

COMMITTEE ON ANTI-DUMPING PRACTICES

Draft Minutes of the Meeting of the  
Committee on 21-24 September 1971

Attached hereto are draft minutes on the meeting of the Committee on 21-24 September 1971. Delegations are invited to inform the secretariat by 10 December 1971 of any comments they may have on the text.

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

COM.AD/W/24  
26 November 1971

Special Distribution

## Committee on Anti-Dumping Practices

### COMMITTEE ON ANTI-DUMPING PRACTICES

#### Minutes of the Meeting Held on 21 to 24 September 1971

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

	<u>Page</u>
<u>Subjects discussed:</u>	
A. Examination of reports submitted under Article 16 of the Agreement covering the period 1 July 1970-30 June 1971	1
B. Examination of national legislation	7
C. Adherence of further countries to the Code	11
D. Examination of questionnaires used in price investigations	13
E. Other business	16
A. <u>Examination of reports submitted under Article 16 of the Agreement covering the period 1 July 1970-30 June 1971</u>	
(a) <u>Canada (COM.AD/15/Add.2)</u>	
1. The discussion on the cases covered by the Canadian Report under Article 16 concentrated on the following aspects:	
(i) Determination of threat of injury	
(ii) Allowance for drawback	
(iii) Treatment of sales at a loss	
(iv) Presentation of evidence	
(v) Questions relating to products made to measure	
(vi) Application by the Anti-Dumping Tribunal of the Code	
(i) <u>Determination of threat of injury</u>	
2. The representative of <u>Japan</u> referred to the case of transformers and reactors and said that his Government was not convinced that the criteria of paragraphs 3(a) and (e) of the Code had been met. In his opinion the relationship between the dumped imports and the possible injury to Canadian industry had not been established. Furthermore, the determination of threat of injury was not based on facts but rather on allegation, conjecture or remote possibility.	

3. The observer for Spain pointed out that in the case of women's footwear the Canadian Anti-Dumping Tribunal had established threat of injury to the domestic industry, although the Tribunal's own opinion clearly indicated that the Code requirements were not met. He submitted a communication in which the views of his Government were set out in detail; the communication was circulated in document COM.AD/W/21. The representative of the United Kingdom indicated that he shared the concern expressed by Spain. The observer for Spain, supported by the representatives of Switzerland and the Communities, pointed out in this connexion that investigations had in some cases been opened in Canada at the request of one producer only. Threat of injury to a single producer could not be regarded as threat of injury to an industry.

4. The representative of Canada replied that the findings in the transformer case could not be said to be based on conjecture only. The hearings had lasted several weeks. He emphasized that injury or threat of injury were always judged with reference to a whole industry, even if the investigation had been opened at the request of a single producer. With regard to the women's footwear case, it was agreed that bilateral consultations would be pursued and that the Committee could revert to the matter at its next meeting. The representative of the Communities, supported by several other representatives, asked for a re-examination of the Canadian decision immediately and not after the expiration of an eighteen-month delay, as the decision in question seemed to provide for.

(ii) Allowance for drawback

5. The representative of the United Kingdom recalled that the question of the extent to which drawback of customs duties would be taken into account in determining normal value had been raised at the previous meeting (COM.AD/14, paragraph 23(b)). He felt that the provisions of paragraph 4 of Article VI of GATT and of paragraph 11 of the Canadian Anti-Dumping Regulations established clearly that allowance should be made for drawback not only on the product itself but also on component materials. Similar views with particular reference to the case of women's footwear were expressed by the observer for Spain who referred to the communication setting out the opinion of his Government in this respect (COM.AD/W/21).

6. The representative of the Communities supported the views on drawback expressed by the representative of the United Kingdom and the observer for Spain. He added that allowance for drawback should in his opinion also be made for duties refunded on an imported component that had been replaced in a particular export product by a like component of domestic origin.

7. The representative of Canada confirmed that the Canadian authorities did not make allowance for drawback on component parts but only for drawback on "like goods" which was interpreted as goods at the same stage of processing. He considered that this practice was in conformity with the requirements of Article 2(f) of the Code and Article VI:4 of GATT which referred to "duties and taxes borne by the like product".

