

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

ADP/M/17

13 June 1986

Special Distribution

Committee on Anti-Dumping Practices

MINUTES OF THE MEETING HELD ON
23 APRIL 1986

Chairman: Mr. R.G. Wright (Canada)

1. The Committee on Anti-Dumping Practices met on 23 April 1986.
2. The Committee elected Mr. R.G. Wright (Canada) as its Chairman and elected Mr. P.S. Randhawa (India) as Vice-Chairman.
3. The Committee adopted the following agenda:
 - A. Adherence of further countries to the Agreement
 - B. Examination of national legislation and implementing regulations (ADP/1 and addenda)
 - (i) Legislation of Pakistan (ADP/1/Add.24)
 - (ii) Legislation of India (ADP/1/Add.25)
 - (iii) Legislation of Sweden (ADP/1/Add.2/Suppl.1)
 - (iv) Legislation of Austria (ADP/1/Add.10/Rev.1)
 - (v) Legislation of Australia (ADP/W/92/Rev.1)
 - (vi) Legislation of Singapore
 - (vii) Legislation of the United States (ADP/1/Add.3/Rev.2 and Corr.1)
 - (viii) Other legislation
 - C. Semi-annual reports of anti-dumping actions taken within the period 1 July 1985-31 December 1985 (ADP/26 and addenda)
 - D. Reports on all preliminary or final anti-dumping actions (ADP/W/105, 109, 111, 112 and 113)
 - E. Report of the Ad-Hoc Group on the Implementation of the Anti-Dumping Code (ADP/W/83/Rev.2)
 - F. Inventory of review and sunset clause provisions in the laws and regulations of Parties to the Agreement (ADP/W/106 + Corr.1 and 2)

A. Adherence of further countries to the Agreement

4. The Chairman informed the Committee that on 24 February 1986 the Republic of Korea had accepted the Agreement and that on 26 March 1986 the Agreement had entered into force for Korea. He welcomed the representative of the Republic of Korea and expressed the hope that his delegation would participate actively in the work of the Committee.

5. The representative of Korea stated that recently the Korean anti-dumping legislation had been revised and that this legislation would shortly be notified to the Committee.

B. Examination of national legislation and implementing regulations (ADP/1 and addenda)

(i) Legislation of Pakistan (ADP/1/Add.24)

6. The Committee had before it document ADP/1/Add.24 containing the text of Ordinance No. III of 1983 concerning the levy of additional duties to check and regulate dumping of imported goods. The representative of Pakistan said that this Ordinance was a framework law. Under Section 11 of the Ordinance the Federal Government was authorized to make rules for the enforcement of the Ordinance but such implementing rules had not yet been made.

7. The representative of the United States, referring to Section 2:7 of the Ordinance, asked whether this provision allowed the averaging of both the export price and the normal value. Secondly, she wished to know whether Section 2:10(ii) was applicable only to non-market economies or to any country which managed a particular industry and controlled the prices of that industry. Thirdly, she pointed to the expression "or adversely affects the local market conditions in Pakistan", contained in Section 3 of the Ordinance and asked for a clarification of the meaning of this expression. Finally, she requested an explanation of the second paragraph of Section 3:1 which provided that where the country of export was not the same as the country of origin, the anti-dumping duty might be levied treating the country of export as the country of origin.

8. The representative of the EEC asked for an explanation of the method used to calculate the anti-dumping duty rates provided for in Section 3:1 and Section 4:1 of the Ordinance.

9. The representative of Hungary wondered whether the method of determining normal value contained in Section 2:10(ii) was complementary to the other methods listed in Section 2:10 or whether in the case referred to in Section 2:10(ii) the use of other methods was excluded. The wording of the legislation suggested that the method in Section 2:10(ii) was exclusive and for this reason he reserved his delegation's position.

10. The representative of Australia asked why, under Section 7, an application for a review of a notification imposing an anti-dumping duty could only be lodged within fifteen days after the date of the notification.

11. The Chairman invited all delegations which had put questions to submit those questions in writing and concluded by saying that the Committee would revert to the anti-dumping legislation of Pakistan at its next meeting.

(ii) Legislation of India (ADP/1/Add.25)

12. The Committee had before it document ADP/1/Add.25 reproducing the text of the Customs Tariff (Second Amendment) Act, amending Section 9 of the Indian Customs Tariff Act, and the Customs Tariff Rules implementing Section 9 as amended.

