

GENERAL AGREEMENT ON  
TARIFFS AND TRADE

RESTRICTED

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TENTH REPORT OF THE COMMITTEE ON ANTI-DUMPING PRACTICES

1. Previous reports to CONTRACTING PARTIES on the work of the Committee on Anti-Dumping Practices have been circulated in documents L/3333, L/3521, L/3612, L/3748, L/3943, L/4092, L/4241, L/4408 and L/4537. The present report refers to the work of the Committee from the annual meeting of the Committee in October 1977 to the annual meeting held on 16-18 October 1978. In addition to the annual meeting the Committee held a special meeting on 3-4 April 1978.

2. The parties to the Agreement on the Implementation of Article VI of the General Agreement are: Australia, Austria, Belgium, Canada, Czechoslovakia, Denmark, European Communities, Finland, France, Federal Republic of Germany, Greece, Hungary, Italy, Japan, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, United Kingdom, United States and Yugoslavia. The Chairman of the Committee is Mr. Lemmel (Sweden).

Meeting on 3-4 April 1978

3. At its meeting in April 1978 the Committee examined a list of such issues in the anti-dumping field that members of the Committee had indicated that they wanted to discuss further. After some discussion the Committee agreed on the following list of issues to be discussed on a priority basis by the Committee:

1. Sales at a loss (including "concept of dumping")
2. Allowances relating to price comparability
3. Definition of "material injury"
4. Causality
5. Regional protection
6. Price undertakings
7. Initiation and reopening of investigations
8. Explanation and reconsideration of decisions.

The Committee also agreed that at its next regular meeting, to be held in the autumn, it would have a detailed discussion of topics 1, 2, 5 and 6 of the above-noted list, the remaining topics to be discussed at a subsequent meeting. It was understood that the topics to be discussed later were of no less importance than the ones to be discussed in the autumn. The Committee requested

the secretariat to establish, by mid-June, a background note containing information on the drafting history of the relevant provisions of the Anti-Dumping Code with regard to the four topics to be discussed at the next meeting. The secretariat was further requested to circulate a document which would contain the information of the Analytical Inventory of Problems and Issues on the eight priority issues listed above and also include references to the discussions held at the February and October 1977 meetings of the Committee. The Committee finally invited its members to submit to the secretariat, for circulation to the Committee, a description of their national systems and practices and any concrete proposals or questions relating to the four topics to be discussed at the autumn meeting; delegations would endeavour to make their submissions by mid-June.

4. One member of the Committee referred to the discussions of the Gilmore case at the October 1977 meeting of the Committee (cf. L/4587, paragraphs 21-25). Pointing out that a number of problems still remained unsolved he admitted that the Gilmore case had undergone major developments since that meeting. The United States had introduced its "trigger price mechanism" to be applied to steel imports (cf. L/4625 and Add.1), which had entailed an improvement in the situation of the steel industry of the United States. Secondly, the Gilmore case had been referred to the International Trade Commission for its injury investigation and he expected the Commission to take into consideration that the dumping margins determined by the Treasury Department would cease to exist, since the trigger prices would bring the import prices up at least to their level.

5. The representative of the United States replied that the Gilmore case had confronted his authorities with the difficult administrative decision of how to act when respondents declined to provide information requested in order to make the necessary calculations. In this situation, his authorities had been compelled to resort to other information available, and shortly before the October 1977 meeting a tentative determination had been made that the weighted average dumping margins were in excess of 30 per cent. He pointed out that the respondents had thereafter changed their position, recognizing that it was in their interest to provide some of the data requested. This had enabled his authorities to establish in their final determination that there were some sales in the home market that had not been made at a loss and that the dumping margin in those cases ranged between 4 and 18 per cent. In his view, this case had proved that refusal by respondents to provide necessary information was unlikely to advance their own case, since the competent authorities were in such cases compelled to resort to secondary information as provided by Article 6(i) of the Code.

