

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## ELEVENTH 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, L/4587 and L/4711. The present report refers to the work of the Committee from the annual meeting of the Committee in October 1978 to the annual meeting held on 29-30 October 1979. In addition to the annual meeting the Committee held special meetings on 16 and 18 January 1979, and on 27-28 February 1979.

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).

### Meetings on 16 and 18 January 1979, and on 27 and 28 February 1979

3. At its meeting in January 1979 the Committee examined proposed amendments of the Anti-Dumping Code consequent to the results of negotiations on subsidies/countervailing measures. The Committee agreed to pursue the detailed discussions of the proposed amendments at a subsequent meeting when the Arrangement on Subsidies/Countervailing Measures would have been finalized. The Committee also had a general discussion on the priority issues, as enumerated in paragraph 3 of L/4711, on the basis of draft texts submitted by several delegations. The Committee finally had an exchange of views on a proposal on reports under Article 16 of the Anti-Dumping Code submitted by the United States with reference to paragraph 14 of L/4711. It was decided that the question of the form and content of the reports under Article 16 should be discussed further at the next meeting of the Committee in the autumn.

4. At its meeting in February 1979 the Committee pursued the detailed discussions of the proposed revision of the Anti-Dumping Code consequent to the state of the negotiations on subsidies/countervailing measures. With respect to the revised Article 3 of the Anti-Dumping Code, the representative of Sweden, supported by the representatives of Norway, Finland and Switzerland, expressed his reservations about the interpretation of the determination of injury as contained in the proposed revision. At the request of a certain number of delegations, it was decided to circulate in the framework of the Multilateral Trade Negotiations the proposed revision of the Agreement on the Implementation of Article VI consequent to the state of negotiations on subsidies/countervailing measures.

Meeting on 29-30 October 1979

5. 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 1978-30 June 1979 is reproduced in the Annex.

6. Czechoslovakia, Hungary, Japan, Malta, Norway, Portugal, Spain, Sweden, Switzerland, Poland and Yugoslavia had notified that no anti-dumping cases were pending or initiated in the period under review.

7. In reply to a question on why the authorities of an exporting country had not been informed about final decisions taken with respect to six anti-dumping cases, the representative of the European Communities said that all decisions on imposition of provisional or definitive anti-dumping duties were published and duly motivated in the Official Gazette of the European Communities, and that furthermore information had been provided to the authorities in question through the usual diplomatic channels.

8. Referring to another question dealing with an anti-dumping action about one product originating from two different countries, the representative of the European Communities replied that in one case the action was settled through a price undertaking while in the other case the investigation continued.

9. One member of the Committee referred to an anti-dumping action in the United States with respect to rayon staple fibre from three different countries. As to the product from the first country, he questioned about the dumping calculation and the injury determination despite a reduced market share. As to the product from the second country, he was not clear whether the calculation of the market penetration was considered in a cumulative form. As to the product from the third country, he complained about the determination of injury when the impact was de minimis. With respect to nylon yarn from one country, he questioned why the case was not sent to the United States International Trade Commission (U.S. I.T.C.) for a preliminary determination, as provided for by the 1974 United States Trade Act.

10. The representative of the United States stated that, in the first case, detailed information had repeatedly been requested from and refused by the exporters concerned. The petitioners' data had then been taken into consideration. Moreover, the injury determination was reasonable when in a six months' period, the market penetration had risen from 0 per cent to 1.5 per cent, and when the United States industry had operated at losses in 1977 and in the first quarter of 1978. In the second case, cumulative data had been taken into consideration. As to the third case, the U.S. I.T.C.

had argued that the exporters from one of the countries had the capability of substituting for the others if that country had been excluded from the dumping finding. As to nylon yarn, he pointed out that the Treasury Department might well have referred the case to the U.S. I.T.C., if the data subsequently developed by the U.S. I.T.C. had been available at the time of initiation of the investigation.

11. In order to verify their conformity with the requirements of the Anti-Dumping Code, the Committee examined an amendment to the Austrian Anti-Dumping Law, amendments to the anti-dumping regulations of the European Coal and Steel Community in respect of iron and steel, amendments to the anti-dumping regulation of the European Communities, a proposed amendment to United States customs regulations relating to documents and information, and proposed amendments to the United States customs regulations concerning deposit of estimated dumping duties for merchandise subject to a dumping finding and use of best information available.

12. In reply to a question the representative of the European Communities stated that his authorities had the intention to proceed to a revision of the European Coal and Steel Community regulations and the general anti-dumping regulations of the European Communities in view of the results achieved in the Multilateral Trade Negotiations.

13. Referring to the EEC regulation No. 1681/79, Article 3:2(c), one member of the Committee said that in the case of imports from non-market economy countries it provided for several alternative criteria to calculate the margin of dumping, some of which were either contrary to the concept of free trade or not consistent with Article VI of the General Agreement and the Agreement on Implementation of this Article. In particular he referred to the use of domestic prices of the importing country or of a third country which might lead to the determination of fictitious or arbitrary values, even if such a comparison was to be made as a last resort, in the absence of any other possibilities. He pointed out that in the Agreement on Implementation of Article VII the criterion of domestic prices of the importing country had been explicitly prohibited as a standard for the determination of customs value. Furthermore, Article VI:1(b) read in conjunction with paragraph 2 of the Interpretative Note to Article VI:1 provided for a possibility to use the highest comparable price for the like product for export to any third country. This criterion of comparison was not provided for in the EEC regulation concerning non-market economy countries, nor did this regulation allow to compare, where appropriate, export prices with domestic prices of an exporting country. He proposed that the criterion of domestic prices in the importing country be replaced by a more general provision allowing use of any other reasonable method of comparison.

