two weeks before the entry into force of the Code.

56. The representative of the United States took note of the views expressed by the representative of the Community. He considered that his Government was fully entitled to continue applying the previous rules to investigations initiated before 1 July 1968. He said that in some cases it was in the interest of the parties concerned that the old rules were still applied.

57. The representative of the European Economic Community replied that in the cases to which he had referred, an application of the more strict time-limits under the new procedures would be a great advantage for the exporters. He felt that it might be necessary to convene a special meeting of the Committee to discuss such cases.

58. The representative of the United Kingdom pointed out, in passing, that both the Canadian and the United States regulations referred only to "the likelihood of injury" whereas the Code demanded that any threat of (material) injury should be "clearly foreseen and imminent". He presumed that the more stringent Code definition of threat would be applied in practice by the United States and Canada.

Switzerland (L/3173)

59. The representative of Switzerland recalled that it had been pointed out in the communication from his Government (document L/3173) that no anti-dumping measures had been taken by Switzerland in the past thirty or forty years. If a case should come up in the future, his Government would apply the Code rules.

Hong Kong

60. The representative of the United Kingdom, speaking on behalf of Hong Kong, said that Hong Kong did not have, and had never had, any anti-dumping legislation. Consequently no action had ever been taken, and none was contemplated, against dumping in the Hong Kong market. If this position were to change in the future and legislation on anti-dumping were introduced in Hong Kong, it would conform in all respects to the provisions of the GATT Anti-Dumping Code, to which Hong Kong was a party by virtue of its acceptance by the United Kingdom.

B. Preparations for next meeting

61. The representative of the European Economic Community said that it was essential that the reports to be submitted under Article 16 of the Agreement on Implementation of Article VI by all the parties to the Agreement were circulated in good time before the September meeting of the Committee. He suggested that the reports should be transmitted to the secretariat not later than on 15 July. It was so agreed.

62. The representative of the European Economic Community suggested that the members of the Committee should, in addition to the report under Article 16 of the Agreement, also submit a summary, covering the period 1 July 1968-30 June 1969, showing:

- (i) the number of dumping complaints received,
- (ii) the number of anti-dumping investigations opened,
- (iii) the number of anti-dumping decisions, final and provisional,
- (iv) the number of anti-dumping cases dismissed, and
- (v) the number of anti-dumping cases pending.

The representative of the Community stressed that what he had in mind was a summary containing only numbers of cases under the various headings. Some representatives said that it might meet with certain technical difficulties to prepare such summaries. The Chairman invited the members of the Committee to submit to the secretariat material of the kind envisaged by the representative of the Community to the extent they were in a position to do so.

63. The representative of the United Kingdom stressed that his Government attached much importance to the way anti-dumping legislation was implemented in practice. He therefore suggested that the members of the Committee, who were active in the anti-dumping field, should be invited to submit to the September

meeting memoranda on their administrative procedures and practices to supplement the legal texts that had already been circulated. In reply to questions he explained that what he had in mind was short memoranda explaining in a form easier to consult than the legal texts the administrative practices of the countries concerned. The Chairman said that the members of the Committee were under no obligations to submit such memoranda; he felt, however, that they could be very useful and he invited the members, who were in a position to do so, to transmit to the secretariat memoranda of the kind suggested by the representative of the United Kingdom.

64. It was agreed that the annual meeting of the Committee should be held at the end of September, at a date to be fixed by the secretariat.

C. Other business

65. The representative of the United Kingdom recalled that in the note on the meeting of the Committee on 15 November 1968 (document COM.AD/1), it was said in paragraph 9 that members of the Committee had stressed the importance of examining in the Committee rather than bilaterally any questions that might arise concerning the failure by any party to implement fully the Code. It was his understanding that the agreement reached in the Committee would not prevent governments from trying to clarify questions bilaterally; if that was not possible the matter should be brought before the Committee. The representative of Sweden shared the opinion expressed by the representative of the United Kingdom.