13. The representative of the United States put a question concerning the definition of domestic industry in Section 2(c) of the Customs Tariff Rules. She wondered whether the Indian authorities considered that the phrase "any activity connected therewith" was consistent with the definition of domestic industry in Article 4:1 of the Agreement. She also expressed her concern about the last part of paragraph 2(c) providing that if producers are themselves importers of the allegedly dumped product, such producers shall be deemed not to form part of the domestic industry. In her view there could be circumstances in which the investigating authorities might want to treat importers as being part of the domestic industry. Finally, she pointed to Section 4:2 of the implementing Rules which required a determination of injury to "any industry established in India" rather than the domestic industry producing the like product.

14. The representative of the EEC stated that it was unclear whether Section 9 A:1 of the Customs Tariff (Second Amendment) Act allowed the imposition of provisional anti-dumping duties immediately after the initiation of an anti-dumping investigation, i.e. before the investigating authorities had made a preliminary determination.

15. The representative of Hungary asked whether the two alternative normal value tests mentioned under item b(ii) on page 5 of document ADP/1/Add.25 covered cases described in the second Supplementary Provision to paragraph 1 of Article VI in Annex I to the General Agreement. If so, he requested a clarification as to whether those methods would exclude the use of the ordinary method of determining normal value; he expressed his reservation about this aspect of the Indian anti-dumping legislation.

16. The representative of Switzerland asked why paragraphs 2(b) and (c) of Section 7 of the implementing Rules contained the words "where applicable".

17. The Chairman invited those delegations which had raised questions to submit those questions in writing and concluded that the Committee would revert to the anti-dumping legislation of India at its next meeting.

(iii) Legislation of Sweden (ADP/1/Add.2/Suppl.1)

18. The Committee had before it the document ADP/1/Add.2/Suppl.1 reproducing the text of Ordinance SFS 1985:738 on Dumping and Subsidy Investigations. In addition, interested delegations had been invited to examine an extract from the Record of the Cabinet Meeting held on 9 September 1985 at which the Ordinance had been approved.

19. The representative of Sweden said that the Ordinance had to be considered as a complement to the provisions of the Anti-Dumping Code. In this context he recalled that, under Section 2 of the Ordinance, investigations had to be conducted in accordance with the provisions of the Anti-Dumping Code.

20. The representative of the EEC asked whether the National Board of Trade was a governmental or a non-governmental body and what its composition was. With regard to Section 4:1 of the Ordinance he wondered whether this provision was consistent with Articles 4 and 5 of the Anti-Dumping Code. He also asked what the views of the Swedish authorities were as to the conformity of Section 4:3 of the Ordinance with Article 12:4 of the Anti-Dumping Code.

21. The representative of Sweden said that although the National Board of Trade was a governmental body, it was free to take its own decisions. In reply to the second question put by the delegate of the EEC, he reiterated that the Ordinance had to be applied and interpreted in accordance with the rules of the Anti-Dumping Code.

22. The representative of Canada noted that the Ordinance contained no provisions dealing with the method of determining normal value and export price and asked whether the Swedish authorities intended to publish more detailed regulations in this regard. He wondered on what basis an interested party could appeal the calculation of normal value or export price if the method of calculation was not governed by specific rules. Finally, he asked whether there existed rules concerning the treatment of confidential information.

23. The representative of the EEC asked whether the Anti-Dumping Code was directly applicable under Swedish domestic law and whether, consequently, interested parties could invoke the rules of the Code in proceedings before Swedish courts.

24. The representative of Sweden said that the treatment of confidential information was subject to the Secrecy Act and to the relevant provisions of the Anti-Dumping Code. Concerning the status of the Anti-Dumping Code under Swedish domestic law he said that, although the Code had not been incorporated or transformed into domestic law, the investigating authorities in Sweden were legally bound to observe the provisions of the Code.

25. The Chairman invited delegations to submit their questions in writing and said that the Committee would revert to the anti-dumping legislation of Sweden at its next meeting

(iv) Legislation of Austria (ADP/1/Add.10/Rev.1)

26. The Chairman recalled that at the meeting of the Committee held in October 1985 a number of questions had been raised regarding the Austrian Anti-Dumping Law of 1985 (see ADP/M/16, paragraphs 5-12). In addition, written questions on the anti-dumping legislation of Austria had been received from Romania and the Nordic countries.