14. The representative of the European Communities replied that the EEC regulation was based on the relevant provisions of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII which were

fully consistent with Article VI of the General Agreement including the relevant Note to it, had resulted from long negotiations with the representatives of countries referred to in the Notes and Supplementary Provisions to the General Agreement (Annex I, Article VI, paragraph 1, point 2) and was carefully worded. The criterion of domestic prices in the importing country was clearly considered as a last resort, when all other possibilities were excluded. In such cases this criterion would be used in a reasonable way and he could cite several cases where it gave more favourable results to the exporters from non-market economies than a comparison with export prices of third countries.

15. One member of the Committee said that he had objected to the inclusion into Article 15 of the Agreement on Subsidies and Countervailing Duties of the concept of the domestic price of the importing country.

16. One member of the Committee reserved its position on the Anti-Dumping Legislation of the European Communities pending the entry into force of the respective MTN agreement. Referring to the criterion of domestic prices in the importing country he thought that clarification of methods of calculation of such prices would be necessary and proposed that the Committee revert to this question at an appropriate stage.

17. The representative of the United States pointed out that a recent change in United States legislation had introduced a new procedure which attempted to take into account any genuine comparative economic advantages or disadvantages of particular non-market economy countries in dealing with problems arising in investigations of products from such countries.

18. One member of the Committee raised several points with respect to the Anti-Dumping Legislation of the European Communities. He referred to Article 14:2, according to which the termination of anti-dumping procedures by accepting price undertakings shall not preclude the definitive collection of an amount secured by way of provisional duties, and wondered whether this provision was compatible with the relevant provisions of the Anti-Dumping Code. He also considered a ten-day period for representations referred to in Article 10:5 as too short, in particular for distant countries. With reference to Article 3:4, he stressed the importance of ensuring fair and equitable treatment for both exporters and importers.

19. The representative of the European Communities pointed out that Article 14:2 of the Anti-Dumping Legislation of the European Communities was in conformity with the relevant provisions of the Anti-Dumping Code. The existence of both dumping and injury would have to be determined and an investigation terminated before a decision was taken on what to do with provisional duties secured prior to the acceptance of a price undertaking. As to the ten-day time-limit, he said that the matter was under consideration and that he had good reasons to hope that a more flexible solution would be found. He also agreed that in the implementation of Article 3:4 fair and equitable treatment should be ensured.

20. The representative of the United States pointed out that the proposed amendments to United States customs regulations concerning deposit of estimated dumping duties for merchandise subject to a dumping finding and use of best information available had been formally withdrawn, and would be overtaken by the new United States Anti-Dumping Law.

21. In reply to a question the representative of the United States stated that it was expected that the United States anti-dumping questionnaire would be revised in the light of the 1979 Trade Agreements Act. He added that the United States would endeavour not to impose difficult burdens on exporters and importers in responding to questionnaires, but noted that the ability of the United States to do so would be limited by the shortened time-limits for investigations under the new law.

22. One member of the Committee referred to the question of the review of a 1973 dumping determination in the United States with respect to canned pears. He stressed that the continuation of the application of anti-dumping duties was not justified under Article 9(a) of the Anti-Dumping Code. Moreover, according to the 1973 finding by the U.S. I.T.C., the imports were only likely to cause injury to the United States industry. He also pointed out that the United States authorities had not been prepared to proceed with the revocation in the absence of a price undertaking. The representative of the United States replied that when the revocation of the dumping finding had been proposed by the United States Treasury Department, the United States industry had objected vigorously by submitting information concerning the prices of the same goods sold to Canada, which would constitute dumping prices in the United States. The United States authorities were not prepared, in these circumstances, to revoke the dumping finding unless assurances were given that future sales would not be at dumping prices. He added that the U.S. I.T.C. had well established procedures for the review of previous injury determinations, which the exporters could invoke in an attempt to secure a revocation of the finding on grounds of absence of injury or likelihood thereof.

23. A brief discussion took place with regard to a proposal tabled by the United States delegation on the reporting format of anti-dumping actions under Article 16 of the Anti-Dumping Code.

24. As to the Trade Agreements Act of 1979, the representative of the United States stated that different sets of proposed regulations would be considered before the end of 1979. One set, published on 16 October 1979, dealt with proposed anti-dumping regulations and the deadline for comments was 30 November 1979. The U.S. I.T.C. had published proposed regulations and proceedings for conducting injury investigations and the formal deadline was 29 November 1979. Some members of the Committee raised questions and made comments on these draft regulations and the 1979 Trade Agreements Act.

ANNEX

Summary of Anti-Dumping Activities\*

	AUSTRALIA	AUSTRIA	CANADA	EC	FINLAND	GREECE	UNITED KINGDOM	UNITED STATES
1. Cases pending as of 1 July 1978	23	-	10	14	-	-	-	36
2. Investigations opened	20	1	13	18	2	1	-	44
3. Cases on which provisional action taken	9	-	12	5	1	-	-	18
4. Cases on which final decision reached								
(i) anti-dumping duties imposed	8	1	8	6	-	-	-	13
(ii) cases settled through "arrangements"	4	1	-	14	-	-	-	5
(iii) cases terminated	15	-	8	3	1	-	-	35
5. Revocation of anti-dumping duties	1	-	2	-	-	-	1	10
6. Cases pending as of 1 July 1979	20	-	7	17	1	1	-	25

\*Some cases involve two or more countries which result in two or more separate actions. This explains why the totals of lines 1 and 2 do not necessarily balance totals of lines 4 and 6.