8. The representatives of the United Kingdom, the Communities and Sweden said that they could not consider the Canadian practice of only allowing for drawback on "same state" products as being in conformity with Article VI:4 of GATT. The representative of the Communities said that it would be logical for governments who granted drawback on component materials on their own exports to make allowance for similar drawback on imported products. He wished in any case to avoid a situation where an importing country applied different allowance rules for products exported from countries which admitted drawback and from those that did not.

9. The representative of Canada, supported by the representative of Japan, recalled that the question of the treatment of drawback on component materials under Article VI:4 had been discussed at the Review Session without any agreed conclusions having been reached.<sup>1</sup> That paragraph could thus be open to different interpretations. The views expressed in the discussion would, however, be brought to the attention of the competent authorities in Ottawa. The representatives of the United Kingdom, the Communities and Sweden considered that the position taken by the CONTRACTING PARTIES at the Review Session confirmed their interpretation of Article VI:4

10. The representative of Japan pointed out, as a general comment to the Canadian provisions on allowances, that paragraphs 4-11 of the Regulations seemed to give an exhaustive list of admitted allowances which was narrower in scope than Article 2(f) of the Code. He recalled that at the 1969 meeting of the Committee the representative of Canada had said that the list could be amended administratively (COM.AD/9, paragraphs 11-17) and asked whether that reply was still valid.

11. The representative of Canada said that in the opinion of his Government the list was in conformity with Article 2(f) of the Code. The possibility to amend the list administratively remained, however, and the Canadian authorities would consider any suggestion for additions to the list that Japan would wish to make.

(iii) Treatment of sales at a loss

12. The representative of the United Kingdom said that in the transformer case the Canadian authorities had considered sales by United Kingdom manufacturers at prices that did not allow for full cost coverage as not made in the ordinary course of trade in the sense of Article 2(d) of the Code. He felt that such an interpretation of Article 2(d) was most unreasonable; it was a common and necessary business practice for producers to sell their products at prices which did not fully cover their overhead costs when demand had failed to come up to past expectations.

13. The representative of Canada stressed that sales at a loss could not be regarded as normal business practice. When considering such cases the Canadian authorities took into account the practices of various branches of industry.

---

<sup>1</sup> A summary of the discussion of this question at the Review Session has been circulated in COM.AD/W/25.

14. The representative of the Communities, supported by the representatives of Sweden, the United Kingdom and the United States, said that if the prices quoted at the domestic market and for exports were the same, it would not be reasonable to consider them as falling outside the normal course of trade and have recourse to comparison with production costs.

15. The representative of Canada said that it was not possible to judge all cases of sales at prices that did not fully cover costs in the same manner. He suggested that the discussion should be continued at a forthcoming meeting of the Committee on the basis of concrete cases. It was so agreed.

(iv) Presentation of evidence

16. The representative of Japan stated, with particular reference to the transformer and reactor case, that foreign suppliers had not been given time enough to present the evidence they considered useful, as required by Article 6(a) of the Code. The representative of Switzerland and the observer for Spain also expressed concern with the limited time in which suppliers could present their evidence.

17. The representative of Canada pointed out that the hearings in the transformer case had lasted for five or six weeks, which should have given ample time for the presentation of evidence.

(v) Questions relating to products made to measure

18. The representatives of the Communities, Sweden and the United Kingdom asked for information on the criteria used in price comparisons between products made to measure. They wished to know how "like product" was defined in the case of products made to measure, where it was frequently difficult to find products to serve as a basis for comparison. For exporters it was very important to know the considerations that would guide the competent authorities in such cases. Full compliance with the requirements of Article 2(f) of the Code was essential.

19. With reference to the transformer case, the representatives of the Communities and Japan asked why Canada had decided to impose anti-dumping duties on transformers imported under future contracts. If the imposition of duties had not been justified in the case of the imports subject to the investigation, one could have expected that the case would have been terminated.

20. The representative of Canada replied that a threat of injury had been found and anti-dumping duties would be imposed on imports under contracts signed after the date of the decision by the Tribunal, if a margin of dumping was established in individual cases. The decision would be reviewed by the Tribunal after eighteen months but could be reviewed earlier on request.

21. The representative of the Communities, supported by several other members of the Committee, requested the representative of Canada to convey to the Tribunal an invitation to review its decision. The representative of Canada confirmed that the invitation would be brought to the attention of the Tribunal without delay.

