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COMMITTEE ON ANTI-DUMPING PRACTICES

Minutes of the Meeting held on 21-24 October 1975

Chairman: Mr. M.J. HUSLID (Norway)

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A. Examination of reports submitted under Article 16 of the Agreement covering the period 1 July 1974-30 June 1975

(a) Canada (COM.AD/35)

1. The representative of Japan stated that he had comments to make on the cases regarding slide fasteners and zippers and parts thereof, self adhesive photo albums, polypropylene and polyethylene ropes, and colour television receiving sets. He explained that when estimating the normal value of parts of Japanese slide fasteners and zippers exported to Canada, the Canadian authorities had multiplied the cost of production by the rate of mark-up of the final product, not by that of the components in question. According to the Japanese view, the fair market price had been unduly

calculated and determined in a way not in accordance with Article 2(d) and (f) of the Anti-Dumping Code. Furthermore, the Canadian authorities had not, in this case, clearly defined the components of the fasteners included in the investigation. They had not, for instance, explicitly requested the submission of information about wires, which product were used not only as a component to fasteners. As a result, Japanese companies had not supplied information about wires, and anti-dumping duties had been imposed also on this product when imported into Canada. The representative of Japan therefore suggested that when initiating dumping investigations, the authorities concerned should define as clearly as possible the items under investigation.

2. The representative of Canada replied that the importing company in question had indicated that it would appeal the ruling on the calculation of mark-ups to the Tariff Board. He therefore refrained from making any comments that could prejudice these legal proceedings. As to the identification of the components, the representative of Canada quoted the relevant paragraphs of "Notice of Final Determination", issued on 20 July 1974 by the Canadian deputy minister of the Department of National Revenue. In his opinion, this text was sufficiently clear as to the question on which products and components there was a need to supply information.

3. The representative of Japan pointed out that Japan's export of photo albums had decreased since 1971 and that this fact was noted in the Report of the Canadian Anti-Dumping Tribunal. This export could, in his view, therefore no longer be a major problem to the Canadian industry. Furthermore, the Anti-Dumping Tribunal had recognized that there had been no immediate threat of injury in this case. In addition, the provisional determination had been based on a hypothetical price, supplied by the Canadian producer who had presented the case to the Tribunal. The Japanese representative concluded that the provisional determination of injury made by the Canadian authorities in this case did not, consequently, satisfy the conditions defined in Article 3(a) and (e) of the Anti-Dumping Code.

4. The representative of Canada recalled that his case involved imports from both Japan and Korea. While admitting that the Japanese exports had decreased, he stressed that during the same period the Canadian producers of "like" products had been under increasing pressure from rapidly increasing exports from Korea. He pointed to the fact that the Tribunal had made a distinction in this case. The Korean exports had been found to cause material injury while the Japanese exports had been found to cause only threat of material injury. He stressed that the Tribunal's report clearly indicated that the Tribunal had based its findings on real evidence that Japanese photo albums had been offered to Canadian customers in large quantities at dumped prices. Hence, the measures taken were, in the Canadian view, in full compliance with the provisions of the Anti-Dumping Code.

5. The representative of Japan stated that the authorities of his country had repeatedly and in vain asked their Canadian counterparts to give sufficient information of the reason and content of the complaint in the case of colour television sets. The answer had been that the material in question was confidential. His Government had also asked the Canadian authorities, after the preliminary determination of dumping, to indicate their criteria for the calculation of normal value. His Government had not yet received sufficient information on this point. With this in mind he held the view that the Canadian authorities had not respected the provisions of Article 6(b) and 10(c) of the Code. The same circumstances were valid, the representative of Japan said, in the case of polypropylene and polyethylene ropes. As in the case of colour television sets Canadian authorities had not sufficiently clarified either the reasons for the complaint or the criteria applied in the calculation of normal value.

6. The representative of Canada confirmed that the Department of National Revenue had, in the colour television case, obtained information on a confidential basis from the manufacturers involved. He admitted the difficulty in such cases to respect the provisions of Article 6(c) of the Code on one hand and the provisions of Article 6(b) and 10(c) on the other. The Canadian Government had, however, supplied as much information of a general nature as it reasonably could provide to explain the reasons for the decision. His Government was also of the opinion that this information was fully sufficient in this case. The difficulties that the Japanese authorities had presented in this case had however led the Canadian authorities to decide that preliminary determination of dumping from now on should include more detailed information as to the basis for the decision. As regards the case of polypropylene and polyethylene ropes, the representative of Canada suggested that he should clear up bilaterally with the Japanese delegation, what information was requested. He also reiterated the willingness of his Government to supply all information that it could according to the Canadian law.

7. The representative of the United States mentioned in this context that his Government requested the submission of non-confidential summaries along with requests for confidential treatment from domestic firms asking for anti-dumping action, thereby assuring rapid communication to the exporters concerned of the nature of the allegations. He recommended the Canadian authorities to proceed along those lines.

8. As regards the practices of Canada, the Japanese and Canadian delegations agreed, at the suggestion of the Chairman, to have further consultations bilaterally.

(b) United States (COM.AD/35)

9. The representative of Japan called attention to a case involving determination of fair value of portable electric typewriters. He recalled that in cases where there were no domestic sales of a certain product and consequently no domestic

sales price, the Code authorized the adoption of a third market sales price or a fair value calculated on the basis of production costs. In the case of electric typewriters the United States authorities had required the submission not only of the third market export price but also, later on, when this information had already been furnished, of production cost information. At the same time, the Japanese firms were informed that customs appraisalment would be withheld, if the production cost information was not submitted. The Japanese representative stated that customs appraisalment was later on withheld, but by reason of suspicion of dumping by price comparison with the third market export price. The cost information submitted by the Japanese firms had evidently been ignored. The Japanese representative found it inappropriate to require production cost information which imposed a heavy burden on private firms, when this seemed to be unnecessary for the determination of fair value.