27. The representative of Austria replied in detail to all the questions that had been raised. With regard to Section 7:2 of the Anti-Dumping Law he explained that this provision was in accordance with Article 2:6 of the Anti-Dumping Code and Article 15 of the Agreement on Subsidies and Countervailing Measures. Section 14:2 of the Law corresponded to Article 4:1(i) of the Anti-Dumping Code. Regarding the phrase "dumping or injury" in Section 16 and Section 22:1 he said that this should be changed to

read "dumping and injury". As to Section 23:1 of the Law, containing provisions for the acceptance of price undertakings, he stated that this Section permitted two kinds of price undertakings: undertakings to revise export prices and undertakings to cease exports at dumped prices. This Section was intended to implement Article 7:1 of the Anti-Dumping Code. Furthermore, he said that an undertaking to revise export prices could be accepted even if such an undertaking did not eliminate the margin of dumping provided that the revised price was adequate to remove the injury. As to the last sentence in Section 22:2 which provided "... that an anti-dumping duty amounting only to part of the margin of dumping shall be levied if this offers sufficient remedy with respect to the injury" he said that this provision was applied on a case-by-case basis. With regard to the last part of Section 23:1 he explained that this provision excluded the acceptance of price undertakings in a case in which, under Section 36 of the Law, a decree had been issued imposing provisional measures to deal with a situation of sporadic dumping. With respect to Section 24 he said that decrees imposing anti-dumping duties could be revoked ex officio or upon request. Concerning the composition and status of the Advisory Board, referred to in Section 31:1, he stated that the members of this Board were the organizations listed in Section 32:1 acting in the field of foreign trade; the Board could make recommendations to the Minister of Commerce, Trade and Industry but the Minister was not bound by such recommendations. Finally, he stated that Section 36 of the Law corresponded to Article 10 of the Anti-Dumping Code.

28. The representative of the EEC requested a further clarification as to the relation between Sections 23 and 36 of the Austrian Anti-Dumping Law. He pointed out that, while the Austrian delegate had explained that the reference to Section 36 in the last sentence of Section 23 covered cases of sporadic dumping in which duties could be imposed retroactively, this applied only to the second paragraph of Section 36. Other paragraphs in Section 36 seemed to provide for the application of provisional duties as such. As Section 23 did not refer to a specific paragraph of Section 36, it could be interpreted to imply that no price undertakings could be accepted once a provisional duty had been introduced. In view of the fact that provisional duties could sometimes be applied very quickly it would seem that exporters had not sufficient time to offer a price undertaking. In this context he also wondered what the rights of exporters were to be informed about the contents of the complaint. Finally, he asked for a further explanation of Section 22:2 of the Austrian Anti-Dumping Law.

29. The representative of Hungary noted that the second Supplementary Provision to Article VI of the General Agreement and Article 15 of the Agreement on Subsidies and Countervailing Measures related to "cases" and not to "countries".

30. The representative of Canada welcomed the statement by the representative of Austria that the phrase "to cease to export the product" in Section 23:1 of the Austrian Anti-Dumping Law was to be interpreted as meaning "to cease to export the product at dumped prices", in accordance with Article 7:1 of the Anti-Dumping Code.

31. The Chairman said that the Committee would revert to the anti-dumping legislation of Austria at its next meeting.

(v) Legislation of Australia (ADP/W/92/Rev.1)

32. The Chairman recalled that at its last meeting the Committee had concluded its examination of the anti-dumping legislation of Australia and had decided to retain the Administrative Procedures on its agenda.

33. The representative of Australia said that his authorities had recently requested a review of the operation of the Customs Tariff (Anti-Dumping) Act. One motive for this request was the question whether it would be desirable to include a "national interest" criterion in the Australian anti-dumping legislation. The report containing the results of this review had been submitted to the Minister but the report had not yet been released. His delegation would provide the secretariat with copies of the report as soon as it would be available.

34. The Committee took note of the statement made by the representative of Australia.

(vi) Legislation of Singapore

35. The Chairman recalled that at the meeting held in October 1985 the representative of Singapore had informed the Committee that her authorities were examining the Singapore Customs Act to ensure that it would conform with the Anti-Dumping Code.

