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GENERAL AGREEMENT ON TARIFFS AND TRADE

COMMITTEE ON ANTI-DUMPING PRACTICES

Minutes of the Meeting held on 25 to 29 September 1972

Chairman: Mr. A.C. Buxton (United Kingdom)

A. Examination of reports submitted under Article 16 of the Agreement covering the period 1 July 1971 - 30 June 1972

(a) Canada (COM.AD/23)

1. The discussion on the cases covered by the Canadian Report under Article 16 concentrated on the following aspects:

(i) Treatment of duty drawbacks and intermediate taxes
(ii) Treatment of sales at a loss
(iii) Determination of injury
(iv) Imposition of provisional anti-dumping duties

(i) Treatment of duty drawbacks and intermediate taxes

2. The representative of the United Kingdom reminded the Committee that at the last meeting his delegation supported by the representatives of the EEC, Sweden and the observer for Spain, had disagreed with the Canadian view that allowances for drawback could be made only when the goods exported were re-exported in the same state (COM.AD/19, paragraphs 5-9). Canada had contended that Article VI:4 of the

General Agreement did not require allowances for drawback on components. The United Kingdom delegation believed that the records of the discussion of this point at the Review Session in 1954/55, reproduced in document COM.AD/W/25, supported their understanding that both drawback paid on the imports of the product itself and in respect of any component or material thereof was permissible. Articles VI:1 of the General Agreement and 2(f) of the Code provided that due allowances should be made for the differences in taxation. The representatives of the EEC and Japan associated their delegations with the views of the United Kingdom.

3. The observer for Spain pointed out with reference to the case of women's footwear (COM.AD/W/21 and 29) that the manner in which the Canadian authorities had dealt with the exemption or refund of duties and taxes borne by products destined for consumption in Spain were not, in his Government's opinion, in conformity with the drawback provisions of Article VI.

4. The representative of Canada said that his delegation had taken note of the views of the Committee on intermediate taxes and drawback. The Canadian authorities were willing to review their position on these issues and a study of the treatment of intermediate taxes was being carried out. However, it must be recognized that the change requested in Canadian practice would have implications for a number of separate but related elements in Canadian commercial policy. This study would of course take full account of Canada's obligations under the General Agreement and its conclusions could be communicated to the Committee. Canadian Regulation No. 11 dealt with this issue and, if it was determined that its provisions were not consistent with the obligations Canada had assumed, the Regulation would be changed.

(ii) Treatment of sales at a loss

5. The representative of the United Kingdom said that at the 1971 meeting his delegation, supported by the delegations of the EEC, Sweden and the United States, had maintained that sales, where the price did not fully cover the costs of the manufacturers, were generally made in the ordinary course of trade (COM.AD/19, paragraphs 12-15). It was a common and necessary business practice to sell goods at a price which did not cover full costs. The Canadian statement that they would consider this issue on a case-by-case basis was not satisfactory because a general rule could be formulated. Domestic sales representing the best price that the seller could obtain in current market conditions for the production in question should be used as a basis for determining normal value. If the export price was not lower than such price there was no dumping. Article 2(d) of the Code supported these conclusions. In the transformers case domestic sales had been rejected as the base for normal value and a constructed value had been arrived at by taking costs plus a purely fictitious profit, which the producer could not possibly have obtained in the circumstances prevailing at that time.

6. The representative of the EEC associated himself with the views of the United Kingdom; he said that he opposed the establishing as a rule that in presence of a sale at a loss, no comparisons could be made between the domestic and export prices. It was not possible always to consider a sale at a loss as an abnormal operation under Article 2(d) of the Code.

7. The representative of the United Kingdom said that he agreed that sales at a loss could be disregarded where the loss sale was motivated by considerations other than that of obtaining the best price, for example to promote sales of other lines, or for social reasons.

8. The representative of Canada said that the question whether sales at a loss were or were not made in the ordinary course of trade was treated in Canadian practice as a matter of fact to be assessed in a particular industry at a particular time. This was a matter of practice, not of legislative requirement. His authorities felt that it was difficult to make a firm rule and would take a pragmatic view on situations in particular industries as cases arose. In the transformers case, a firm had sold at a loss in the domestic market, but that was not the general condition prevailing in the industry at that particular time.

(iii) Determination of injury

9. The representative of the EEC recalled that in 1971 the majority of the Committee had invited the Canadian authorities to ask the Tribunal to review its decision in the footwear case on the ground that it was not in accordance with the rules of the Code concerning the principal cause of the injury (COM.AD/19, paragraph 3). He asked if a review had taken place.

10. The representative of Canada said that the Tribunal had undertaken to review the injury determination within 18 months. The Tribunal formed part of the judicial system and would review the injury decision on its own responsibility. Any interested party could also ask the Tribunal to review its finding. This possibility was always open to the parties to any anti-dumping case, from both the public and private sectors. No formal written representation other than the handing over of the records of the last meeting of the Anti-Dumping Committee had been made to the Tribunal, but a member of its staff had attended that meeting.

11. The representative of the EEC agreed that the revision rules conformed to Article 9(b) of the Code, but he recalled that the Committee had specifically requested a revision of the decision before the end of the 18 months period.

12. The observer for Spain recalled that at the 1971 meeting it had been agreed that bilateral consultations between Canada and Spain should be pursued in respect of the case of women's footwear where Spain could not agree that a threat of injury to Canadian industry existed (COM.AD/19, paragraphs 3 and 4). These consultations had not lead to any result.

13. The representative of the EEC questioned whether it could be argued that the Code criteria had been met when the Canadian Tribunal had established that the dumped imports were not the main cause of the difficulties of the Canadian industry. In cases of threat of injury special care should be exerted, and he was not convinced that sufficient evidence had been shown in the footwear case.

14. The representative of Canada replied that the Tribunal had not found past injury but had established that there was a threat of injury from future imports. Such findings could be appealed on matters of law to the Federal Court. He would convey the comments of the Spanish and EEC representatives to his authorities. The Tribunal would in any case review its decision in respect of the injury finding not later than on 25 February 1973. The Chairman said that he hoped that the issue could be solved with a minimum of delay.

15. The representative of Japan asked for an explanation of the basis for the finding that the imports of bicycle tubes from Austria, Japan, the Netherlands, Sweden and Taiwan were materially retarding the establishment of a national industry in Canada. He noted that tubes, where there was a threat, were statistically classified together with tyres, for which there was no threat.

16. The representative of Canada agreed that there were certain difficulties in separating tyres and tubes statistically. The Tribunal considered that the establishment of retardation had been made on solid grounds. He pointed out that recourse could be had to the appeal procedures established in the Canadian Act.

(iv) Imposition of provisional anti-dumping duties

17. The representative of the EEC asked if it was correct that a provisional duty had been imposed in the women's footwear case and had been applied for more than the three months period established in the Code.

18. The representative of Canada said that in the case of Spanish and Italian footwear, an appeal had been lodged early in 1972 to the Trials Division of the Federal Court which subsequently had issued a writ of prohibition preventing the application of anti-dumping duties. The Appeals Division of the Federal Court reversed this decision in June 1972. Anti-dumping duties corresponding to the period under the prohibition had then been collected. Definitive anti-dumping duties were now being collected at the time of importation. Provisional duties collected during the period when the injury question had been under review had been returned because the Tribunal had decided that there was only future injury.