10. The representative of the United States recalled that the Anti-Dumping Code authorized the use of either method, if there were no domestic market sales. In this case, his authorities had had some initial difficulties in determining whether there had been sufficient third market sales and whether, because of a question concerning a possible relationship between the exporters and third market importers, these sales were of such a nature as to allow for price comparison. They had therefore asked for both kinds of information in order to comply with the stringent time-limits imposed in the United States on the making of anti-dumping decisions. Later on his authorities had found that it in fact was possible in this case, to make a price comparison without having recourse to production costs.

11. The representative of the European Communities called attention to the investigation on butadiene acrylonitrile rubber. This investigation had, according to the representative of the European Communities, opened a new procedure that seemed likely to bring the United States practices closer to those rules of the Anti-Dumping Code that required simultaneity of examination of dumping and injury. He was particularly interested to learn more about the nature of these new proceedings which involved a summary investigation whether or not the Secretary of Treasury should refer a case to the International Trade Commission on the basis that there was substantial doubt whether the industry in question was or was likely to be injured. He added that only two cases under the current investigation period had been referred to the International Trade Commission since the introduction of this new procedure. Other cases, for instance the one concerning water circulating pumps, had not been referred to the International Trade Commission. He asked for the reasons why this had not been done.

12. The representative of the United States explained that the procedures in the Treasury Department, prior to a decision whether or not to refer a case to the International Trade Commission, consisted of an examination by means of a

questionnaire, as to the question whether there was evidence of injury. If this investigation raised substantial doubt of injury, the case was referred to the International Trade Commission for a thirty days' summary enquiry as to whether there was any reasonable indication of injury. He added that the regulation requiring submission of information in response to the questionnaire had not yet been promulgated. The questionnaire was, however, in the meantime used as guidelines, and the Treasury had received sufficient evidence of injury in answer to it. He also mentioned that the composition of the questionnaire had been influenced by suggestions from the European Communities during the past years.

B. Examination of national legislation

(a) Greece

13. The representative of the European Communities expressed the concern his delegation felt as regards the situation in Greece. Greece had adhered to the Code as early as 1968 but had not yet adapted its legislation to the Code in spite of its repeated assurances that it would do so. He felt that the Anti-Dumping Committee had a duty to consider the effectiveness of the application of the rules of the Code through national legislations and domestic procedures. He stressed that the Code was designed to establish rules which all parties respected, thereby creating an equitable situation between these parties. He found it therefore important to establish clearly that the Committee did not pass without remark that the necessary adaptation that was called for by the Government of Greece to comply with the provisions of the Code had not been undertaken.

14. The representative of Greece regretted that the position of his country was the same as at the last year's meeting of the Committee. There were still some technical difficulties preventing his Government from completing the adaptation of the internal legislation but he stressed that his authorities would complete as rapidly as possible the necessary procedures. He asked the Committee to give his Government some more time to fulfil its obligations. Meanwhile, anti-dumping measures would be taken in strict conformity with the Code.

(b) Hungary

15. The representative of Hungary informed the Committee that the Anti-Dumping Code as such had been incorporated in the Hungarian legislation last year. Thus, the Code itself constituted the Hungarian anti-dumping legislation. It had been published as Government decree No. 47/1974 in No. 98/1974 of the official journal of the Hungarian People's Republic. The decree was put into effect as from 18 November 1974. The Hungarian representative promised to submit this decree to the secretariat for circulation in the official GATT languages.

(c) Portugal

16. Referring to the special circumstances prevailing in his country, the representative of Portugal asked that the examination of the Portuguese legislation be postponed to a later meeting of the Committee. He assured the Committee that any Portuguese anti-dumping actions taken in the meantime would be in full conformity with the Code. He added that no anti-dumping actions had been taken during the last years in Portugal.

C. Adherence of further countries to the Code

(a) Developed countries

17. The observer of Australia informed the members of the Committee that his country most certainly would be a full member of the Committee at its next meeting. The Australian Government had in fact introduced on 20 June 1975 a new legislation which was in full conformity with the Anti-Dumping Code. The required approval by the Australian Executive Committee for the formal accession of Australia to the Code had recently been sought and a decision to this effect was expected in the very near future. The observer of Australia stated that he meanwhile intended to submit his country's anti-dumping law to the secretariat for forwarding to members of the Committee.

18. While welcoming the fact that Australia in the near future would adhere to the Anti-Dumping Code, the representative of Japan asked whether the Australian representative could give precise information as regards the date for his country's accession. The representative of Australia replied that it would probably be a matter of weeks.

19. The Chairman stated that there had been no change in the situation in New Zealand and South Africa since the last meeting.

(b) Developing countries

20. The Committee noted that the Working Party on the Acceptance of the Anti-Dumping Code had been unable to reach a solution that could be acceptable to all countries concerned. It also noted that the Working Party had decided to report the results of its deliberations to the Council (L/4239).

D. Examination of questionnaires used in price investigations

21. The Committee agreed that this question should remain on the agenda.

E. Anti-dumping investigations in the United States

22. The Chairman recalled that the Council at its meeting on 25 September had discussed, on the initiative of the European Communities, a series of anti-dumping investigations in the United States and that the Council had decided to refer this question to the Anti-Dumping Committee.

23. The Committee decided to discuss under this item of the agenda also some other aspects of the United States anti-dumping legislation and procedures. In the following, the discussion is split up under these two headings.