(vi) Application by the Anti-Dumping Tribunal of the Code

22. In the course of the discussion of some of the particular items referred to in paragraphs 2-21 above, the representative of Canada pointed out that the Canadian Anti-Dumping Tribunal was a court independent of the Government and that it was bound only by Canadian national Law and not by the Code. The representatives of the Communities and the United Kingdom and the observer for Spain expressed concern with the possible implications of this attitude and wished to have explicit confirmation that the legislation as applied by the Tribunal was in conformity with the Code.

23. The representative of Canada replied that the Canadian legislation took full account of the Code. The Tribunal was called upon to make its determinations on the basis of the legislation and thus indirectly took account of the Code. The Code was an international contract; the Tribunal operated under the Canadian legislation. Since the one, however, reflected the other, the result was that the Tribunal was in fact bound by the provisions of the Code.

(b) Greece (COM.AD/15/Add.3)

24. The representative of the Communities referred to case 2(b)II, cheese rennet, of the Greek report. He said that the Commission had not yet any official knowledge of that investigation which affected some Community member States. He wished to stress the importance of respecting the provisions of the Association Agreement between Greece and the European Economic Community.

25. The representative of the United Kingdom pointed out in respect of case I:V of the report (high pressure mercury vapour lamps) that no exporting country was indicated. He further observed that the report showed a considerably increased anti-dumping activity in Greece. Against that background it would be interesting and useful to have more information on the administration of the Greek legislation and the procedures followed. The representative of the Communities recalled that the examination of the conformity of the Greek legislation with the provisions of the Code had not been terminated and that the Greek delegation had promised to provide further information in that respect (cf. COM.AD/14 paragraphs 5-8).

26. The Chairman noted that no Greek representative was present. The observations made would, however, be brought to the attention of the Greek authorities.

(c) Sweden

27. The representative of Sweden stated that no action had been initiated in the period under review and that the only anti-dumping duty in existence, on hydrogen peroxide, had been repealed by Royal Ordinance with effect from 1 October 1971.

28. The representative of the United Kingdom expressed satisfaction at the removal of the anti-dumping duty on hydrogen peroxide.

(d) United States (COM.AD/15)

29. The representative of the United Kingdom expressed his concern with the interpretation being made by the United States Tariff Commission on the meaning of the expression "material injury". In several cases it had considered that anything that was not trivial was material. In the case of British ceramic wall tiles with sales representing only 2 per cent of total sales in the United States and with no evidence that a benefit would have accrued to the domestic industry in the absence of these sales, the existence of material injury had been found. Moreover, anti-dumping duties had been imposed upon all ceramic wall tiles even though only one range of dimensions had been subject to the accusation of dumping. Minimal market penetrations had also been considered as causing material injury in the cases of ferrite cores (0.4 per cent) and glass (1 per cent) coming from Japan and of glass (0.2 per cent) coming from Taiwan. In the case of Dutch dried eggs he could not see how injury could have existed when, at the time, domestic demand could not be satisfied. He also referred to the case of diamond tips for phonograph needles where only a remote threat of dumping had been found to exist; such a situation did not warrant action under Article VI. Furthermore, in the case of shoeboard with imports involving not more than 8 per cent of total imports, the complaint by one producer had been considered enough to commence anti-dumping proceedings even though the rest of the industry might not have considered itself affected.

30. The representative of the European Communities supported all the general remarks of the representative of the United Kingdom and referred particularly to the case of dried eggs. He urged the United States delegation to ascertain that material injury determinations were done in accordance with the Code. Otherwise he would have to reserve his right to take the matter to the CONTRACTING PARTIES.

31. The representative of Canada shared the concerns of the representatives of the United Kingdom and the European Communities. He added that in the case of Canadian pig-iron the margin of dumping had been negligible (2 to 3 per cent); in his view Article 5(c) of the Code had not been observed. He pointed out that in the cases of key blanks and of kraft paper investigations had been initiated upon complaint by one producer only. He further stressed that Article 5(a) of the Code required that evidence of injury should be established before the initiating of investigations. In his view a comparison should be made of the volume of dumped imports with both total United States production and imports; against that background he criticized the attitude of the Treasury and the Tariff Commission concerning Canadian kraft paper and pig-iron and Japanese ferrite cores. With regard to the case of Australian steel bars, he noted that the majority of the Tariff Commission had not even tried to define regional markets as foreseen in Article 4(a)(ii) of the Code.