(b) Greece (COM.AD/23/Add.1)

19. The Chairman said that he had been informed by the Ambassador of Greece that, because of some unexpected technical difficulties, a Greek representative would not be able to attend the meeting of the Committee. Greece was, however, willing to provide by letter answers and information requested by delegations. The

Chairman recalled that the questions that had been posed at previous meetings by members of the Committee concerning Greece's legislation and regulations appeared in documents COM.AD/14, paragraphs 5 to 8 and COM.AD/19, paragraphs 24 to 26 and 88.

20. The representative of the EEC said that it was not clear which were the countries included in the expression Eastern Trading Area countries in the Greek report.

21. The Committee agreed that the secretariat should communicate to the Ambassador of Greece the questions which had been raised.[1] The Greek answers would be circulated to the members of the Committee, when received.

(c) United States (COM.AD/23)

22. The discussion on the cases covered by the United States report under Article 16 concentrated on the following aspects:

(i) Determination of material injury
(ii) Determination of normal value
(iii) Withholding of appraisement
(iv) Price undertakings
(v) Other questions

(i) Determination of material injury

23. The representative of the EEC recalled that he had at several earlier occasions expressed concern at the application of the Code by the United States Tariff Commission. He saw no change of past trends in the field of material injury. On this question two elements had to be taken into account. First, the question of the importance of the injury. Second, the question of causality of the injury; Article 3(a) of the Code stipulated that the dumping had to be demonstrably the principal cause of the injury. In reaching their decision, authorities had to weigh, on the one hand, the effect of the dumping and, on the other hand, all other factors taken together which might be adversely affecting the industry. The jurisprudence of the Tariff Commission did not conform to the provisions of the Code. For instance, in the case of pig iron from Western Germany, it was said that the Tariff Commission had always considered that it was not necessary to show that dumped imports were the sole cause, nor even the major cause of injury, as long as the facts showed that the dumped imports caused an injury which was more than de minimis. This was in clear disagreement with the Code provision that dumping had to be demonstrably the principal cause of the injury. In the decision

[1] A letter was sent to the permanent mission of Greece on 9 November 1972.

in the transformers case, the Tariff Commission had said that dumped imports contributed substantially to the injury suffered by the United States industry. A substantial contribution was not the same thing as the principal cause. He admitted that dissenting opinions in the Tariff Commission had no legal standing but he noted that one member of the Tariff Commission had said in that connexion that it was impossible to separate the result of the dumping from other factors affecting the United States industry.

24. The representative of the United States said that there was a difference of interpretation between the United States and the EEC on the question of the cause of the injury. According to the United States interpretation, sales at less than fair value constituted the principal cause of the injury whenever there was no other more important individual cause, even though the dumped sales might not account for 50 per cent of the injury. The Executive Branch had stated in a written submission to the Senate Finance Committee that "The term 'the principal cause' is susceptible of such interpretation and indeed does not require that dumped imports be that cause which is greater than all other causes combined of material injury". In the transformers case it had been clearly stated in a unanimous decision that sales at less than fair value were the cause of substantial injury.

25. The representative of the United Kingdom said that too literal an interpretation of the requirements in Article 3(a) of the Code that imports should be "demonstrably the principal cause of material injury ...." could lead to anomalies. For example it might be established that the net return of a particular domestic industry had fallen by 50 per cent, made up of 30 per cent due to general economic factors and 20 per cent due to dumping. In this case dumping was not the principal cause of the total injury suffered, but would the Committee consider that a 20 per cent loss of net income caused by dumping was not material? He suggested that this was a matter which the Committee might agree to consider at its next meeting.

26. The representative of the EEC agreed that there were differences of view with regard to the interpretation of Article 3(a) of the Code. In his view it was clear that dumped imports should weigh more than all the other factors taken together. He underlined that this view was corroborated by the very explicit wording of the second sentence of Article 3(a) of the Code which stipulated that in order to take a decision on the causality of the dumping "the authorities shall weigh, on one hand, the effect of the dumping and, on the other hand, all other factors taken together which may be adversely affecting the industry". The causality issue should be taken up again at the next meeting of the Committee. The Committee agreed to revert to the matter at its next meeting.

27. The representative of the United Kingdom said that cases had been taken up by the United States Treasury without prima facie evidence of injury; he particularly had in mind three cases still under investigation: record changers, card clothing, and printers' rubberized blankets. After the Code had been signed

by the United States, the British Embassy in Washington had received an aide memoire from the Department of State, dated 4 June 1968, giving assurances that the Treasury Department would implement the new anti-dumping regulations so as to comply with the provisions of the Code. No reservations had been made. The aide memoire had also said that the Executive Branch was confident that the Tariff Commission, in the context of specific facts of particular investigations, would render its decisions under the Anti-Dumping Act of 1921 in a manner consistent with the principles and purposes of the Code, including those relating to the determination of material injury and to the definition of industry.

28. The representative of the EEC said that he recognized that the United States delegation at the time of the drafting of the Code, had said that it would not be possible to change the Anti-Dumping Act, but it had also been stated that the Code requirements could be complied with. The United States had furthermore signed the Code without any reservations. In the elevator case, one single firm had filed the complaint while the majority of the industry did not consider itself affected; moreover the dumping margin had been very small. The authorities should, in accordance with Article 5 of the Code, only accept complaints made on behalf of the industry affected; as defined in Article 4, other complaints should be rejected.

29. The representative of Japan agreed that the authorities concerned should in all cases, to prevent unfounded complaints, request that complaints be supported by substantial evidence of injury as well as relevant price data in accordance with Article 5(a) of the Code.

30. The representative of the United States could not agree with the statements that the Treasury initiated investigations without proper evidence of injury. The Code asked for simultaneous determination of injury and dumping. Consequently, prior to commencing an investigation initial statements of injury were required by the United States authorities. When a single firm filed a complaint the Treasury Department made a preliminary enquiry, looked into the fair value question and also verified that the complaint contained an allegation that the sales at dumped prices were causing injury. On the other hand, the Treasury Department could not under United States law look behind the allegations of injury in the complaint. The Tariff Commission invariably looked at the entire United States industry involved in making its determination whether an industry in the United States was being injured to such an extent that the Code criteria were met.

31. The representative of the United Kingdom said that he was concerned at the number of cases where the Tariff Commission had made determinations of injury although the market penetration had been minimal. He referred to the cases of tempered sheet glass from Japan, clear sheet glass from France, Italy, West Germany and from Taiwan, ice cream wafers from Canada and fish nets and netting from Japan. In all those cases the market penetration had been 3-4 per cent at the most but in some cases less than one per cent. This showed, in his view, that the Tariff Commission was not applying the material injury criteria properly.