6. A member of the Committee stated that the implementation of the basic price system by the European Communities and the trigger price mechanism by the United States had introduced a new element in international trade in steel products which could have a serious impact on the future operation of

the Anti-Dumping Code, particularly if restraints were not exercised and if a proliferation of such schemes took place. While the trigger price mechanism and the basic price system might not be technically contrary to the Code, he believed that the Code did not in any way envisage mechanisms of that kind as means of facilitating anti-dumping investigations. Such developments, in a time of growing protectionist pressures, could in his view lead to a severe erosion or disregard for international trade rules. He said that both the trigger price mechanism and the basic price system shifted the onus to the importer/exporter to demonstrate that they were not dumping, which could lead to harassment of exporters who were not engaged in dumping. He pointed out a number of problems as regards the implementation of the two schemes. As to the trigger price mechanism he mentioned inter alia the onerous documentation requirements of the Special Summary Steel Invoice, the fact that the mechanism departed from the norm that the anti-dumping remedy should be applied on a selective basis, and the possibility that nearby suppliers could be discriminated against, due to the method of calculation of the freight component. As to the basic price mechanism he mentioned inter alia the possibility that those countries which were led to enter into bilateral agreements would be given differential treatment in comparison with those who did not, the lack of allowances for changes in exchange rates, for differences in credit terms and for quality differences.

7. Another member of the Committee expressed his concern that a proliferation of the anti-dumping schemes mentioned above would impair the normal trade with iron and steel products and encourage a surge of protectionism in major developed countries. It was, however, his understanding that the United States trigger price mechanism had been introduced in order to withstand the accelerated recourse to anti-dumping practices but he emphasized that it should be only temporary and of an emergency nature. He wanted to be assured that the mechanism would be implemented in full compliance with Article 5(a) of the Code and that dumping determinations would not be based upon an arbitrary, summary, or insufficient investigation. Referring to the basic price system of the European Communities he explained that imports of hot-rolled sheets and plates, steel coils for re-rolling, cold-rolled sheets and plates, galvanized sheets and plates, and angles, shapes and sections had already been subjected to actions under that system. He saw a number of problems as regards the compliance of the basic price system with the requirements of the Code. In this context he asked the Communities to supply information as to how the basic prices on individual products had been calculated, as required by Article 10(c) of the Code. He maintained further that the imposition of an anti-dumping duty corresponding to the difference between the basic prices and the import prices would constitute an excessive protection in contravention with the latter part of Article 8(d) of the Code, since the basic prices exceeded the market prices. He stated also that the basic prices had been established by reference to the lowest normal costs and not to the lowest normal price as prescribed by Article 8(d) of the Code. In addition, the basic price system under Article 8(d) of the Code was only aimed at providing another way of imposing anti-dumping duties and was not allowed to provide the

basis upon which the existence of dumping under Article 2 should be determined. Referring to the particular cases mentioned above he stated that a proper investigation had to be conducted under Article 5 of the Code before provisional duties could be imposed in accordance with Article 10 of the Code.

3. The representative of the European Communities stated that a special situation existed in the steel sector which was characterized by extensive dumping on the world market, and that this situation had had to be coped with by special counter-measures, a matter which had been unavoidable after the introduction of the United States trigger price mechanism. He agreed that it was important to try to prevent that such scheme spread to other product sectors. He stressed, however, that the basic price system was in conformity with Article 8(d) of the Code and that it had re-established a necessary order of the market. He admitted that the implementation of the system gave rise to a number of problems which were being studied presently in order to arrive at a liberal solution. In addition, he emphasized that the system was only triggering off investigations during the course of which the calculations used could be contested by the parties concerned. He regretted in this context that the suppliers in question had declined to supply information for the calculation of costs and prices. He pointed out, however, that the calculations had not been contested so far. He added that the Communities' basic prices had been calculated by reference to the lowest normal prices or costs in the exporting countries and that any comparison with European prices which had been depressed during a long time and which did not cover production costs were without relevance for dumping purposes.

9. The representative of the United States believed that the trigger price mechanism, rightly understood, would be recognized as the least disruptive, the least departing from the Code and the least inflationary measure to be resorted to in order to help the industry to adapt to the prevailing conditions in the steel sector and therefore the most lenient measure for all parties involved. It was his hope that the trigger mechanism could be limited to its present dimensions and he assumed that it was not aimed at becoming a permanent instrument. He underlined that all rights of the parties concerned that had existed before were preserved under the mechanism which was only a means for the Treasury Department to identify in an expeditious way imports that might be presumed to be at less than fair value. Any foreign exporter was consequently still free to sell its steel in the United States at prices below the trigger price level if it could sell at such prices also in its home market and still cover its production costs. Steel producers in the United States could continue to file anti-dumping petitions to the extent that they felt needed. It was hoped, however, that the time for investigations would now be reduced from about thirteen months to perhaps six months without affecting negatively the equity of the decisions.