(a) United States anti-dumping investigation on automobiles

24. The representative of the European Communities recalled that the Communities had asked for an earlier meeting of this Committee than had been foreseen. The reason for this was the serious repercussions of certain anti-dumping investigations in the United States, which constituted a risk for Community exports to the United States of \$2,500 million of value. Pointing in particular to the current investigation on automobiles, he summarized some of the considerations that had struck him when comparing the requirements of the Code with the American procedures. Firstly, Article 5(a) provided that an investigation might be opened only in two circumstances: normally upon a request of an industry, and in special circumstances, without such a request, provided that there was evidence both on dumping and on injury resulting therefrom. In the view of the European Communities none of these conditions were fulfilled in the automobile case. The investigation in this case had not been initiated upon a request from the industry but on requests from the trade union of the automobile workers and from a congressman. Furthermore, when asking the International Trade Commission to conduct its investigation, the Treasury Department had stated that there was substantial doubt of injury. Secondly, Article 3(d) of the Code required that any injury resulting from dumped imports should be assessed in relation to the domestic production of like products. The representative of the Communities stressed that the American production of small cars, which cars must be those deemed as "like products" in this case, was prospering for the time being. Thirdly, Article 3(a) of the Code required the investigators to be satisfied that the dumped imports were demonstrably the principal cause of material injury or threat thereof and were weighing heavier than all other factors taken together which might be adversely affecting the industry. In the view of the European Communities no such demonstration had been made. In fact, the causal link between dumping and injury had not been established in the terms of the Code, which demonstrated a serious discrepancy on this point between the provisions of the Code and the American law.

25. The representative of Japan stressed the great concern of his authorities as regards the consequences of the American anti-dumping investigations on imported cars. He underlined that this investigation, taking into account the number of

countries and the scope of trade involved, was the largest in the history of anti-dumping actions. The views of his Government had been transmitted in August to the United States in a note verbale containing the four following points:

- (a) the initial stagnation of the United States automobile industry had occurred during the energy crisis; during the recession that followed, which further decreased the demand for automobiles, the industry had not been able to recover from the earlier drop in sales;
- (b) the American automobile industry had recently begun to show signs of recovery, while the exports of Japanese cars to the United States had fallen 25 per cent during the first six months of 1975 as compared with the same period the previous year;
- (c) the American automobile industry had publicly expressed the opinion that the problems of the industry were not caused by the imports of foreign cars;
- (d) the United States imports of cars amounted to \$8,000 million annually and anti-dumping investigations on a commodity of such importance should not be initiated without a clear statement of the reasons for the action taken; such an action when taken without sufficient clarification might have adverse effects on the expansion of international trade, which was especially true in a situation when there was urgent and imperative need to maintain free trade.

The representative of Japan added that the main reason for the increase of sales of Japanese passenger cars in the United States was the increasing preference for energy-saving cars on the part of the consumers. He mentioned in this context that President Ford had presented, in his message to the Congress, a policy to decrease by 1980 the energy consumption of the cars by 40 per cent. Referring to the report on the thirty days' enquiry by the International Trade Commission, which had been published on 8 September 1975, he stated that this report had only concluded that the Commission did not determine that there was no reasonable indication that an industry in the United States was or was likely to be injured. He stressed that the report did not present a valid evidence of injury. He reiterated that the American automobile industry had expressed the view during the public hearings of the International Trade Commission that the problems the industry faced were not caused by imported passenger cars. He also pointed out that no positive evidence was to be found in the letter of Mr. Dent, which called for the inclusion of Japanese cars into the investigation. Basing themselves on these facts, the Japanese authorities felt that the investigation had been initiated without the positive evidence of injury required in Article 5(a) of the Code. Article 3(a) of the Code provided furthermore that a determination

of injury should be made only when the authorities concerned were satisfied that the imports were demonstrably the principal cause of material injury or threat of material injury to a domestic injury. Even if it perhaps could be argued that nothing was provided in this paragraph as regards initiation of investigation, the Japanese representative expressed serious doubt as to whether the United States under the prevailing circumstances had given full consideration to the principal cause of material injury which was required to exist in order to justify the initiation of this investigation. Finally, the representative of Japan pointed to the fact that an undue burden had been imposed on the Japanese enterprises in this investigation. The questionnaire that the Department of Treasury had sent to the Japanese firms concerned had at first covered the period of 1 December 1974 to 31 March 1975. The period had since been changed and covered now the time from 1 January to 31 August 1975, which had created a significant amount of extra work for the enterprises concerned. He appealed to the American authorities not to make such changes in the administrative procedures in the future.

26. The representative of Canada said that he shared some of the concerns regarding the American investigations on automobiles that had been voiced by others. He added that some of these points had been taken up in a note verbale transmitted to the Department of Treasury in August. He, therefore, limited himself to saying that he had serious doubts whether the complaint which initiated the investigation complied with the provisions of Article 3(b) of the Code, especially in view of the statement made in this respect by the representative of the automobile industry itself. The Canadian authorities were also disturbed by the fact that imports of automobiles from Canada were included in the investigation in spite of the fact that the complaint did not mention automobiles from this country. The Canadian representative further stated that the new rules initiated by the Trade Act, providing for negative findings of injury, gave rise to confusion. The Anti-Dumping Code envisaged a situation, where the authorities concerned should try to obtain positive evidence of both dumping and injury. This confusion had been confirmed by one of the earliest cases under these new rules, namely the automobile investigation, where the International Trade Commission had declared that it had not found a situation of no substantial injury.

27. The representative of Sweden pointed out some aspects regarding the automobile investigation where, in the Swedish view, there was ground for questioning the compatibility of the proceedings with the provisions of the Code. Firstly, he recalled that paragraph 5(a) of the Code provided that investigations should normally be initiated upon a request on behalf of the industry affected. In this case, however, the investigation was based on a complaint filed by one congressman followed by an additional complaint by UAW (the trade union representing automobile workers). This source of a complaint did not according to his view