32. With reference to the cases mentioned by the representative of the United Kingdom, the representative of the United States replied that the majority and minority in the Tariff Commission had frequently come to different conclusions because the former had taken into account the aggregated less than fair value imports coming from various countries. Nothing in the Code prohibited taking into account an aggregation of sales at less than fair value from a series of countries. In the case of glass imports from Taiwan, account had also been taken of dumped imports from Japan. Price declines of 10 per cent to 24 per cent from 1968 to 1970 had been caused by the imports. As to tempered sheet glass from Japan, the majority of the Tariff Commission had concluded that the impact of these imports was highly significant because of the elasticity of the demand. Under these circumstances a small price advantage could be decisive in determining who made the sale. Concerning sheet glass from Italy, France and West Germany, the majority had concluded that less than fair value imports, whether considered cumulatively or individually, had had a substantial disruptive effect on the domestic market for such glass. The continued existence of the United States clear sheet glass industry could be in danger. In the cases of ice cream sandwich wafers from Canada and fish nets and netting from Japan, the majority had found that small margins of dumping had had significant impact on the sales. The representative of the United States emphasized once more that the opinion of the minority in the Tariff Commission had no legal standing whatever.

33. The representative of Japan pointed out that some of the anti-dumping cases concerning textiles raised the issue of the relationship between anti-dumping actions and export control mechanisms such as those on textiles and steel. The purpose of these arrangements was precisely to prevent injury to the United States industry. In accordance with the textile arrangement between the two Governments, Japanese exports to the United States were limited and subject to controls. The United States Commerce Department had declared itself satisfied with the operation of the arrangement which had reduced the volume of exports while prices were increasing. The import-consumption ratio for 1972 would be 2 per cent and under the circumstances no damage could be caused to the United States industry. Products under special arrangements that prevented material injury to the industry of the importing country should not be subject to anti-dumping actions, as this would constitute a double protectionism.

34. The representative of the United States pointed out that the Tariff Commission, not the Commerce Department, was responsible under United States law for determining the existence of injury in anti-dumping cases. Whether injury existed, in the situations adverted to by the representative of Japan had not yet been passed on in a Tariff Commission determination. Accordingly, the United States representative was not in a position to comment in further detail at this time.

(ii) Determination of normal value

35. The representatives of the United Kingdom and the EEC noted that in the transformer case the unadjusted dry weight method had been used for the comparison of prices of transformers sold in the domestic markets of the exporting countries

and those exported to the United States. They did not consider that this method was sufficiently precise to allow a meaningful comparison.

36. The representative of the United States replied that the unadjusted dry weight method had been used for the determination of fair value by the Treasury. For this purpose the method was fully adequate. For the later calculation of the precise margin of dumping, other, more precise methods would be considered, but no decision in that respect had yet been taken. He noted that United States manufacturers of power transformers used a price list method for determining prices; it was his understanding that in Europe the manufacturers generally used an adjusted dry weight method for purposes of verifying their computations before making a bid.

37. The representative of Switzerland said that the decision of the Tariff Commission in the case of large power transformers imported from Switzerland caused concern. The comparisons made with other transformers did not appear to be pertinent, the Swiss transformers in most cases being made on special order.

38. The representative of Japan cited various difficulties in connexion with the determination of the normal value. For example, he noted that in market economy systems the normal value was continuously varying as offer and demand changed. Furthermore, the concept of "like product" while presenting little problem in the case of simple products such as sugar, salt, sulphurs, caustic soda, steel ingots, etc., would present difficult problems in the case of more sophisticated goods such as cars, TV sets, clothing, etc. Therefore, determination of normal value of "like products" in the case of sophisticated goods in a market economy would be extremely complicated and could give too large a discretion to the authorities. When the meaning of due allowance was considered in the context of market and commercial practices, there was such a considerable difference between an exporting and an importing country in making due allowance that the administration of the latter could enjoy discretionary authority. Consequently the action by officials could often appear to be arbitrary and unfair.

39. The representative of the United States pointed out that the Treasury Department made a point of maintaining close contact with representatives of the companies concerned and discussed with them in detail the various factors comprising the specific elements in fair value determinations. This was intended to minimize the danger of arbitrary and unfair rulings with respect to adjustments for similarity.

(iii) Withholding of appraisement

40. The representative of the United Kingdom was concerned at the fact that withholding of appraisement was applied for a longer period than the one contemplated in the Code. Provisional action should be delayed until the authorities were satisfied that a final decision would be reached within the time-limit prescribed.

41. The representative of Japan stressed that the withholding of appraisement should be made only when there was sufficient evidence of injury. Withholding of appraisement on the ground that the Treasury was not authorized to make an injury determination in accordance with the United States anti-dumping regulations, was not consistent with Article 10(a) of the Code. The United States authorities should also ensure compliance with Article 11 of the Code. Section 153.48 of the present Regulations providing for discretionary retroactive application of withholding of appraisement would appear to be in conflict with that Article.

42. The representative of the United States pointed out that there had been a major change in United States procedures upon acceptance of the Code. In contrast with the United States earlier practice where there had been long periods of withholding, withholding of appraisement was applied for a period of three months only, except where the exporters and importers requested its extension. Since it was difficult to fairly consider all issues within three months in complicated cases, the six-month period of withholding was typically requested and granted. In no event was withholding now being maintained in effect for longer than six months. Anti-dumping duties were assessed as of the date of withholding. The right to withhold appraisement retroactively, which was expressly recognized under the Code, had not so far been used in the United States. After a dumping finding, withholding of appraisement was invariably terminated. On the other hand, the process of gathering information for purposes of assessment could be lengthy. He recognized there was an element of uncertainty while a final conclusion on assessments was pending and his authorities were exploring procedures for expediting the assessment process.

43. The representative of Japan said that the Code provided for retroactive application of anti-dumping duties but not of provisional measures. In his view retroactive withholding of appraisement was not permitted. He took note of the United States statement that retroactive action had not been taken with regard to withholding of appraisement. It was the hope of his Government that company-by-company determinations would soon become the rule in the case of application of anti-dumping duties in the United States.

44. The representative of Japan expressed the hope that, with respect to the anti-dumping actions, the determinations and their publication should be made on a company-by-company basis in accordance with the spirit of Article 8(b) of the Code. The representative of the United States replied that determinations on a country basis could be made under the Code and were made if significant dumping margins were found to exist in respect of the principal exporters accounting for a major part of the exports. If a particular company could establish that no sales at dumped prices had been made over a period of two years prior to the date of the dumping finding, an order excluding the company concerned from the dumping would be issued.

(iv) Price undertakings

45. The representative of Japan stressed that investigations should be discontinued as soon as it was found that price undertakings were likely to be carried out in view of the number of foreign exporters involved and of the commercial practices applied in the country of exportation. The strict policy being pursued by United States with regard to price undertakings was not in conformity with the spirit of Article 7 of the Code. He felt that it was in the spirit of the Code to apply more flexibly the price assurance principle, because the main objective of the Code was the prevention of dumping.

46. The representative of the United States noted that so far no formal comments had been received concerning the written submission of the United States exploring its price assurance policies (Annex I to COM.AD/14) and he could only reiterate the conclusion in the United States submission that the United States policy was consistent with both the letter and spirit of the Code. He did not assume that the silence of other parties to the Code signified acquiescence in the United States views on price assurances. On the other hand, if this subject was to be pursued further, his Government would appreciate receiving formal comments in writing rebutting the points made in the United States submission, so that the United States would be able to make a point-by-point rejoinder. Nothing was accomplished by a mere reassertion of conclusions expressed in the previous annual meeting.