10. A member of the Committee explained that the United States authorities had in March 1971 made a final determination to impose anti-dumping duties on various types of television receivers from Japan. The liquidation of duties had, however, been suspended for a very long time, i.e. from January 1972 to March 1978. It was evident that such a long period of suspension had constituted an unjustifiable impediment to international trade not compatible with the spirit of the Anti-Dumping Code. In addition, he found that the way in which the duties would be liquidated gave rise to a number of questions in the light of the Code.

11. The representative of the United States replied that the reason for the delay in collecting the duties was due to the problem of comparability of the various models of television sets in question and to the difficulty of making price comparisons. He regretted that this procedure had taken such a long time but underlined that it had been necessary in order to arrive at equitable conclusions. If the Japanese exporters found that the final calculations were inaccurate, there were possibilities of judicial review of the determination that they could avail themselves of.

#### Meeting of 16-18 October 1978

12. The Committee examined the reports on the administration of anti-dumping laws and regulations that had been submitted by its members in accordance with Article 16 of the Anti-Dumping Code. A table summarizing the cases where investigations have been opened, provisional or final action taken, etc. in the notifying countries in the year 1 July 1977-30 June 1978 is reproduced in the Annex.

13. Austria, Czechoslovakia, Finland, Hungary, Japan, Poland, Portugal, Spain, Sweden and Switzerland had notified that no anti-dumping cases were pending or initiated in the period under review. No reports had been received from Greece, Malta and Yugoslavia.

14. The Committee had a general discussion of the form and content of the reports to be made under Article 16 of the Code. Some members of the Committee were of the view that certain additional facts could with advantage be included in these reports so that a better transparency of the anti-dumping actions taken could be reached and an improved assessment of the consequences of such actions made possible. In this connexion, it was suggested that a coherent pattern be adopted for the listing of the cases, that the volume of trade affected by the cases be indicated, that the place where the official determination could be found be spelled out, and that a summarized justification of dumping and injury findings be added. Other members of the Committee expressed certain reservations to some of these proposals stating that the matter needed further reflexion. It was decided that the question of the form and content of the reports under Article 16 should be discussed further as a separate agenda item at the next meeting of the Committee.

15. In answer to a question concerning the sixteen cases reported by his authorities as terminated, the representative of Australia explained that the complaints had been withdrawn in two cases, that the alleged normal price in the country of export had not been substantiated in four cases, that the principal cause of injury had not been sustained in four cases, and that six cases had been terminated for other reasons. On a question why the case concerning cheese (Edam and Gouda) was still pending he stated that it was difficult to assemble sufficient information on the damage caused to the domestic industry in question.

16. Following a request to clarify the meaning of the heading "cases concluded by price undertakings or similar actions" in the report submitted by his authorities, the representative of the European Communities explained that firms sometimes declined to sign a formal price undertaking but nevertheless increased their prices to a sufficient level. Such cases were included under the heading in question. A member of the Committee stated that the measures introduced on steel by the European Communities in the beginning of 1978 appeared not to work in the way intended as regards the maintenance of a price discipline within the Communities. In addition, accommodation had been found for the problems of certain suppliers but not for others and, as a result, external suppliers had been discouraged from competing in the market of the Communities. The representative of the Communities agreed that this was an important and very difficult problem and stated that his authorities did their utmost to achieve a satisfactory price discipline within the customs territory.

17. In response to a question the representative of Canada explained that his authorities initiated cases vis-à-vis companies instead of countries in cases where out of a number of suppliers only one or a few were dumping. There was a discussion between one member of the Committee and Canada of a case in the Canadian report concerning stainless steel pipe and tubing.