32. The representative of Japan said that his delegation shared the concern of the previous speakers with the anti-dumping practices of the United States.

33. The representative of Switzerland had the feeling that the injury requirements of Article 5(c) of the Code were not always met. He criticized the tendency to compare prices on products which were not really alike and to use mean prices. He said that the abolition of the 25 per cent rule had led to decisions in price matters, which were still less precise than previously.

34. The representative of the United States said that, as the members of the Committee were aware, it was the usual practice of the United States Treasury to initiate anti-dumping investigations only in response to complaints on behalf of the industry affected, supported by evidence of injury as well as of sales at less than fair value. With respect to the injury standard by the Tariff Commission he noted that this matter had been discussed extensively on previous occasions. He referred to paragraph 56 of the Minutes of the previous meeting (COM.AD/14) and reiterated the statement made previously that, although the language used by the Tariff Commission differed from that of the Code, in his view the Standards of the Code had been met. Noting that the representative of the United Kingdom and others relied on statements from minority opinions in criticizing specific determinations of the Tariff Commission, particularly the case involving dried eggs from the Netherlands, the representative of the United States pointed out that the opinion of the majority was the best authority concerning facts which were in dispute in such cases. Referring to the majority opinion in the Dutch dried egg case, he noted that price differences of up to 20 per cent between the domestic products and those imported at less than fair value had resulted in loss sales and had depressed the prices received by domestic producers. In any event no dumping duties would be assessed on shipments made at not less than fair value.

35. The representatives of the Communities and the United Kingdom disagreed with the reasoning of the representative of the United States and pointed out that paragraph 56 of COM.AD/14 did not contain the views of the Committee as a whole but those of the representative of the United States. In their view the United States practices had imposed costly studies on the part of the importers.

B. Examination of national legislation

(a) Malta (L/3578)

36. The Chairman noted that Malta had acceded to the Agreement on the Implementation of Article VI on 31 March 1971 and had submitted for examination Part VI of the Aids to Industries Ordinance, 1959, dealing with Anti-Dumping and Countervailing Duties.

37. The representative of Malta explained that the Board referred to in the first line of the Maltese text was the Malta Development Corporation Board. With respect to the injury provisions of paragraph 10(i), he assured the Committee that they would be applied in conformity with the requirements of Article VI of GATT and of the Code.

38. The representative of Norway noted that the Maltese legislation did not contain any provision regarding anti-dumping actions on behalf of third countries. The representative of Malta agreed that there were some provisions of Article VI and the Code which had no counterpart in the Maltese legislation which did, however, basically correspond to the GATT and Code provisions.

39. The representative of the Communities pointed out that paragraph 10(1) contained a reference to the General Agreement but not to the Code. He suggested that the text should be amended to contain a specific reference to the Code. He proposed that in the meantime a statement could be incorporated in the note on the meeting of the Committee to the effect that Malta would not implement any anti-dumping measures that would be in conflict with the Code.

40. The representative of Malta replied that it was his understanding that the reference to the provisions "for the time being in force" of the GATT would cover also ancillary instruments to which Malta had adhered, including the Code. The question would, however, be brought to the attention of the competent authorities in La Valetta, and he would inform the Committee at a later occasion of their decision.

(b) Canada

(i) Amendments to Regulations (L/3560)

41. The representative of Canada explained that the aim of the amendments was to provide a procedure for assessing the effect of credit terms and in particular of concessional financing on normal values and export prices and hence on margins of dumping. The background was the increasingly common practice of governments of guaranteeing loans to buyers abroad at lower rates of interest than prevailed in the lending country. His Government considered that the new paragraphs were consistent with Article 2(e) and (f) of the Code.

42. The representative of the Communities said that the new provisions seemed to be based on a mixture of anti-dumping and customs valuation considerations. The Communities reserved their right to apply similar provisions to imports from Canada.

43. The observer for Spain questioned whether the provisions were in conformity with the Brussels definition of value.

44. The representative of Switzerland recalled that efforts were being made to harmonize internationally export credit terms and said that the adoption by Canada of the new rules seemed to prejudice the outcome of the harmonization work.