47. The representative of the EEC did not agree with the contents of the United States note on price assurances. His position remained the same as it had been at the discussion in 1970 (COM.AD/14, paragraphs 15 and 16). No new arguments were contained in the United States note. The United States should make every effort to move closer to the views of the majority of the members of the Committee.

48. The representative of the United States recalled that in the hand pallet trucks case, for example, the exporters had refused to give price assurances and had preferred to test out in the Tariff Commission whether or not the margins of dumping were adequate to cause injury. They had succeeded and could now sell in the United States at less than fair value. The Treasury's position was that it would discontinue investigations on a price assurance basis only where the margins of dumping were minimal. A minimal margin might be 45 per cent in a situation where there were very many sales and only one of these was made at a dumping margin. On the other hand, a 5 per cent margin covering 90 per cent of the sales would probably not be considered to be minimal under the Treasury policy.

(v) Other questions

49. The representative of Japan said that respondents should always be notified of the basis for fair value calculations. This was necessary in order that foreign exporters and United States importers could establish export prices so

as to avoid the occurrence of dumping margins. The reluctance by the United States authorities in some cases to provide information to governments was unwarranted. Articles 6(h) and 10(c) of the Code said that representatives of the exporting country would be notified of reasons for decisions on anti-dumping duties and the criteria applied.

50. The representative of the United States replied that he was mystified by the statement of the Japanese representative that on occasions the respondent had not been notified of the fair value calculations. Foreign exporters were entitled to examine the evidence submitted by the complainant if there was no violation of confidentiality rules. From sometime before the withholding, the firm concerned or its attorneys were given full information as to how the calculations were made in order to give the respondents the opportunity to make any appropriate price adjustments. The United States authorities had more interest in seeing dumping terminated than in collecting anti-dumping duties. Since most information gathered in an investigation was confidential in nature, it was not given to governments or to complainants.

51. The representative of Switzerland noted that doubts arose in some cases as to the evolution of the restrictive practices being followed in the United States. The same United States manufacturers that had acted in the transformers case had started a new action and requested the Office of Emergency Preparedness to determine if imports of certain reactors should be barred for national defense reasons. This was an attempt to eliminate foreign competition, and such a policy might lead to an escalation of protectionism if other countries adopted similar measures. Recent events appeared to confirm such fears. On 13 September 1972, the Assistant Secretary of the Treasury had indicated that in the fiscal year 1971/1972 the number of anti-dumping proceedings in the United States had increased 119 per cent. He questioned whether the report on the Anti-Dumping Committee to the CONTRACTING PARTIES ought not to be broader in scope than in the past, relating anti-dumping practices to trade policy in general, and in particular to protectionist practices.

52. The representative of the United States expressed the view that the comments made by the representative of Switzerland contained considerable logic and merited serious consideration. He agreed that there was an inter-relationship between dumping and protectionist practices. He observed that the United States had conducted six large power transformer investigations. Five had resulted in findings of dumping and one in a discontinuance. The government of the country where the investigation was discontinued followed a practice of allowing open bidding on all transformer contracts in the country. If domestic companies in that country could not meet the price of foreign bidders, the latter obtained the contract. This policy was not followed in the five other countries where dumping had been found. Bidding on large power transformers in the five other countries was largely restricted to domestic companies. This tended to lead to high home market prices for large power transformers. On the other hand, when these same companies bid on United States contracts, they of necessity had to meet international competition, and in doing so, they tended to offer lower prices abroad than in the home market. It was this practice that had led to the dumping findings in the large power transformer cases.

B. Examination of national legislation

(a) Austria (L/3740)

53. The representative of Austria recalled that certain Austrian legal provisions - especially of a procedural character - had had to be amended before Austria had been able to accede to the Anti-Dumping Agreement. Parliament had approved the new Anti-Dumping Law in June 1971 and Austria had accepted the Agreement on 1 January 1972. The representative of Austria stressed that no investigations had yet been initiated under the new Anti-Dumping Law of 1971; the Austrian authorities therefore had no experience with regard to the application of the Law. The provisions of the Law were, in the opinion of his Government, in conformity with Article VI of GATT and the Anti-Dumping Code. He stressed in this connexion that the Anti-Dumping Code had been given the force of law in Austria. Should thus the Law give room for more than one interpretation, the one to be applied would be the one which would be in conformity with GATT and the Code.

54. The representative of the United Kingdom said that it was satisfactory that the Austrian Law to a large extent took up the Code language. In reply to questions put by the representative of the United Kingdom, the representative of Austria confirmed that the words "appropriate quantities" in paragraph 9:2 of the Law should be interpreted in conformity with Article 2(f) of the Code and that the provisions concerning drawbacks in paragraph 10 of the Law should be interpreted - with regard to components and materials - in conformity with paragraph 4 of Article VI of GATT.

55. In reply to a question by the representative of Canada, the representative of Austria confirmed that the term "injury" in the Law should be interpreted as meaning "material injury" in the sense of the Code.

56. The representatives of the EEC and the United Kingdom pointed out that they had not had time to examine in detail the provisions of the Austrian Law. The Committee agreed that it would continue the examination of the Law at its next meeting.

(b) Portugal (COM.AD/18)

57. The representative of Portugal stressed that the Code had become binding for his country upon its acceptance. He felt that the Portuguese legislation was in conformity with the Code requirements. His authorities were, however, willing to consider adjustments of the legislation in the light of the comments that might be made in the Committee.

58. In reply to questions by the representative of the United Kingdom concerning the meaning of the terms "serious damage" and "production branch" in the Portuguese legislation, the representative of Portugal said that the translation into English in COM.AD/18 was not correct; the proper terms were "material injury" and "industry".

59. The representative of the EEC reserved the right to put additional questions concerning the Portuguese legislation at the next meeting of the Committee.

(c) Greece (COM.AD/14, paragraphs 5-8; COM.AD/19, paragraph 88)

60. The Chairman noted that no Greek representative was present but recalled that Greece had offered to reply in writing to questions put (see paragraph 19 above). The representatives of the EEC and the United States asked that the questions put at earlier meetings concerning the Greek legislation be transmitted to the permanent mission of Greece. The Committee agreed to invite the secretariat to proceed accordingly.[1]

(d) Malta (COM.AD/19, paragraphs 36-40)

61. The representative of Malta recalled that certain points concerning the Maltese legislation had been raised by the representatives of the EEC and Norway at the Committee's meeting in 1971. He had then undertaken to bring the questions to the attention of the competent authorities in La Valetta (see COM.AD/19, paragraph 40). It was the considered view of the Maltese legislators that the points raised by the EEC and Norway were fully covered. The legislation of Malta, which dated back to 1959 and 1965, might not specifically cover all Code aspects, but the Government of Malta would not act in a way that would be in conflict with the General Agreement as in force - including the Code - when the case came up. That commitment was confirmed by the fact that Malta had adhered to the Code without reservation.

62. With particular reference to the question put by the representative of Norway at the 1971 meeting concerning third country dumping, the representative of Malta pointed out that the Maltese law was an enabling one. Additional regulations could be issued administratively, but there had not yet been any case of third country dumping that had required action.

(e) Canada (L/3733)

63. The representative of Canada explained that the amendments to the Canadian anti-dumping regulations contained in L/3733 had been made on the basis of Canadian experience in administering its anti-dumping legislation over the last few years. These changes were designed to remove certain ambiguities.