36. The representative of Singapore informed the Committee that her authorities had completed a first draft of an anti-dumping law and that the Committee would be informed as soon as this law had been finalized.

37. The Chairman said that the Committee would revert to the legislation of Singapore at its next meeting.

(vii) Legislation of the United States (ADP/1/Add.3/Rev.2 and Corr.1)

38. The Chairman recalled that at its meeting in October 1985 the Committee had continued its examination of the anti-dumping legislation of the United States. In view of the concern expressed by one delegation about the issue of mandatory cumulative injury assessment, the Committee had decided to retain the legislation of the United States on its agenda.

39. As there were no requests for the floor, the Chairman said that the Committee had concluded its examination of the anti-dumping legislation of the United States.

(viii) Other legislation

40. The representative of Japan said that recently Korea had initiated an anti-dumping investigation involving Japanese products; his delegation was therefore interested in the Korean anti-dumping legislation and would appreciate if Korea notified this legislation to the Committee.

41. The Committee took note of the statement by the representative of Japan.

D. Semi-annual reports of anti-dumping actions taken within the period 1 July 1985-31 December 1985 (ADP/26 and addenda)

42. The Chairman recalled that an invitation to submit semi-annual reports under Article 14:4 of the Agreement had been circulated in ADP/26 of 10 January 1986. Responses to this request had been circulated in addenda to this document. The following Parties had notified the Committee that they had not taken any anti-dumping action during the period 1 July-31 December 1985: Austria, Brazil, Czechoslovakia, Finland, Hungary, India, Japan, Norway, Pakistan, Poland, Romania, Singapore, Spain, Switzerland, United Kingdom on behalf of Hong Kong, and Yugoslavia (ADP/26/Add.1). Anti-dumping actions had been notified by Australia, Canada, the EEC and Sweden. No report had been received from Egypt. The Chairman made an appeal to all Parties to submit their semi-annual report as soon as possible after the end of the reporting period. He recalled that the Committee had established deadlines for the submission of those reports (28 February and 30 September of each year). He regretted that a number of Parties had not observed these deadlines; in particular the United States had submitted its report only very recently and it had not been possible to circulate this report in advance of the meeting. He said that non-compliance with the few notification requirements contained in the Code could not be justified.

Canada (ADP/26/Add.2 and Corr.1)

43. The representative of the United Kingdom speaking on behalf of Hong Kong, said that he would like to seek a clarification concerning an outstanding Canadian anti-dumping action on wooden clothespins imported, inter alia, from Hong Kong (ADP/26/Add.2, page 10). He added that his delegation was grateful to the secretariat for producing the inventory of review and sunset clause provisions (ADP/W/106) which had proved most useful in focussing attention on the matter he was going to raise. This matter concerned an anti-dumping action which had been taken by Canada under the provisions of the Anti-Dumping Act which had been superseded by the Special Import Measures Act on 1 December 1984. Section 76:5 of the Special Import Measures Act provided for the expiration of anti-dumping orders after five years unless a review had demonstrated the need to continue the application of the anti-dumping duty. With regard to anti-dumping duties imposed before the entry into force of the Special Import Measures Act, Section 108:8 of the Act stipulated that Section 76 would apply as if the order imposing the duties had been made on the day on which the Act came into force. It followed from Section 108:8 that the anti-dumping duties on wooden clothespins, which had been introduced in 1979, could remain in force until 1989. He considered that this ten-year period was rather long, in particular in the light of Article 9:1 of the Anti-Dumping Code. He recalled that he had already raised this issue at a previous meeting of the Committee (ADP/M/15, paragraph 74-75).

44. The representative of Canada confirmed that, for the purpose of Section 72 of the Special Import Measures Act, the finding made in 1979 was considered to have been made on 1 December 1984. However, while it was possible that the anti-dumping finding on wooden clothespins could remain in force until 1989, other provisions of the Act allowed for a review, at the request of any interested party, of the anti-dumping finding prior to this time. Any such review could lead to the revocation of the finding in whole or part prior to the expiration of the five-year period provided for in Section 76.

Sweden (ADP/26/Add.3)

45. The representative of Czechoslovakia said that in the anti-dumping proceeding notified by Sweden and involving imports of wood particle board from Poland and Czechoslovakia, certain procedural irregularities had occurred. He mentioned in particular the fact that provisional duties had been imposed prior to the expiration of the period within which the exporting firm concerned had to return the questionnaire to the Swedish authorities. He considered that this was in violation of several provisions of the Code, such as Article 6:7 and Article 10. Noting that in this case a final decision had not yet been taken, he expressed the hope that similar irregularities would be avoided and reserved the right of his delegation to revert to this matter.