correspond to the definition of industry as given in Article 4 of the Code. If the United States authorities considered that special circumstances as mentioned in the second sentence of Article 5(a) were present, an investigation according to the Code might be initiated only if there was evidence of both dumping and injury. The Treasury Department had, however, in its advice to the International Trade Commission in August stated that it concluded from the information available to it that there was substantial doubt whether the automobile industry in the United States was likely to be injured by imports of cars. He therefore concluded that the circumstances in this case did not seem to have justified the initiation of an investigation in accordance with Article 5(a) of the Code. Secondly, he recalled that Article 3(a) of the Code stated that in determining injury the imports concerned should demonstrably be the principal cause. In this determination, dumping should be compared with all other factors taken together which might be adversely affecting the industry. The circumstances in this case indicated, however, in his view that it was far from reasonable to expect that imports could constitute the principal cause of injury to domestic production of like products. He pointed to the fact that the investigation had been allowed to continue in spite of the absence of any such evidence. Thirdly, he recalled that the Code provided in Article 3(d) that imports should be assessed in relation to domestic production of like products. He underlined that domestic production and its share of the market in the relevant categories of cars had increased during the period in question. Therefore, an assessment in accordance with Article 3(d) further sustained the Swedish view that there was no evidence of injury. He added in this connexion that the provisions of Article 3(c) needed to be taken into account. Thus, all other factors which might adversely affect the industry, should be examined. He noted also that the example in Article 3(c) of the Code concerning changes in consumer tastes seemed likely to be relevant in this case. Fourthly, he recalled that Article 5(b) of the Code provided that evidence of both injury and dumping should be considered simultaneously in the decision of whether or not to initiate an investigation and thereafter. The investigation had, however, so far been directed at examining the one element of dumping as such. While recognizing that no final determination has yet been made by the American authorities, he found it nevertheless necessary to underline that the investigation as such constituted a significant obstacle to trade. The proceedings created uncertainty for traders and involved legal expenses and other administrative costs. In view of the several departures from the provisions of the Anti-Dumping Code which in his opinion were involved, there seemed in the Swedish view to be no reason to allow the investigation to continue.

28. The representative of the United States replied that it had not yet been determined that injury was present in the automobile case and that it therefore was premature to state that a violation of the provisions of the Code had taken

place. Referring to Article 5(a) of the Code, he stressed that investigations according to this provision could be initiated upon a request "on behalf of" the industry affected, and not necessarily, as some members of the Committee had contended, by that industry itself. He also pointed out that there was a footnote to this Article, saying "industry as defined in Article 4". And Article 4 said "in determining injury the term 'domestic industry' shall be interpreted as referring to the domestic producers as a whole of the like product ... except that (i) when producers are importers of the allegedly dumped product the industry may be interpreted as referring to the rest of the producers ...". The representative of the United States stated that the automobile industry in his country was also the major importer. Someone else must therefore be able to speak "on behalf of" the industry. According to the United States view, this could very well be done by representatives for the workers employed in the domestic industry concerned or spokesmen for those workers. He recalled that in the automobile case, the petitions were filed by the UAW, the trade union representing automobile workers in the domestic industry, and by Mr. Dent, a Congressman, who represented workers in that industry in his district, and who had a special competence for labour and labour affairs. He maintained that this was not a violation of the Code but complied fully with a reasonable and correct interpretation of its provisions. As far as the requirements under Article 5 for initiating an investigation were concerned he stated that there must not necessarily be a positive finding of the existence of injury prior to the initiation of an investigation. Article 5 did not say that there must be simultaneous determination of injury and dumping at the initial point of the investigation. The requirements were that after initiation, the consideration of injury and dumping must be simultaneous from the time at which provisional remedies were applied except as provided in Article 10(d). As regards the evidence required to initiate the investigation, he referred to the information produced in two petitions, which described the decline in profits of the motor vehicle industry in the United States, the decline in capacity utilization over the last four-year period, the increasing level of imports, the unemployment among automobile workers and the increasing ratio of imports to total sales of cars in the United States market.

29. Taking up Article 3 of the Code, the representative of the United States pointed to the fact that its title read "Determination of Injury". He reiterated that there had not yet been any injury determination in the automobile case. Thus, anything that Article 3 said was, in his view, irrelevant at this moment. Replying to those who had asserted that according to Article 3(a), the effect of dumped imports must be a heavier factor than all other factors, the representative of the United States said that he could not agree. No factor should be regarded as more important than the others. Taking up the question of "like product", as defined in Article 3(d), he pointed to the fact that there were some 300 different models of automobiles manufactured in the United States. This large number showed the difficulties in making any classification at all. There was also the question

of the substitutability of a certain car by certain other cars. The United States position was that evidence of sales at less than fair value included all types of automobiles.

30. Taking up the question referred to by the Japanese representative concerning the burden placed on the automobile manufacturers by the timing of the questionnaire in the automobile case, the representative of the United States explained the following. In August this year the Japanese manufacturers had been notified that the period for investigation in their case would be from October 1974 to March 1975. One week later, they were notified that the period had been changed to cover the time from 1 January to 31 August 1975. The reason for this change was simply to bring the period of investigation into parallel with the period used in all other cases. He could not believe that a change after such a short time had caused too many problems for the industry concerned.

31. The representative of the European Communities found the United States interpretation of the words "on behalf of" in Article 5(a) of the Code absurd. He also found that Article 4 gave a valid basis for the interpretation of the concept "industry" and this did not, according to his view, at all comply with the American interpretation thereof. According to his view, some of the arguments of the representative of the United States showed a total lack of proportions. This was particularly serious as the automobile case was more important in its trade impact than all other anti-dumping cases put together. Having said this, the representative of the European Communities quoted the report of the International Trade Commission entitled "Negative determination of no reasonable indication of injury", published in September 1975. On page 13 of this report, a reference was made to the requirements of the United States law according to which the cause attributable to imports sold at less than fair value ... "needed not be the principal cause or the major cause or even the substantial cause, but merely a cause"... This was, according to the representative of the European Communities, a statement which was in flagrant violation of the requirements of the Code. Referring to the question of "like products", he stressed that where it was possible, and this was the case in the automobile investigation, to identify "like products" in a more refined way than the products of the whole industry, the Code required this to be done. In the automobile case there were clearly different categories of cars. An examination would reveal that the categories manufactured in the United States, which were directly competitive with the kind of cars under investigation, were the ones where production and sales were increasing in the United States. He admitted that a final determination had not yet taken place. The worries of the Communities referred however to the fact that, judging from previous cases, there was little reason to have confidence that the requirements regarding causality and injury would be those of the Code rather than the inadequate requirements of the United States law. All the evidence from earlier cases supported, in his

opinion, the view that there were reasons to have grave misgivings about the ability and willingness of the authorities concerned in the United States to ensure conformity with the Code. The problem was, he said, that there were major departures in the United States legislation from the provisions of the Code, not minor technical inconsistencies as the United States representative had maintained. He concluded that there was overwhelming evidence that there was no injury due to imports of foreign cars. As regards the question of interpreting the second sentence of Article 3(a) of the Code, he maintained that if one on the one hand should weigh the impact of the imports and on the other all the other factors put together, it was a reasonable interpretation to say that imports should weigh heavier than the other factors.