45. The representative of Canada stressed that the provisions only related to anti-dumping investigations and not to the determination of value for customs purposes. In reply to the representative of Switzerland, he said that Canada supported the efforts to harmonize credit terms, and if they were successful there would be no need to use the new regulations.

(ii) Amendments to the Anti-Dumping Act (COM.AD/17)

46. The representative of Canada explained that the amendments to the Act were of a technical nature, providing for the termination of anti-dumping proceedings and the return of provisional duties, if no injury had been established, and enabling the Anti-Dumping Tribunal to inquire into and report on certain matters in relation to imports causing or threatening injury to Canadian production, which were, however, not related to dumping.

47. The representative of the Communities said that the extension of the function of the Tribunal to investigations in areas where less strict criteria were applied than in the anti-dumping sector, caused some worries; the use of such less strict criteria could easily spread into the anti-dumping sector too.

48. The representative of Canada pointed out that the investigations that had now been entrusted to the Tribunal, had previously been carried out by individual officers. The fact that they were now carried out on the responsibility of a court meant an advantage to exporters.

(b) Review of United States Anti-Dumping Regulations (L/3537 and Add.1)

49. The representative of the United States recalled that document L/3537 dealt with two matters: the abolition of the "25 per cent rule" and the broad review of the anti-dumping regulations which was currently being conducted by the Treasury.

50. The representatives of the Communities and Switzerland expressed the hope that the abolition of the "25 per cent rule" would not lead to a situation less favourable from the point of view of exporters.

51. The representative of the United States replied that the abolition of the "25 per cent rule" was intended to ensure, in conformity with the Code, that home market prices would be used for price comparisons unless home market sales were so small as to provide an insufficient basis for comparison. The trade effects of abolition of the rule were expected to be neutral.

52. The representative of Japan made the following comments on possible amendments to the Anti-Dumping Regulations in the framework of the Broad Review:

(a) Withholding of appraisement

(i) Requirements for withholding: Section 153.34 of the Anti-Dumping Regulations said that if the Commissioner determined ... that there were reasonable grounds to believe ... that any merchandise was being sold ... at less than its foreign market value ..., and if there was evidence on record concerning injury or likelihood of injury ..., he should publish a "Withholding of Appraisement Notice". On the other hand, the Anti-Dumping Code said, in its Article 10, paragraph (a), that provisional measures might be taken only when a preliminary decision had been taken that there was dumping and when there was sufficient evidence of injury. The representative of Japan hoped that the United States regulations would be revised along the line of Article 10 of the Code.

(ii) Retro-active application of withholding of appraisement: Section 153.48 of the Regulations allowed the Commissioner of Customs to apply withholding of appraisement retro-actively. The understanding of the representative of Japan was, however, that a retro-active application of provisional measures, including withholding of appraisement, was not allowed under the provisions of Article 11 of the Code.

(b) Price assurance

The representative of Japan hoped that anti-dumping proceedings would be terminated without imposition of anti-dumping duties or provisional measures upon receipt of a voluntary undertaking by the exporters to revise their prices, if the authorities considered this practicable, taking account of the number of exporters and the trading practices.

(c) Reasons and criteria applied for a decision of provisional measures or anti-dumping duties

In the Japanese view, Sections 153.34, 153.35 and 153.48 should be more specific so that the exporting country and directly interested parties might be informed more accurately of the reasons and criteria applied for a decision regarding imposition or provisional measures or anti-dumping duties.

(d) Commercial practices in exporting country

Article 2(f) of the Code provided that due allowance should be made in each case, on its merits, for the differences in conditions and terms of sale, for the differences in taxation, and for the other differences affecting price comparability. Section 153.8 of the Regulations had a similar provision. It was felt, however, that it would be more desirable to see some provisions included in Section 153.8, so that it was ensured that due regard would be paid to commercial practices in the exporting country.

(e) Time-limit for price investigation

It appeared from the so-called Williams Report that the time-limit for price investigations might be shortened. The time requirements varied of course from case to case, but it was essential that a reasonable period was allowed for price investigations.