64. The representatives of the United Kingdom and the EEC asked for the reasons for the removal from Section 4(1)(a) of the 20 per cent limit and its replacement by "generally" and how the Canadian authorities considered discounts in cases where domestic deliveries were on a truck load basis while deliveries to Canada were on a ship load basis.

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[1] A letter was sent to the permanent mission of Greece on 9 November 1972.

65. The representative of Canada replied that the introduction of the word "generally" in Section 4(1)(a) was intended to give more flexibility to the calculation of quantity discounts and referred to sales of comparable quantities in the home market. Section 4(1)(b) referred to "savings specifically attributable to the quantities of the goods involved". This provision would apply in the truck versus ship example.

66. In reply to a question put by the representative of the United Kingdom concerning the amendment to Section 12 of the Regulations, the representative of Canada explained that in the case of deliveries under open ended contracts, the exchange rates to be used would be the rates prevailing at the date when prices of particular shipments were fixed.

(f) United States

(i) Amendments to Regulations (L/3640)

67. The representative of the United States explained that the amendments to the anti-dumping regulations contained in L/3640 were of a procedural and not substantive nature.

(ii) Proposed amendments to Regulations

68. The representative of the United States noted that technically the proposed Regulations were not properly on the Committee's agenda since they had not gone into effect, but stated that the United States would be pleased to discuss them in the hope of clarifying possible misunderstandings. The representative of Japan pointed out that his Government had already had bilateral contacts at various occasions with the United States in order to discuss the proposed amendments to the United States anti-dumping regulations. With reference to Article 14 of the Anti-Dumping Agreement - the obligation for the parties to ensure the conformity of their laws, regulations and procedures with the provisions of the Code - he wished to make seven comments concerning the proposed amendments which, he furthermore hoped, would not be applied in cases already under consideration.

1. Section 153.8 - Method of Fair Value Calculation

69. The representative of Japan noted that Section 153.8 of the proposal deleted the word "reasonably" when referring to the granting of sale adjustments. As a result, only circumstances of sale directly related to specific sales under consideration would be allowed and general advertising expenses, bad debt adjustments, etc. would be entirely disallowed. He was of the opinion that the proposal did not give adequate consideration to the usual and normal elements of selling costs structured into prices prevailing in a country of exportation. In the light of Article 2(f) of the Code he felt that commercial practices and customs in the country of exportation should be duly taken into consideration and that the proposed amendment would be inconsistent with the spirit of the Code.

70. The representative of the EEC said that he was grateful for the opportunities that the United States had offered to the Community to discuss the proposed amendments bilaterally with the United States. He wished, however, to use this additional opportunity to obtain some further clarifications. With regard to Section 153.8, he shared the fears of the representative of Japan that the deletion of "reasonably" would severely limit the possibilities of making adjustments.

71. The representative of the United States felt that the omission of "reasonably" made the sense of the provision clearer. Opinions could be divided on the extent to which adjustments should be made, but it was obvious that overhead costs should not be included. The introduction to the regulations made it clear that their intention was to defend the United States against unfair trade practices in accordance with the spirit of the Anti-Dumping Code. In this particular case, the aim was to limit requests for adjustments to costs directly related to the specific sale under consideration. Among costs that could not be considered to be directly related to a specific sale he mentioned general advertising costs and bad debts. Bad debts were from his point of view closely related to overhead costs. In the opinion of the representative of the United States, Section 153.8 was fully consistent with Article 2(f) of the Code.

72. The representatives of EEC and the United Kingdom felt that the United States should not automatically exclude the possibility of making adjustments for overhead costs.

73. The representative of the United States pointed out that some adjustments for overhead costs could be done under Article 2(d) of the Code when resort to a constructed value was necessary, but that this was the only instance specified in the Code in which such costs should be taken into account.

74. The representatives of Japan and the United States discussed at length some types of costs - inter alia sales promotion expenses, salesmen's salaries, advertising costs and warranties - where their opinions on the reasonableness of adjustments were frequently different. The representative of the United States reiterated that the main criterion in the opinion of his authorities was the direct relationship between the costs and the specific sale under consideration. He said that advertising costs, rebates and verified warranties directly related to specific sales would be included in the calculation of costs.

2. Section 153.13 - Method of Fair Value Calculation

75. The representative of Japan pointed out that Section 153.13 provided that the Secretary may use any method for determining fair value which he deemed appropriate when there was not a clear preponderance of the merchandise sold at the same price and weighted averages of the prices of the merchandise sold were determined to be inappropriate. The representative of Japan hoped that the United States authorities would exercise utmost care in the implementation of this clause.

76. The representative of the EEC said that the expression "any method" gave a very wide latitude to the Treasury Department when making price comparisons. He asked which methods were envisaged in cases where domestic prices were not deemed to be adequate.

77. The representative of the United States reiterated the assurances that his Government would adhere to the Code rules on the determination of normal value. He said that the first alternative was a comparison with the preponderant domestic price in the exporting country, thereafter with a weighted average price in the exporting country, and in the third place with a weighted average of the preponderant prices, whenever a simple weighted average would produce an unfairly distorted price. Thereafter, the comparison would be with other prices as established in Article 2(d) of the Code.

3. Section 153.15(f) - Periodic Reports

78. The representative of Japan noted that Section 153.15(f) provided that, after investigations had been discontinued on the basis of price assurances, foreign firms should report detailed price information for such a period of time and at such intervals as the Secretary might deem appropriate. In his view, this was imposing too much of a burden on foreign firms. He would hope that a reasonable time limit as to the reporting period, and procedures for a final termination of anti-dumping investigations after the lapse of such period could be provided for.

79. The representative of the United States said that the intention was to administer this particular provision equitably. The preparation of the first report might be somewhat burdensome but the following reports would be very simple to prepare. The point raised by the representative of Japan with regard to cut off dates would be carefully considered in deciding on the final form of the Regulations and their application.

4. Section 153.15(g) - Reopening of Investigations

80. The representative of Japan pointed out that Section 153.15(g) provided for the reopening of investigation and immediate withholding of appraisement, based simply upon price information. He recalled that Article 10(a) of the Code provided that provisional measures should be taken when there was sufficient evidence of injury in addition to sales at less than normal value. The possible ninety day retroactive application of withholding of appraisement in the same paragraph appeared to be clearly in conflict with Article 11 of the Code.

81. The representative of the United States emphasized that action under 153.15(g) would only be taken in exceptional cases when a price assurance had been given and subsequently disregarded. Previously a new investigation had to be opened in such cases, but under the proposed provisions the interrupted investigation could be continued. It would, in such cases, not be necessary to renew the injury information. With reference to the observation by the representative of Japan on

retroactive withholding of appraisement, the representative of the United States said that cases falling under Section 153.15(g) clearly came within Article 11 of the Code which permitted a ninety day retroactivity.

82. The representative of Japan said that he could not agree with the opinion of the representative of the United States for the reason mentioned in paragraph 43 above.

83. In reply to a question by the representative of the EEC how changing conditions in industry were taken into account under Section 153.15(g), the representative of the United States pointed out that if industry did not feel that there was a threat of injury, the reopening of the investigation would not be asked for.