32. The representative of Sweden recalled that his authorities were fully aware of the fact that no determination had taken place in the automobile case. His authorities were for the time being concerned with the initiation and the proceedings of the enquiry. He had taken note of the explanations on the evidence present in this case made by the United States. He recalled however that Article 5(a) of the Code stated that this evidence should concern injury resulting from dumping. Noting that this fact was omitted in the explanations made by the representative of the United States, he questioned where this relationship between injury and dumping were shown in the evidence. He added that his authorities had failed to detect this relationship in the procedure and in the material available in the United States.

33. Referring to the report of the International Trade Commission in the automobile case, the representative of Japan said that according to his view the relationship between dumping and injury in paragraph 5(a) of the Code should be proved positively. Another point that he wanted to make concerned the several attestations recorded during the proceedings of the International Trade Commission, which stated that the difficulties in the United States automobile industry were not principally caused by the imports of foreign cars. He questioned whether these attestations had been duly taken into account.

34. Answering the spokesman for Japan the representative of the United States said that the Motor Vehicle Manufacturers' Association had a somewhat unclear position in the automobile case inasmuch as it represented not only the major producers but also the major importers in the United States. This was perhaps the reason why the International Trade Commission might have given greater weight to other evidence. Taking up the Swedish comments as to the causal link between injury and dumping, he stated that there must, of course be a reasonable limitation of the amount of information required for initiation of an investigation. It was the purpose of the investigation to clarify with certainty whether the imports were causing the injury. He said that his authorities required both some evidence of dumping and of injury or threat of injury before an initiation

of an investigation. In the automobile case there were allegations of margins amounting on the average to 20-30 per cent. At the same time the ratio of imports to total sales had increased from 15 to 21 per cent during six months. He maintained that these two facts created a presumption of causality. He also underlined that in order to comply with the time-limit of thirty days, it was not possible to go far into detail in analyzing the causality between imports and injury before taking a decision to initiate an investigation. In his view, Article 5(a) required evidence of dumping and injury resulting therefrom, not certainty. Answering the comments of the European Communities he recalled that high-level representatives of various automobile producing corporations in Europe had pointed out that they were selling cars in the United States below costs and substantially below the prices for the same models in the home market. These statements were a principal factor in drawing interest to the possibility of foreign automobiles being dumped in the United States which had resulted in initiation of the investigation.

(b) Other questions regarding the United States anti-dumping legislation and procedures

35. The representative of the European Communities stated that the basic problem in the automobile case was that the United States did not respect or did not apply the relevant provisions of the Anti-Dumping Code and in particular its Article 14. He stressed how serious he found it to be that now, eight years after the Code had been adopted, the United States had not yet brought its legislation and practices into conformity with it. He regretted the fact that the legislature of the United States regarded the Code as a secondary instrument in comparison with the provisions of United States law. He referred in particular to the House-Senate Conference in 1968, which had noted that "nothing contained in the Anti-Dumping Code shall be construed to restrict the discretion of the Tariff Commission" and that "the Tariff Commission shall resolve any conflict between the Anti-Dumping Code and the United States Anti-Dumping Act in favour of the Act". He recognized that certain changes had taken place in the American practices, some of which to the better. These changes had, however, not concerned some of the central issues. He stressed that the United States when drafting the 1974 Trade Act had had also the opportunity to secure the legislation needed to establish conformity with the results of past negotiations. He regretted that this opportunity had not been taken. In particular, his authorities had hoped for improvement as regards the provisions on multinational companies and on sales at a loss. He said that the new procedure for the American administration to proceed to a preliminary investigation of injury had created some hopes. However, the requirement to find a negative evidence of injury did not, in his view, seem adequate and practical in this context. As far as the proposals to revise the American anti-dumping practices were concerned, the representative of the European Communities did not find them reassuring at

all. This applied in particular to the rules that dumping findings could not be revoked upon request unless there was evidence that no dumping had taken place for at least two years and that such findings must be in force for at least four years before they could be revoked at the initiative of the United States authorities. All these problems had led the European Communities to call into question the usefulness to negotiate on new codes within the framework of the multilateral trade negotiations, as such negotiations required a climate of confidence as regards the effective application of such new agreements. The representative of the European Communities concluded by saying that there indeed were important problems in reaching a necessary equitable application of the provisions of the Anti-Dumping Code. To deal with this matter he suggested that the Committee should take on the task of noting down the discrepancies between the Code and the practices of the countries that had adhered to the Code.