(f) The scope of merchandise to be covered by anti-dumping procedures

The Government of Japan believed that anti-dumping investigations should be strictly limited to the merchandise in question. From this point of view, it would be more desirable if a public notice regarding initiation of anti-dumping investigation described not only the name of the merchandise concerned, but also the name of the manufacturer and the type and model as well as any other features of the merchandise in question.

(g) Summary investigation by the Commissioner of Customs

The representative of Japan expressed the hope that the so-called "summary investigation" by the Commissioner of Customs should be carried out to the fullest extent possible before an "anti-dumping proceeding notice" was published. There had been certain instances, in the past, where anti-dumping proceedings had been initiated in respect of firms that had not exported or were not exporting the merchandise to the United States.

53. The representative of the United States recalled that the time-limit for foreign governments to submit proposals for the broad review had originally been set for 13 June 1971, had been extended to 31 July 1971 and had now expired. When, at a future date not yet established, the draft new regulations were published, governments would have a further possibility of submitting comments. He stressed that the amendments would conform to the Code requirements. With regard to the reference made by the representative of Japan to the Williams Commission Report, the representative of the United States noted that the Report was prepared by a group composed of private citizens at the request of the President and that its findings and recommendations would be carefully considered by the United States Government; by its very purpose it did not necessarily express the views of his Government.

54. The representative of the Communities said that the views of the Communities in respect of the Review had been brought to the attention of the United States authorities. The Communities attached particular importance to the definition of injury, to the conditions for accepting price undertakings and to the establishment of anti-dumping duties below the full amount of the margin of dumping.

55. The representatives of the Communities and the United Kingdom and the observer for Spain stated that the introduction of the 10 per cent import surcharge in the United States and the recent developments in the monetary field had in many cases resulted in increases of landed prices of imports to a level where they no longer caused injury. Against that background the United States authorities should review all anti-dumping duties in force.

56. The representative of the United Kingdom pointed out exporters might feel compelled to reduce prices on exports to the United States below their home market price level in order to counteract the effects of the surcharge. When the United Kingdom temporary charge on imports was in force the United Kingdom authorities did not count as dumping price reductions which did no more than offset this charge.

57. In response to questions relating to possible effects of the surcharge, the representative of the United States said that questions of policy in the anti-dumping area, as in many other trade policy areas, were currently under active consideration by his Government.

C. Adherence of further countries to the Code

(a) Adherence of developing countries

58. Several members of the Committee said that they felt that developing countries should be encouraged to accede to the Code and that the parties to the Code should take a flexible attitude towards the particular wishes expressed by developing countries. Most of these members considered, however, that proposals for modifications of the text of Article VI or of the Code were not acceptable; it might, on the other hand, be possible to agree on interpretative notes to the Code or on common understandings amongst the parties to the Code, that would meet the wishes of the developing countries.

59. The representatives of Yugoslavia and the United Kingdom said that the suggestion made by Israel and India in documents Spec(71)27 and Spec(71)98 seemed to offer a good starting point for further discussions. The representatives of the United Kingdom, Canada and the Communities pointed out, however, that some of the proposals in the two documents could lead to a situation where it would be easier for the importing countries to impose anti-dumping duties.

60. The representatives of Switzerland, the United Kingdom, Norway and Sweden said that there were two different types of problems in relation to the acceptance of the Code by developing countries: wishes of developing countries with regard to the treatment of their exports, and difficulties of developing countries to adjust their own anti-dumping legislation to meet the requirements of the Code. The Chairman recalled that the developing countries had in all previous discussions on the subject concentrated on the first aspect; they did not seem to foresee any difficulties in bringing their own legislation in line with the Code.

61. The Chairman noted that the aim of the discussion in the Committee was to clarify the views on the suggestions made by developing countries but not to agree on a common attitude in the discussion to be held in the Working Party on the Acceptance of the Anti-Dumping Code.<sup>1</sup>

(b) Adherence of developed countries

62. The representatives of the United Kingdom and Japan said that they attached great importance to the adherence to the Code of Australia, New Zealand and South Africa. Despite efforts in Group 2 on Non-Tariff Barriers and in bilateral contacts it had not been possible to get a clear picture of the attitude of these countries towards an acceptance of the Code. The representative of the United Kingdom proposed that emphasis should be put on this question in the report of the Committee to the CONTRACTING PARTIES.