5. Section 153.30(b) - Time limit for Summary Investigation

84. The representative of Japan pointed out that Section 153.30(b) of the proposed amendment provided thirty days for completion of the summary investigation. It was questionable whether an adequate summary investigation could be completed within such period. He was concerned that the shortness of the time limit might cause the initiation of a full scale investigation without an adequate summary investigation. Accordingly, it was hoped that the United States authorities would implement the provision in a flexible manner and on a case-by-case basis.

85. The representative of the United States replied that the text contained the word "generally"; in a case where a period of more than thirty days was required, as much time as necessary would be taken.

6. Section 153.32(c) - Time limit for Full Scale Investigation

86. The representative of Japan felt that the basic six-month investigation period provided for in Section 153.32(c) of the draft proposal was too short. In recent cases involving Japanese products, at least two to three months had been needed to complete investigations in Japan only. It had taken an additional five (worsted fabrics case) to sixteen months (large power transformer case) - on the average ten months - for the United States authorities concerned to issue any determination after the completion of investigations in Japan. While he recongized that the investigation period should not be prolonged unduly, it would be regrettable if instances occurred in which an investigation was not fully conducted, or in which adequate opportunity for expressing views or for submission of appropriate documentation by respondent firms were not afforded because of the time limitation. He felt that a more appropriate basic time limit for the investigation period would be nine months as a rule.

87. The representative of the United States pointed out that the time limit was "generally" six months but that it could be extended to nine months when required. The recent increase in the Treasury staff would enable the investigations to be carried out much more rapidly than in the past.

88. The representative of the United Kingdom welcomed the shortening of the period, as long as it did not cause difficulties for the parties concerned.

7. Sections 153.33(b) and 153.37 - Opportunity to present Views

89. The representative of Japan expressed the hope that, in implementing Sections 153.33(b) and 153.37 of the proposal, the presentation of the matter to the Treasury Department by the parties concerned would not be unreasonably or unfairly restricted.

90. The representative of the United States replied that experience showed that many irrelevant matters were frequently taken up in the course of investigations, for example constitutional issues. Since the United States authorities were convinced that the United States procedures were fully consistent with all United States laws, it was preferable that the party concerned took such matters to court rather than that it repeated them endlessly in conferences with Treasury officials.

91. The representatives of Japan, the EEC and the United Kingdom thanked the representative of the United States for the extensive replies given. Even if agreement had not been reached on all points, the discussion had been very useful and had shown the value of the Committee.

C. Adherence of further countries to the Code

(a) Developed countries

92. The Chairman recalled that it had been agreed at the 1971 meeting of the Committee that he should write a letter to the Director-General asking him on behalf of the Committee to write to the governments of Australia, New Zealand and South Africa inviting them to explain their problems in adhering to the Code and inviting them to have an informal discussion with the Committee at its 1972 meeting (COM.AD/19, paragraphs 63 and 64). Such letters had been sent and the replies received from Australia and New Zealand had been reproduced in COM.AD/24.

93. An informal discussion was held with representatives of Australia, New Zealand and South Africa. A Record of the discussion is contained in the Annex to these Minutes. The Committee decided that the Record should be transmitted to the permanent missions of these three countries.

(b) Developing countries

94. The Chairman recalled that at last year's meeting of the Working Party on the Acceptance of the Anti-Dumping Code the members of the Committee had considered that the Code was broad enough to allow solving the problems contemplated by developing countries. Developing countries for their part had felt that if they adhered to the Code, there should be provisions to enable their exports to be dealt with in a special manner, because of their special market conditions. Developing countries did not see any difficulties in applying the Code with regard

to their own anti-dumping measures. Neither the Indian (Spec(71)98) nor the Israeli (Spec(71)27) proposals had been acceptable to all members of the Working Party. A counter-proposal by the representative of the EEC had been made at the meeting (Spec(71)127 and Corr.1); the developing countries had requested time for reflection. A new proposal submitted by India was contained in document Spec(72)93. India was flexible as to whether this text would be a note to article 2 of the Code or an expression of intent in the report of the Working Party.

95. The representatives of the United States, the EEC and Canada felt that the new Indian proposal was not acceptable. Its content was practically the same that had not been accepted the year before because it represented a modification of the Code.

96. The representative of Canada noted that paragraph (c) of document Spec(71)127/Corr.1 did not apply in the case of Canada as price undertakings were not contemplated in the Canadian legislation. Otherwise the EEC proposal was fully acceptable.

97. The representative of Sweden supported by the representatives of Norway and Malta suggested amending the text of the India proposal by adding the word "always" after "would not" in the first line and replacing "would" by "can" in the fourth line.

98. The representative of Malta asked whether developed countries had ever taken into account in an anti-dumping procedure the developing status of an exporting country. In his view the proposal contained in document Spec(72)127/Corr.1 was too wide and would apply also in the case of anti-dumping proceedings among developing countries.

99. The representative of the United States said that in investigations concerning imports from developing countries the United States did not depart from its normal practice of applying its rules and regulations consistently with the Code.

100. The representative of Japan felt that any problems faced by the developing countries should be considered by the Committee after they had adhered to the Code. He could not support the proposal by the Nordic countries contained in paragraph 12 of document Spec(71)127, because the proposal would lead to modifications of the Code. Paragraph (a)(i) of document Spec(72)127/Corr.1 would be acceptable if it meant not to modify the Code but to examine, on a case-by-case basis, only those cases which fell under Article 2(d) of the Code.

101. The representative of the EEC said that the Code should not be modified. The situation should be examined on a case-by-case basis. With regard to the question put by Malta, he felt that developing countries should treat each other as they wished to be treated by developed countries.

102. The representative of the United States agreed with the statement made by the Japanese representative. No exceptions to the rules of the Code should be put as a condition precedent to the adhesion of developing countries.

103. The representative of Yugoslavia said that the Indian and Israeli proposals had been considered in the Informal Group of Developing Countries. No decision had been taken there as some countries had wanted more time to reflect, particularly in view of possible repercussions on future negotiations on other Non-Tariff Barriers.

104. The representative of the United Kingdom was in agreement with the views of the United States and Japan that the Code should not be modified. The first sentence of the Indian proposal, whether or not modified as suggested by Sweden and Norway, was somewhat contradictory. Article 2(a) would not be applied if sales in domestic markets did not permit a proper comparison. It could not be argued that in all cases sales in domestic markets of developing countries did not permit a proper comparison. The United Kingdom supported the proposal put forward by the EEC contained in document Spec(71)127/Corr.1.

105. The representative of Sweden could accept the EEC proposal in Spec(71)/127)Corr He agreed with the United States, Japan and the United Kingdom that the Code should not be modified or limited in order to obtain the adhesion of developing countries. Developing countries should, however, be encouraged to associate more closely with the activities of the Committee. A solution might be found if the developing countries could accept the Indian proposal as amended by Sweden.

106. The Chairman thanked the members of the Committee for the guidance he had been given for the meeting of the Working Party on the Acceptance of the Code. (This Working Party met on 27 September. A Note on the meeting has been circulated in Spec(72)125.)

D. Examination of questionnaires used in price investigations

107. The Chairman recalled that it had been agreed at the 1971 meeting of the Committee that the item should remain on the agenda of forthcoming meetings and that members should notify changes in their practices and questionnaires (COM.AD/19, paragraph 84). He noted that EEC had submitted the text of a revised questionnaire, which had been circulated in COM.AD/11/Add.4.