36. The representative of Japan also wished to take up some problems encountered as regards the United States laws and practices. The first problem concerned the effectiveness of the summary investigations of the International Trade Commission, which in the Japanese view was somewhat doubtful. This doubt was confirmed after the investigation on the automobile and the butadiene acrylonitrile rubber cases. Since the time period given to the Commission was limited to thirty days, the Commission would inevitably have to rely upon the information supplied by the Department of Treasury and by the parties concerned in the course of the investigation. Consequently, it might, according to the Japanese authorities be difficult for the Commission to reach a conclusion that there was no reasonable indication of injury. It was also doubtful whether support "by evidence both of dumping and injury resulting therefrom", as required by paragraph 5(a) of the Code, could be assured. The representative of Japan furthermore agreed with the European Communities that the requirement of a negative proof of dumping and injury was disadvantageous and could create difficulties. Coming to the second problem, which concerned the American rules for initiation of investigations, the Japanese representative welcomed the amendments and improvements of these rules that had recently been made. He hoped that these new rules would be applied in conformity with Article 5(a) of the Code. Taking up a third problem the representative of Japan stated that the United States rules as regards "sales at a loss" could be interpreted too extensively and in a way going beyond the provisions of Article 2(a) and (d) of the Code. A fourth problem concerned the American rules on multinational enterprises. The Japanese representative expressed doubts whether the price comparisons that should be made according to these rules were consistent with Article 2(d) of the Code. A fifth problem concerned the American assessment investigations. In exemplifying the problems encountered on this point the Japanese representative referred to the case regarding the exports of the Sony company of television sets to the United States. He said that customs appraisalment was withheld in this case in September 1970.

The Sony company had been subject to assessment investigation until February 1975, i.e. for a period of four and a half years. According to the Japanese point of view the time for assessment investigation must be much shorter, for instance six months in case of companies for which sales at dumped price had not been found in the course of anti-dumping investigations, or which had not been in the sample actually investigated. The representative of Japan finished by taking up some points in the United States anti-dumping legislation, to which Japanese authorities already at earlier occasions had proposed amendments but where no change had been made in the recent amendments to the United States regulations. One of these points concerned the method of calculation of fair market value, another the possibility of retroactive application of withholding of appraisal. In the Japanese view, the former regulation should be administered in accordance with Article 2(f) of the Code, and the latter should be amended to conform with Articles 10(a) and 11 of the Code.

37. The representative of Canada also welcomed some of the changes made in the United States regulations that were promulgated in July 1975. He stated however that problems still existed as regards a number of other changes and he mentioned that the Canadian authorities recently had transferred to their American counterparts detailed comments on these regulations. In this connexion he limited himself to taking up a few points made in Section 153.4 which extended the scope of an enquiry to include sales by related companies in a third country to establish normal value. He questioned whether there was an adequate basis for such a price comparison and whether this was in conformity with Article 2(d) of the Code. Furthermore, he agreed with the concern of the European Communities and Japan as regards the mandatory time-limits before a revocation of previous findings could take place. He concluded by saying that the Committee over a number of years had discussed legislation, regulations and practices of various countries, which in the opinion of a number of delegations were not in conformity with the provisions of the Code. Referring to the suggestion by the representative of the European Communities to draw up a list of these deviations, the Canadian representative questioned to what extent the problems in this regard were due to misinterpretations of the provisions of the Code. He raised the question whether the problems instead were due to the fact that the Code itself over time had become out of date. After the experience during eight years, one could perhaps draw the conclusion that the Code was not a perfect instrument. The representative of Canada therefore suggested that the time had come to review the Code, for instance as regards issues like the definition of injury, the definition of the word "material" and the arrangements for surveillance. The Canadian representative felt that this review could best be done within the framework of the multilateral trade negotiations and he recalled that his country had made a proposal to that effect in that forum.

38. The Swedish representative voiced support for the idea that was mentioned by the representative of the European Communities according to which the Committee should endeavour to register discrepancies between national practices and provisions of the Code. He stated that there were also other possibilities of tackling problems in the anti-dumping field. Like the representative of Canada, he believed that problems related to anti-dumping should be reviewed in the context of the multilateral trade negotiations. He was, however, of the opinion that in principle only issues going beyond the terms of reference of the Anti-Dumping Committee should be taken up in that forum. He had not yet found reasons for a full revision of the Code.

39. The representative of the United States stressed that prior to the accession of the United States to the Anti-Dumping Code, his Government had made it clear that it would not be able to change the text of its statutes to make that text completely in parallel to that of the Code. His Government had declared that it would ensure that its anti-dumping procedures, policies and practices conformed fully with the provisions of the Code. According to the representative of the United States, this was now the case. He recalled that during the period from 1 July 1974 to 30 June 1975, no new anti-dumping duties had been levied by the authorities of his country. During that period, four determinations of no injury had been made by the International Trade Commission. He reiterated what he had said during the previous meetings of the Committee, that he preferred to hear comment based on definitive actions taken by his authorities rather than on technical distinctions that could be made between the text of the United States statutes and the text of the Code. He furthermore recalled that at the last year's meeting of the Committee he had delivered a list setting forth all the changes that had been made in the United States legislation and procedures to evolve them, inter alia, in response to comments made by members of the Committee. In addition there had been some changes to the same effect in the Trade Act of 1974. He found a tendency of the Committee to under-estimate or even ignore the evolution of his country's procedures to meet concerns expressed by others regarding the United States' compliance with the Code. He maintained, for his part, that the system of his country was as equitable and objective as that of any other adherent to the Code.

40. Referring to the comments on the preliminary procedures by the International Trade Commission the representative of the United States reiterated that these procedures did not constitute a determination of injury. What the Commission did was to decide on a threshold question, i.e. whether there was sufficient evidence present to warrant further investigation. He could not, for his part, find that the negative formulation of the decision could be regarded as being contrary to the provisions of the Code. He also recalled that the question of injury was looked into twice before an initiation took place, not once as in most other countries. Thus, the American procedures provided for an extra safeguard for the exporters concerned.

41. As regards the provisions of the Trade Act dealing with multinational corporations, the representative of the United States said that according to these provisions, the authorities concerned should, if there were no or virtually no domestic sales in the exporting country, look into the prices of the merchandise of the same branch in a different country and make adjustments for the differences in the two economies concerned. He admitted that Article 2(d) of the Code did not deal with such a comparison. He added that this issue perhaps needed to be dealt with in the future by the Committee. He however wished to point out that the use of these provisions was very restricted, and that the company which was primarily responsible for their inclusion in the anti-dumping legislation had not taken advantage of them yet.