18. Referring to a case in the United States concerning sugar a member of the Committee asked for information of the approximate proportion of the United States production maintained by the petitioner and for clarification whether this proportion constituted a major part of the United States production as prescribed by Article 5 of the Code for admission of complaints. The representative of the United States replied that when the Secretary of Treasury received evidence of sales at less than fair value he was required to state if he had "substantial doubt" of the existence of injury. In the sugar case such doubt had been expressed and the matter had been referred to the International Trade Commission for its determination to be made within thirty days whether there were any reasonable indication of injury resulting from the sales in question. Since the respondents had declined to supply evidence and the dumping margins were high, which had led to a rapid growth of imports entailing a substantial price depression, the case had not been

terminated at that juncture. If dumping margins would be found in the final dumping determination, the case would once more be referred to the Commission for a full injury investigation, which would constitute a new possibility for the parties involved to supply information. He added that the United States market for sugar could by no means be regarded as a single one due to the regional marketing orders promulgated by the Department of Agriculture. The regional producers, on behalf of which the petition had been made in this case, supplied 85 per cent of the consumption in the area and the imports in question represented 6 per cent of such sales. One member of the Committee requested in this connexion further information whether the criteria of Article 4 of the Code had been met when the petition had been admitted. Noting that this case was subject both to anti-dumping and countervailing proceedings, a member of the Committee asked how this fact complied with Article VI:5 of the General Agreement. The representative of the United States replied that the question whether anti-dumping or countervailing duties would finally be imposed depended on the circumstances, such as whether a subsidy had been received by the exporter. In reply to a question by another member of the Committee who stressed the importance of the requirement to be met by the petitioner with regard to the representativeness of the affected industry as provided for in Article 5(a) of the Code, the representative of the United States explained that a petitioner needed not to be a principal producer of the products in question, but he had in his petition to present the case taking into account the domestic industry as a whole.

19. Referring to a case in the United States report concerning rayon staple fibres, a member of the Committee pointed out that in the injury determination of the International Trade Commission the statement of the majority made no reference to the question of causality in spite of the fact that one of the exporters had supplied only as little as 1.4 per cent of all such goods consumed in the United States in 1977. The representative of the United States replied that the dumping margin in this case was as high as 57 per cent and even small volume sales could in such circumstances cause injury. A variety of factors had been taken into account in the injury determination, including losses of sales to the exporter referred to and substantial unused capacity to enlarge sales.

20. In response to a question the representative of the United States explained that his authorities were required in connexion with the initiation of an investigation to describe as exactly as possible the "class or kind" of the product referred to in a complaint. Even if that was done inter alia by the indication of a tariff number, this did not mean that

other products falling under the same item number but not covered by the description of the "class or kind" would be subject to investigations.

21. The Committee examined the anti-dumping laws and regulations of Portugal and Poland and the revised regulations of the United States in order to examine their conformity with the requirements of the Anti-Dumping Code.

22. In reply to a question the representative of Portugal explained that decisions were published in the Official Gazette when investigations were initiated and when provisional actions were taken. Likewise, a governmental decree was published when final anti-dumping duties were imposed. In addition, professional organizations usually and on their own initiative gave publicity to decisions, once they had been published in the Official Gazette. Furthermore, Article 12:3 of the Implementing Decree No. 38/77 stated that opportunity might be given to the parties concerned to familiarize themselves with the information and evidence obtained. He emphasized that the Portuguese legislation was in accordance with the Code and that no investigation had taken place until now. He assured that the application of the law would provide sufficient transparency. Some members of the Committee recalled that a justification of anti-dumping decisions should be published.

23. The representative of Poland stated that there were no particular anti-dumping regulations promulgated in Poland. If such regulations would be issued in the future, they would be based on the provisions of the Anti-Dumping Code. However, when Poland signed the Anti-Dumping Code its provisions became automatically part of Polish legislation. The Ministry for Foreign Trade and Shipping was responsible for the customs policy. Any anti-dumping action in Poland would be conducted in accordance with the official Code of administrative procedures published in the Journal of Laws, No. 30 of 1960, under item 168. Up to date however there were no anti-dumping actions taken in Poland.

24. A member of the Committee questioned whether anti-dumping duties would ever belong to the arsenal of trade policy instruments used in State-trading countries. He presumed, however, that the adherence of State-trading countries to codes of the same nature as the Anti-Dumping Code would be discussed in a broader context in the GATT. The representative of Poland replied that his country had as a member of the GATT a right to accede to any codes negotiated in that forum.