108. The representative of Japan felt the EEC questionnaire was a step in the right direction as the points taken up at last year's meeting had been in general duly considered. He supported the harmonization of questionnaires and hoped that the following items would be included in all questionnaires:

(1) reasonable time-limits for the submission of replies;

(2) reasonable period to be covered by replies;

(3) an explicit statement that replies on export prices to third countries and costs of production were required only in cases falling under Article 2(d) of the Code;

(4) scope of the allowances to be made in conformity with Article 2(f) of the Code and admittance of "other" allowances;

(5) reproduction in the questionnaires of Article 6(c) and 6(d) of the Code concerning confidential information;

(6) identification in as specific terms as possible of the nature of the product subject of the complaint.

Questionnaires should be sent only to firms concerned, i.e. for example not to firms producing but not exporting like products. Representatives of the exporting countries should be informed of the names of the firms to which questionnaires had been sent and be supplied with a copy of the questionnaires.

109. The representative of the EEC supported in general the points made by the representative of Japan. The distribution of questionnaires should be restricted to companies directly concerned. In the Canadian case of women's footwear, questionnaires had been sent to firms in France and Italy neither manufacturing nor exporting women's footwear and to firms that had long ago gone out of business. The names of exporters could be obtained through the associations of manufacturers in the exporting country. Questions concerning the cost of production were very sensitive and should be limited to the cases where it was clear that import prices would be compared with the cost of production in the country of origin. Such a comparison was rather rare. He believed it had never been used in the United States. The questionnaire of the EEC clearly stated that cost of production information should be supplied only specifically demanded.

110. The representative of the United States agreed that a comparison with the cost of production had not been made in the United States in recent years; nevertheless recourse could have to be had to such a comparison in certain circumstances.

111. The representative of Canada said that since last year the Canadian practice had been modified. Measures had been taken to solicit information on cost of production only when necessary. The distribution of questionnaires was done on the basis of exporters identified on customs invoices. The Canadian authorities had been in close touch with associations of manufacturers and representatives of exporting countries. The representative of Canada pointed out that Canadian Regulation 5 required that allowances be made for quality differences. The Committee should recognize, however, that certain cost information was required to make such allowances which might give the erroneous impression that determination of normal value was to be made under Article 2(d).

112. The representative of the EEC considered the Canadian undertaking to limit questions on cost of production to indispensible cases to be a positive result of the discussions in the Committee.

E. Other business

(a) Adherence of Spain to the Code

113. The representative of the United States recalled that Spain had signed the Anti-Dumping Agreement on 12 January 1971 subject to ratification. He asked whether the observer for Spain could give any indication when Spain would be likely to ratify its signature. The observer for Spain replied that the adherence to the Code was being considered by Parliament; it was unfortunately not yet possible to give a precise indication of the date for the ratification.[1]

(b) The Committee's Report to the CONTRACTING PARTIES

114. The Chairman pointed out that, at the 1971 Session of the CONTRACTING PARTIES, the Swiss representative had suggested that the Reports by the Committee should bring out more clearly the main points that had arisen in the discussions and should draw attention to the problems of substance encountered in applying the Code and the resulting protectionnist dangers (SR.27/5, page 68). The representative of Switzerland said that it was important that the Report to the CONTRACTING PARTIES gave a full picture of the activities of the Committee, because, inter alia, of the importance of the Code as a means of protection against unfair competition and thereby of liberalization of trade and of the likelihood that the Code would be a model for other instruments to be drawn up in the Non-Tariff Barrier field. The representatives of the United States, Japan, Canada and the United Kingdom agreed in principle with the Swiss suggestions but stressed the importance of maintaining the confidential nature of the discussion of concrete cases in the Committee. The representative of Switzerland submitted a draft text embodying his suggestions (COM.AD/W/30). On the basis of this text and of a draft text of the remaining parts of the Report prepared by the secretariat (COM.AD/W/31), the Committee agreed on the text of a Report to the CONTRACTING PARTIES.[2]

(c) General Comments on the Committee's Work

115. The representative of the EEC noted with satisfaction the frankness of the discussions in the Committee and the efforts being made to obtain full compliance with the Code by all signatory countries. Canada's willingness to review its position on drawback and to give further thought to the question of sales at a loss were positive steps. Portugal had also declared its readiness to consider adjustments of its legislation. The representative of the EEC hoped that the United States would take into account the comments made by the members of the

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[1]The Government of Spain deposited on 19 December 1972 the instrument of ratification (see COM.AD/25).

[2]Circulated in document L/3748.

Committee when publishing the new regulations. The manner of determining material injury in the United States was of special concern. At the time the Code was negotiated the United States delegation had said that the Anti-Dumping Act could not be modified without Congressional approval, but United States representatives had also stated their belief that the provisions of the Code would be fully applied by the Tariff Commission. However, the Tariff Commission had adopted the policy that whenever the injury exceeded de minimis, material injury was considered to exist. The findings of the Tariff Commission might lead the United States industry to believe that it could claim protection every time there was an injury exceeding de minimis. This might be one cause of the increase in the number of anti-dumping cases in the United States. The representative of the EEC said that there were some further areas where it appeared that some member countries did not live up to their obligations under the Code. Provisional measures should thus be limited in time. Complaints should be lodged by the industry and not by one single firm. He hoped that the discussion in the Committee would contribute to convince all countries concerned to comply fully with the provisions of the Code.

116. The representative of the United Kingdom agreed with the comments of the representative of the EEC on the usefulness of the meetings of the Committee. Important progress had been made in the case of Canada which was taking steps to ensure that complaints of dumping were supported by all or the majority of the producers. Canadian authorities were reviewing their position concerning drawback, were giving further thought to the question of sales at a loss and would request a review of the finding on shoes which the EEC had criticized. A thorough discussion of the proposed changes to the United States regulations had taken place. The explanations given by the representative of the United States had been reassuring on some points, although there was disagreement on some distinctions in regard to allowances for selling costs. Such distinctions added further to the complexity of the problems facing the United States authorities in their assessment of fair market value. The representative of the United Kingdom was of the opinion that the standards applied by the Tariff Commission on material injury fell short of those applied by the United Kingdom. The period of withholding of appraisement had been extended beyond the time limit permitted by the Code. From the replies of the United States delegation he felt that this discrepancy was not intentional and trusted that the United States authorities would re-examine their procedures. He noted that the new members of the Committee had given useful explanations of their anti-dumping laws.

117. The representative of the United States replied to the comments made by the representatives of the EEC and the United Kingdom on United States practices. He noted that the Tariff Commission had made twelve determinations from 1 July 1971 to 30 June 1972. Of these only two made reference to the de minimis doctrine. A reading of the Tariff Commission opinions in these two cases made it clear that the injury had in fact been material (far more than de minimis). The calculations of the Treasury with regard to fair value were, he was convinced, as accurate as

the assessment calculations of any other country. The allegation that provisional measures taken by the United States exceeded the period of the Code was not correct. The "provisional" measures were no longer provisional after the parties had formally been found to be dumping. The United States authorities would nevertheless examine what could be done to expedite the assessment of dumping duties after a dumping finding had been made.