63. The representative of Japan agreed with the proposal by the United Kingdom and suggested that in addition the Chairman of the Committee should write a letter to the Director-General asking him on behalf of the Committee to write to the Governments of the three countries inviting them to explain their problems in adhering to the Code and inviting them to have an informal discussion with the Committee at its next meeting. It should be noted in the letter from the Chairman that the Code had the nature of an interpretative note to Article VI, that it represented a fair and reasonable basis for the harmonization of national anti-dumping legislation and that it had been accepted by nearly all developed countries.

64. The Committee agreed that the Chairman should write a letter to the Director-General as suggested by the representative of Japan.

---

<sup>1</sup>A note on the discussion in this Working Party has been distributed in document Spec(71)127.

65. The representative of the Communities agreed that it was important to convince additional countries to adhere to the Code. It was, on the other hand, equally important to ensure that countries which had accepted the Code lived up to their obligations under it. He urged all countries in the Committee to amend their laws, regulations and practices so that they fully met the requirements of the Code; he recalled that particularly with regard to the definition of material injury there were discrepancies between the Code provisions and the national legislation in some of the parties to the Code.

D. Examination of questionnaires used in price investigations

(a) Canada (COM. AD/11 and addendum 3)

66. The representative of the Communities noted that the list of information required in anti-dumping investigations in the revised form in document COM. AD/11/Add. 3 represented a step forward in comparison with the original list in COM. AD/11. Some of the wishes expressed by the Communities had been taken into account. He had, however, one major objection to the Canadian list of information required. The Code stipulated that the price comparison should be made between identical products or products closely resembling each other. The Canadian form, on the other hand, required that as soon as there was no identical product sold in the home market, the producer should show the production costs in general for the exported product. Such a requirement went far beyond the needs and would frequently compel exporters unnecessarily to disclose business secrets; an indication of the production costs of the part of the product which distinguished it from the home market product should be sufficient. If, however, the products were "like" in the sense of Article 2(b) of the Code, the production costs should not at all be taken into account but only the home market price. He therefore suggested that the word "identical" in the Canadian form be replaced by "like". The representatives of the United Kingdom and Switzerland supported the views expressed by the representative of the Communities.

67. The representative of Canada pointed out that his authorities did not use standard questionnaires; they felt that the need for data varied too much from case to case. In the Canadian opinion, personal contacts between customs officials and exporters were essential in order to avoid misunderstandings in price investigations. With regard to the particular question raised by the Communities, he said that in his opinion the costs of production plus gross profits on sales in the home market of a comparable product was the most reasonable basis for the price comparison. If the differences between the two products were very slight, it would, however, be sufficient to indicate the variation in production costs in those differences. He did not believe that there was a substantive difference between the Canadian views in that respect and those of the Communities. He would, however, call the attention of his Government to the views expressed by the representative of the Communities.

68. The representatives of the United Kingdom and the Communities asked whether the request for copies of profit and loss accounts in point 10 of the original questionnaire was related to the point raised earlier (see paragraphs 12-15) concerning sales at a loss. The representative of Canada replied that the information was only used as a means of checking other cost information supplied. He also pointed out that the point had been dropped in the revised questionnaire.

69. In reply to a question by the representative of the United Kingdom, the representative of Canada explained that the terminal date for the submission of purchase orders or contracts under point 1 of the questionnaire was the date of the investigation in question.

70. The representative of the United Kingdom pointed out that points 13-15 of the original Canadian questionnaire listed some of the adjustments which an exporter was entitled to make. Some important allowances - e.g. for sales promotion, advertising and after sales service costs - were not mentioned. He felt that the questionnaires should indicate all such adjustments. He added that this remark applied not only to the Canadian questionnaire but also to many others. The representative of Canada took note of the remark by the United Kingdom representative.

(b) European Communities (COM.AD/11)

71. The representative of the United Kingdom pointed out that the questionnaire in many cases did not specify for which period information was requested. He also pointed out that the request for information on sales to non-EEC countries was appropriate only when the ordinary price comparison could not be made with home market prices.

72. The representative of the Communities said that the questionnaire in document COM.AD/11 was only an administrative working document. It would be accompanied by an explanatory note. The periods for which information had to be supplied would tentatively be twelve months. Concerning third country export prices, a note should be added to the effect that they were only required when other price comparisons under Article VI were not possible or when an exporter particularly wished to supply them. In respect of the different prices under point C.1, he was prepared to indicate that the ex-factory price would be the first choice.