25. Referring to the United States regulations concerning merchandise from State-trading countries, one member of the Committee stated that interpretative note 2 to Article VI:1 of the General Agreement contained a very clear definition of what was meant by the term State-trading countries. He asked for confirmation whether or not exports from State-owned firms in market economy countries could be subjected to the new legislation. The representative of the United States assured that this would not be the case, and had never occurred in the past. Another member of the Committee stated that in drafting note 2 to Article VI:1 of the GATT, the CONTRACTING PARTIES had not spelled out with which prices the export prices of goods from State-trading countries should be compared. While he could accept some parts of the United States legislation to solve this problem, he had misgivings as regards the possibility of using domestic United States prices for the purpose of comparison. The representative of the United States explained that this possibility would only be used if other price or cost information could not be verified. In answer to another question he explained that in dealing with related party transactions the date of shipment was preferred in the calculation of exchange rates rather than the date of transaction, since the first date was easier to verify.

26. The Committee examined the Australian questionnaire used in price investigations in Australia. Another member of the Committee stated that also his country was preparing a questionnaire to be used in the domestic market for determinations concerning opening of investigations and that this questionnaire would be transmitted shortly for circulation to the Committee.

27. The Committee had an extensive discussion of the four priority issues referred to in paragraph 4 above. It was agreed that these issues needed further examination and would be discussed at a special meeting to be convened by the Chairman in consultation with members of the Committee. The Committee invited its members to submit by 1 December 1978 a description of their national systems and practices and any concrete proposals or questions relating to the topics 7 and 8 referred to in paragraph 3 above, i.e. "initiation and reopening of investigations" and "explanation and reconsideration of decisions". It was decided that these two issues be discussed at the next meeting of the Committee. It was decided to initiate the discussions of the topics 3 and 4 referred to in paragraph 3 above when negotiations relating to injury aspects in other areas of the multilateral trade negotiations had reached a more advanced stage.

28. A member of the Committee referred to the case concerning television receivers discussed at the April 1978 meeting of the Committee (cf. paragraphs 10 and 11 above). He pointed out that the United States had decided in September 1978 to carry out the liquidation of the anti-dumping duties to be imposed on the imports from 1972 to date. He reiterated that the method employed in the liquidation was not in conformity with Article 2 of

the Code in that the United States assessment of the dumping margins were based on a home market price of a hypothetical nature that did not exist in the ordinary course of trade in Japan and that the prolonged suspension of the liquidation had constituted an unjustifiable impediment to international trade, not in conformity with the preamble of the Code. The representative of the United States explained the way in which the dumping margins had been calculated. He reiterated his regret of the delay in the assessment of the anti-dumping duties. He noted, however, that these delays were occasioned by the enormous number and complexity of transactions and adjustments necessary, the failure of the exporters and importers concerned to supply complete data on a timely basis, and the cloud cast on the reliability of that data by evidence of attempts to evade dumping duties. The authorities therefore felt justified in relying on the Japanese producers' commodity tax returns in establishing "foreign market value". These and other steps were now being taken in order to overcome the problems which had caused the delay, and his authorities intended to find means to avoid a repetition of such events in the future. He questioned whether the delay in liquidation was in fact a hardship for the exporters, who increased their share of the United States market during this period to such an extent that negotiation of an orderly marketing arrangement became necessary. The member of the Committee that had taken up the matter reserved the right to revert to this issue in the future.

29. Two members pointed to a question not directly covered by the Anti-Dumping Code, which they wished to be discussed at the next meeting of the Committee. The question related to what extent a signatory might apply anti-dumping duties on merchandise produced from materials that had been acquired at prices which were less than the normal value of such or similar goods.

ANNEX  
Summary of Anti-Dumping Activities

	Australia	Canada	EC	Norway	United Kingdom	United States
1. Cases pending as of 1 July 1977	17	14	2	1	3	16
2. Investigations opened	26	19	23	-	-	44
3. Cases on which provisional action taken	7	18	9	-	2	17
4. Cases on which final decision reached						
(i) anti-dumping duties imposed	1	13	3	-	1	10
(ii) cases settled through "arrangements"	5	-	16	-	1	1
(iii) cases terminated	16	4	-	1	2	14
5. Revocation of anti-dumping duties	4	2	-	-	-	2
6. Cases pending as of 1 July 1978	23	10	15	-	-	35