ANNEX

Adherence of Developed Countries to the Code

(Cf document COM.AD/24)

1. The representative of New Zealand said that the present legislation and practice of New Zealand, which were based on the provisions of Article VI of the GATT, were suited to the special needs of his country. New Zealand had a small but growing industrial sector and a relatively large number of new industries which, at their present stage of development, were more vulnerable to damage from dumping than those of developed industrialized countries. The New Zealand authorities would, nevertheless, be fully prepared to consider carefully any views that members of the Committee might wish to express on the benefits to be derived from adoption of the Code.

2. The representative of Australia said that his authorities after reviewing the situation had come to the conclusion that there were no grounds at present for changing their position with regard to adhering to the Code. At the time the Code had been negotiated, they had felt that it was sufficient for Australia to abide by Article VI of the GATT and that no further elaboration of this Article was required. Australia saw no overriding benefits deriving to it from the Code bearing in mind the nature of its exports. However, the matter of adhering to the Code would be kept under review.

3. The representative of South Africa said that his government attached great importance to anti-dumping questions. An Inter-Departmental Committee in South Africa was considering the suggestions on valuation put forward to the GATT Council by the Committee on Trade in Industrial Products (paragraph 6 of document L/3609). The South African authorities felt that there was a close relationship between valuation for customs purposes and anti-dumping practices. At this stage it was premature to express firm views on South Africa's adhesion to the Code; the adoption of the Brussels Convention was being studied simultaneously by the Inter-Departmental Committee. He recalled that South Africa had not participated in the negotiations for the drafting of the Code. Acceptance of the procedures of the Code would involve a substantial change of South Africa's practice. Since the entry into force of the Code on 1 July 1968, only 22 out of a total of 80 contracting parties had accepted the Code. Eighteen of the adherents were highly industrialized countries. South African had not yet achieved that stage. It should be recognized that countries in different stages of economic development had divergent needs and interests.

4. The representatives of the EEC and the United Kingdom asked in which respects the three countries felt that their anti-dumping legislation had to be modified, if they decided to adhere to the Code. The representative of the United Kingdom considered that the Australian method for determining normal value which appeared in Section 4:1(c) of the Australian Act (document COM.AD/18) was not in conformity

with Article VI of the GATT. Under the Australian law normal value could be determined as an amount equal to the fair market value of like goods produced and sold in a third country selected by the Minister, if in that country, in the opinion of the Minister, the cost of production or manufacture was similar to those in the country of export. This method was not foreseen in Article VI of the GATT, but for state-trading countries. In Australia deposits could be required while a case was under consideration. He asked whether the time limit for this provisional action corresponded to the one set up in the Code. With regard to South Africa, he asked whether the law contained provisions concerning provisional measures. He pointed out that only a few of the eighty contracting parties to the GATT ever took anti-dumping action. The only contracting parties which were active in this field but which had not adhered to the Code, were South Africa and Australia.

5. The representative of Hong Kong said that the Article VI criterion for the imposition of anti-dumping duties was material injury. According to Section 55:2 of the South African Act (COM.AD/18, page 49) the criterion for the imposition of an anti-dumping duty was that the Minister should be satisfied that "detriment may from one or more of the said circumstances result to an industry within the Republic". He asked how detriment was established. With reference to the South African practice of establishing current domestic values, he pointed out that in the case of imports from Hong Kong it was very frequently not possible to establish domestic values in Hong Kong because of the absence of home market sales; the value was then fixed on the basis of the prices of similar products from Western Europe. This was not admissible under Artivle VI of the GATT and had very adverse effects for Hong Kong goods.

6. The representative of South Africa recalled that the matters raised by the representative of Hong Kong had been discussed in depth in one of the N.T.B. Working Parties, and suggested that the question put to him be submitted in writing for transmission to his authorities. Although the terminology of South Africa's legislation differed from that of Article VI of the GATT in some respects, the aims were fundamentally the same. South Africa had a limited market and was in the process of industrialization. Disruptive competition had to be dealt with speedily and effectively. Referring to the provisions of paragraph 8 of the Code, the representative of South Africa explained that in South Africa each anti-dumping investigation was conducted on a country basis. Two countries might both be dumping a particular product, but an anti-dumping duty might apply to only one of them, because a request for an anti-dumping investigation had stipulated only one of the countries concerned. If, therefore, the expression "all sources" in Article 8(b) of the Code meant that non-discriminatory anti-dumping duties should be imposed on imports of a particular product from all countries and not only from all sources within a particular country, the South African legislation was not in conformity with the Code. Another matter requiring clarification was if anti-dumping duties could only be levied on imports from named suppliers. These were only some of the legislative problems connected with a possible adherence to the Code which were being examined.

7. The representative of Australia said that no detailed study had been carried out of modifications to the legislation required to conform to the Code. It was true that Australia had resorted to anti-dumping action quite often. The reason might be that exporters sold at dumped prices on the Australian market more frequently than in other comparable countries.

8. The representative of New Zealand said that he was not in a position to indicate the amendments to the legislation that might be required in the case of the adherence to the Code by New Zealand.

9. The representative of the United Kingdom said that the basic idea in Article 8(b) of the Code was the concept of most-favoured-nation treatment. The expression "all sources" could apply both to all countries and all suppliers within a country. The Code also specified that anti-dumping investigations would be initiated on complaint of a particular industry. If no complaint was submitted by the industry concerned against the like product coming from a second country, no action would be taken in respect of that country. Suppliers had to be named only if there was one single supplier; if there were more than one the listing of their names was discretionary under the Code.

10. The representative of the United States considered that it was very useful that a Group of experts met periodically in the Committee and discussed candidly problems arising in the anti-dumping field.

11. The representative of the EEC was in full agreement with the statements by the representatives of the United Kingdom and the United States. It would be useful to follow South Africa's suggestion to transmit in writing specific questions concerning the three countries. The adhesion to the Code represented practial and juridical advantages. It was in the interest of exporters as well as importers that their governments took part in the work of the Anti-Dumping Committee. Article VI of the General Agreement was of general application; the Code was a legal instrument giving further precision to Article VI rules but binding only those contracting parties that had adhered to it. He recalled that two governments had recently accepted the Code, one by incorporating the Code in full in its national legislation, the other declaring itself ready to make whatever changes might be necessary to conform its regulations to the Code.

12. The representative of Japan associated himself with the statements made by the representatives of the United States and the EEC. The objectives of the Code were set out in its preamble. All countries were both exporters and importers and the existence of common rules to deal with dumping cases was a necessity. Periodical discussions on the application of anti-dumping regulations and practices by the signatory countries had proved to be very useful.

13. The representative of the United Kingdom was in agreement with the statements by the United States, EEC and Japan. He pointed out that the existence of the Committee permitted countries parties to the Code to have multilateral examinations of differences in legislations and practices, which was in the immediate interest of exporters.

14. The representative of Sweden supported the statements by the other countries members of the Committee on Anti-Dumping Practices.

15. The Chairman noted that the representatives of Australia, New Zealand and South Africa had explained the position of their Governments with regard to a possible adherence to the Code. They had undertaken to convey the views expressed by the parties to the Code to their capitals. He suggested that some of the issues raised could be further clarified through bilateral discussions. He expressed the hope that such discussions would ultimately lead to the accession of the three countries to the Code.