46. The representative of Poland supported the statement by the representative of Czechoslovakia. In addition, she expressed her concern about the fact that the Swedish authorities had assessed injury on a cumulative basis.

47. The representative of Sweden said that in this case nearly nine months had elapsed between the time at which the complaint had been lodged and the initiation of the investigation. During this period the National Board of Trade had scrutinized the evidence contained in the petition. By the time the Government imposed provisional duties, it had received information from different interested parties. With regard to the issue of assessment of injury on a cumulative basis he said that his authorities had observed the provisions of Article 3 and Article 8:2 of the Code.

48. The representative of the United States shared the concerns expressed by the representatives of Czechoslovakia and Poland concerning the imposition of a provisional duty before information had been received from the interested exporters. He also asked which criteria Sweden had used in applying the concept of cumulative injury assessment to this particular case.

49. The Chairman said that the Committee would revert to these questions at its next meeting.

EEC (ADP/26/Add.4)

50. The representative of the EEC said that the report submitted by his delegation included some cases involving products imported from Spain and Portugal. As of 1 January 1986 those two countries had become member States of the Community and, consequently, the Anti-Dumping Code had ceased to be applicable between the Community of Ten and Spain and Portugal. Therefore, future reports by the Community on anti-dumping actions would contain no references to Spain and Portugal.

51. The representative of Sweden said that disagreement had arisen between Sweden and the Community concerning the introduction by the Community of a provisional duty on clogs imported from Sweden (ADP/26/Add.4, page 4). He reserved the right to revert to this case at a subsequent meeting of the Committee.

Australia (ADP/26/Add.5)

52. The representative of Australia said that the semi-annual report submitted by his delegation contained a number of errors and he supplied corrected data (see ADP/26/Add.5/Corr.1).

United States (ADP/26/Add.6)

53. No comments were made; the Chairman said that, given the fact that this report had been received only very recently, the Committee would revert to it at its next meeting.

E. Reports on all preliminary or final anti-dumping actions (ADP/W/105, 109, 111, 112 and 113)

54. The Chairman stated that reports on all preliminary or final anti-dumping actions had been received from Australia, Canada, the EEC, the United States and Sweden.

55. No comments were made on this item.

F. Report of the Ad-Hoc Group on the Implementation of the Anti-Dumping Code (ADP/W/83/Rev.2)

56. The Chairman recalled that at its meeting in October 1985 the Committee had considered a recommendation on the question of input dumping (ADP/W/83/Rev.2). At that time three Parties had indicated that, for various reasons, they were not in a position to adopt the recommendation. It had therefore been decided by the Committee to retain this item on the agenda for its next meeting.

57. The representatives of the United Kingdom, speaking on behalf of Hong Kong, and the United States stated that they were not in a position to adopt the recommendation on input dumping.

58. The Chairman said that the Committee would revert to this matter at its next meeting.

59. The Chairman informed the Committee that the following issues were being examined by the Ad-Hoc Group: the use of price undertakings in anti-dumping proceedings against imports from developing countries; revision and/or denunciation of an undertaking; constructed value; cumulative injury assessment. He expressed the hope that at the meeting of the Committee in October 1986 he would be in a position to submit new draft recommendations to the Committee.

G. Inventory of review and sunset clause provisions in the laws and regulations of parties to the Agreement (ADP/W/106 + Corr.1 and 2)

60. The Chairman recalled that in October 1985 the Committee had requested the secretariat to compile an inventory of review procedures and "sunset" clauses in the anti-dumping laws and regulations of Parties to the Agreement. This inventory had been circulated in ADP/W/106 and Corr.1 and 2.

61. The representative of Sweden said that the explanatory statement by his Government concerning the Ordinance on Dumping and Subsidy Investigations contained a provision to the effect that, in general, the duration of anti-dumping duties should not exceed three years.

62. No further comments were made on this item.

Date of next meeting

63. The Chairman said that, in accordance with the decision taken by the Committee at its meeting in April 1981 (ADP/M/5, paragraph 51), the next regular meeting of the Committee would take place in the week of 27 October 1986.