(c) Norway (COM.AD/11/Add.2)

73. The representative of the United Kingdom said that some of the questions in the questionnaire did not seem relevant for the purposes of the questionnaire. He referred in particular to questions 5 (production costs in Norway), 6(iii) (sales to third countries), 8 (statement concerning supply and demand situation) and 9 (the exporter's production of other goods). The reference to the Norwegian production price in Section V did also seem irrelevant.

74. The representative of Norway said that the questionnaire was at the same time a kind of guideline for importers and exporters. Questions 6(iii) and 9 would only be used when there were no domestic sales or no domestic sales and no exports, respectively, of like products. Question 8 was drafted for cases where the exporters were suspected of having fixed his prices in order to take advantage of a particular market situation in Norway. Norwegian production costs had never been used in price comparisons.

(d) United Kingdom (COM.AD/11)

75. The representative of the Communities suggested that the practice referred to in point 10 of the United Kingdom submission - that information on production costs was only sought when a decision had been taken by the competent authority that such a comparison was necessary - should be generally adopted by the members of the Committee and notably by Canada.

(e) United States (COM.AD/11 and COM.AD/16)

76. The representative of the United Kingdom said that his delegation had at an earlier occasion pointed out that Section 153.7 of the Regulations concerning quantity discounts was very rigid. The reply had then been that the provision was preceded by the word "ordinarily" which added a degree of flexibility. He was therefore concerned that "ordinarily" did not appear in point 7 of the introductory instructions.

77. The representative of the United States said that there was no intention to change the practice; "ordinarily" had not been omitted intentionally.

78. The representative of the United Kingdom recalled that Section 153.8 of the Regulations contained a detailed list of costs for which allowance could be made. It would be useful for exporters if such a list appeared in the questionnaire or the instructions.

79. The representative of the United States replied that a list could be added in the questionnaire or in the instructions. Customs representatives, however, normally gave the exporters detailed information about allowances.

(f) General remarks

80. The representative of the Communities felt that the examination of the questionnaire had been very useful and suggested that the members of the Committee should communicate amendments to their questionnaires to the secretariat. The item should remain on the agenda of the Committee. He believed that a useful move towards greater harmonization of questionnaires could be achieved through the discussions in the Committee.

81. The representative of Japan said that his delegation was in favour of harmonization of questionnaires.

82. The representative of the United States found the exchange of information on questionnaires useful. While his Government could not agree to the adoption of a standard questionnaire, he would welcome any de facto harmonization which might occur on a voluntary basis as the result of such exchanges. He expressed the hope that such exchanges might also lead to a wider understanding of the nature of anti-dumping investigations and improved co-operation in expediting them for the benefit of all parties.

83. The representatives of the United Kingdom and Canada also felt that a continued examination of questionnaires would be useful.

84. The Committee decided that members of the Committee should notify changes in their practices and questionnaires in price investigations abroad, and that the item should remain on the agenda of the forthcoming meetings of the Committee.

E. Other business

85. It was agreed that the secretariat should, as had been done in 1970 (COM.AD/W/16) distribute to the members of the Committee for approval a list of COM.AD/documents that could be derestricted.

86. It was agreed that a new, revised edition of "Anti-Dumping Legislation 1970" should be issued.

87. It was agreed that the secretariat should assemble in a document for the Committee the information received in 1969/70 (cf. document Spec(69)60 and addenda) on anti-dumping legislation of countries members of the Committee on Trade in Industrial Products but not members of the Anti-Dumping Committee. The secretariat should also endeavour to complete and bring up to date the information collected in 1969/70.

88. The Committee noted that no Greek representative had been present at the meeting and it was agreed that the secretariat should draw the attention of the Permanent Delegation of Greece to the fact that questions had been put regarding the Greek report under Article 16 (see paragraphs 24-26 above) and that a number of questions regarding Greek legislation remained unanswered since the 1970 meeting (cf. document COM.AD/14, paragraphs 5-8).

89. It was agreed that the Committee's reports to the CONTRACTING PARTIES should henceforth cover the periods from one annual meeting of the Committee to the next instead of, as previously, calendar years.