42. Referring to the comments made on the provisions of the Trade Act dealing with sales at less than the costs of production, the representative of the United States explained that those provisions stated that the authorities might disregard the home market sales if these were made over an extended period of time and in substantial quantities and at a price which did not permit recovery of the production costs within a reasonable period of time in the normal course of trade. He recalled that according to Article 2(d) of the Code, the authorities concerned could resort to prices in third countries or to constructed prices. He added that the provisions in the Trade Act applied to situations as to extended sales, in the normal course of trade, where the sellers did not break even in their sales on their home market. He maintained that there was no reason to interpret these provisions as a violation of the Code and he reiterated that he would prefer to hear comments based on actual cases rather than on possible discrepancies in the texts of the Code and the American anti-dumping legislation.

43. Taking up the comments on the proposed regulations dealing with revocation, the representative of the United States said that findings of dumping should normally be revoked only after there had been no sales at less than fair value for a two-year period. He stressed that this did not mean that anti-dumping duties could be collected during these two years. Anti-dumping duties were collected on an entry-by-entry basis, and the customs service did an extensive entry-by-entry analysis to determine whether any dumping margins existed. If no sales at less than fair value took place during the two-year period, and sometimes even before, the dumping finding was revoked, not the dumping duties which in most cases had ceased to be levied a long time before. Furthermore, the four-year period that had been referred to, was in his view simply a house-keeping procedure. If nobody had cared to petition for revocation, his authorities could automatically revoke a finding after four years if no sales at less than fair value had occurred. He added that in the case of Sony, referred to by the Japanese representative, it was the dumping finding which had been in effect for four and a half years. No dumping duties were collected during this period. Concluding his remarks, the representative of the United States said that the procedures of his country were in his eyes fully in compliance with Article 9(a) of the Code.

Nevertheless, the United States hoped to evolve a better revocation procedure in the future regarding changes in circumstances affecting injury determination.

44. The representative of the European Communities reiterated that the United States had not, after eight years, fulfilled the obligations under Article 14 of the Code. He agreed with the representative of the United States that his authorities had not altogether appreciated the modification in the United States law and practices since 1968. The reason for this was that the modifications had been minor and had not brought the American procedures into line with the Code on a number of important points.

45. Referring to the explanations made by the representative of the United States that the amendments to the American regulations in the Federal Register in July remained proposals, the Canadian representative expressed the hope that the United States authorities before issuing the final version of these rules would take into account, to the extent possible, the comments made by several countries. As regards the question of revocation of dumping findings, he expressed the opinion that the minimum time before a finding could be revoked, could in some instances have prohibitive effect. He also found it illogical to have a provision in the Trade Act which required the Secretary of Treasury to refer a case of the International Trade Commission for investigation whether there was a case of no substantial injury, if the Secretary of Treasury, as in the automobile case, virtually at the same time initiated the investigation of anti-dumping. If there was some doubt, the investigation should not be initiated until that doubt had been cleared up. He added furthermore, that the previous statement of the representative of the United States constituted in his eyes an overwhelming case for improving the Anti-Dumping Code.

46. Referring to the provisions of the Trade Act relating to sales at a loss, the representative of Japan expressed the view that these provisions should not be implemented in a broader sense.

47. Referring to the comments made by the Canadian representative the spokesman of the United States assured the members of the Committee that the comments made in this forum on the proposed American regulations would be considered and that an extension of the period for comments that had been decided as well as the earlier date for the meeting of the Committee provided that this would be possible. Regarding the time-limits for revocation he agreed with the Canadian representative that in some instances the continuation of a finding for a minimum period of time could have unfortunate effects on trade. For that reason the United States regulations did not require the two-year period to be respected in all cases. Exceptions from the normal procedure could be made. As regards the question of interface in the law of the preliminary procedure of the

International Trade Commission and the initiation of an investigation, he said that the Secretary of Treasury, according to the law, had to make his preliminary investigation during the first thirty-days period after the filing of a petition as to whether there was substantive doubt of injury requiring a submission of the case to the International Trade Commission for its thirty days' summary enquiry. The law prescribed the procedures to continue during the enquiry of the International Trade Commission. In the automobile case, the Secretary of Treasury had referred the case to the International Trade Commission at the very last day of the thirty-days period following the filing of the petition. In consequence, the initiation took place the next day and the investigation was going on in this case during thirty days before the time-limit of the International Trade Commission ran out. If the decision of the Commission had been the opposite, the investigation would have been terminated thirty days after its initiation. The representative of the United States found this to be a technical matter which did not impose a severe burden on the firms in question. He also stressed that the procedures did not violate the provisions of the Code. In reply to the comments by the representative of the European Communities, the representative of the United States reiterated that before signing the Anti-Dumping Code there had been certain understandings between the countries concerned. The United States had for instance undertaken to change its regulations, not the text of its legislation, to comply with the Code. He underlined that the representative of the European Communities had not been able to point out a single decision made by the American authorities that was not in conformity with the Code.

48. The representative of the European Communities could not agree with the Canadian statement that the automobile case and the explanations given by the representative of the United States constituted an overwhelming case for improving the Code. He did not exclude the possibility of making improvements to the Code but in his view, the essential problem was to ensure that the Code was applied fairly and equitably. As far as the United States position was concerned, the United States negotiators had thought, before the conclusion of the Code, that it would be possible for the United States to operate within the boundaries of the Code without immediate amendments to its anti-dumping legislation. This thought which had then been expressed to other delegates, came however in contradiction with the 1968 Conference Report, where the rules of the legislation were asserted as supreme for the United States. He reiterated that the United States practices did not conform with the provisions of the Code and thought that this view was shared by most if not all other members of the Committee. He also reiterated that the United States investigation in the automobile case constituted a desperately serious threat to world trade. With reference to these facts, he suggested that the Committee should express its realization that the Anti-Dumping Code represented a unique effort to give a necessary greater precision to certain provisions of the General Agreement, for

the purpose of creating fairer trading rules capable of uniform application. He also thought that the Committee should note that its discussion had shown that certain important problems existed regarding the equitable operation of these rules. With this in mind he suggested that the Committee should decide to draw up an analytical inventory of problems arising under the Code and its application by the parties to the Code and that the Committee should meet again as early as possible next year. He proposed that both the members of the Committee and, in certain respects, the secretariat should be invited to prepare some sort of a basic documentation for this work.

49. The representative of Japan stated that he was not fully satisfied with the explanations of the representative of the United States and that accordingly, the outstanding problems would be further discussed bilaterally. He supported the suggestion of the European Communities to draw up an analytical inventory of discrepancies between national regulations and the provisions of the Code. He also supported the idea of taking up anti-dumping matters in the framework of the multilateral trade negotiations and he recalled that this question had been discussed in the MTN Group "Non-Tariff Measures".

50. The representative of Switzerland found the suggestion of the European Communities to draw up an analytic inventory useful. He proposed, however, that the Committee in parallel with this analysis should elaborate a factual study of its activities during its last five years, which would describe the development of the work of the Committee. He suggested that the secretariat should proceed to this factual study which could include the differences of views concerning the application of the Code, the number of cases which had been examined where duties had been applied, the number of cases where the investigation proved no dumping or injury, the time for the enquiries, etc.

51. The representative of Sweden supported the proposal of the European Communities. He recalled the suggestion that Sweden and Switzerland had put forward last year to give the work of the Committee a more multilateral character. He interpreted this proposal as a step in this direction.

52. The representative of the United States said that there seemed to be some merit in the suggestion of the Communities to review the work of the Committee in the past. He stressed, however, that the Committee had to be careful in the way it proceeded with this task to avoid a repetition of the arguments that had already been made on different issues and problems.

53. The Chairman suggested that the continued discussion of the proposals of the European Communities and Switzerland should take place under the agenda item "other business".

F. Other business

(a) Future work of the Committee

54. The Chairman recalled that the Committee had had a first discussion at its 1974 meeting on a proposal put forward by Sweden and Switzerland to give the work of the Committee a more multilateral character. He found it appropriate to discuss this proposal in connexion with the suggestion of the European Communities to draw up an analytical inventory of problems arising under the Code and its application by the parties to the Code.

55. The representative of the United States recalled that the Committee on Balance-of-Payments Restrictions recently had decided to review the work of the Committee over the previous four years. He suggested that such a project could also be undertaken in the Anti-Dumping Committee. He proposed that a study of this sort should concentrate on identifying the issues without any attempt to pass judgement of the possible merits of particular arguments made in the course of the deliberations in the Committee over the years. Furthermore, he wished not to have identified, to the extent possible, the adherence of particular members of the Committee to particular positions. The study should, in his view, present a compendium of issues, which would serve as a basis for a discussion how to deal with the problems that had arisen before.

56. The representative of Spain supported the proposal to draw up an analytical inventory and suggested that it should cover all the time during which the Anti-Dumping Code had been in force.

57. The representative of Switzerland supported in principle the proposal of the European Communities. He found it, however, somewhat ambitious. He suggested therefore that the secretariat should start the work by making a report similar to the study of the Committee of Balance-of-Payments Restrictions and that the analysis of the problems and issues thereafter should take place in the Committee itself.

58. The representative of Canada supported broadly the proposal of the European Communities and did not find it very different from the suggestion of Switzerland. He was however of the opinion that the secretariat study had to be based on a certain amount of analysis in order to be able to present some sort of systematic review that would be useful for the further discussion within the Committee.

59. The Committee felt that the Anti-Dumping Code represented a unique effort to give a necessary greater precision to certain provisions of the General Agreement, for the purpose of creating fairer trading rules capable of uniform application.

The Committee agreed to draw up an analytical inventory of problems and issues arising under the Code and its application by the parties to the Code. To this effect, the secretariat was requested to prepare a systematic inventory, article by article of the Code, of problems and issues that had been raised by adherents to the Code since the inception of the Committee. The Committee decided to meet again approximately six weeks after the report had been circulated which was foreseen by the end of the year. It invited its members to provide any written contribution they might wish to make in preparation for this meeting.

60. The representative of Sweden recalled the suggestions he had made at the last meeting (COM.AD/34, paragraph 55) for improving the work of the Committee and suggested that an additional means of achieving this purpose might be that members of the Committee as a matter of routine should have the right to request written clarifications from importing countries on problems relating to the implementation of the Code during the reporting period in question. Such requests as well as replies should be circulated sufficiently in advance of the meetings of the Committee. The Committee agreed to revert to this question at its next meeting.

(b) United States policy with respect to voluntary undertakings

61. The Chairman recalled that this matter had been discussed last year on the basis of two documents, COM.AD/29 and COM.AD/32, submitted respectively by Japan and the United States.

62. The representative of Japan reiterated his objections to the guidelines of the Treasury Department in this area. In May 1970 the Treasury Department had announced that price assurances should be accepted only in cases where dumping margins were minimal in terms of volume of sales involved. Basing themselves on Article 7(a) of the Code, the Japanese authorities were of the view that these guidelines limited too much the room for the eventual termination of the measures. The Japanese authorities had also taken every opportunity to state these views to the United States Government. The Japanese representative stated that the guidelines incorporated in Article 153.33 of the new Customs Regulations should be reviewed with a view to conforming clearly to the Code.

63. The representative of the United States replied that the position of his country, as laid down in document COM.AD/32, had not changed and he reiterated that his country's procedures in this respect were fully in compliance with Article 7 of the Code. He added that this provision was not new but had been included in his country's regulations for at least fifteen years.

64. The representative of the European Communities supported broadly the views of Japan on this point and he urged the United States to reconsider the relevant provisions when deciding definitively on the new regulations.