Committee on Anti-Dumping Practices

Minutes of the Meeting held on
9-12 October 1973

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

Subjects discussed:  
A. Examination of reports submitted under Article 16 of the Agreement covering the period 1 July 1972-30 June 1973
B. Examination of national legislation
C. Adherence of further countries to the Code
D. Examination of questionnaires used in price investigations
E. Other business

A. Examination of reports submitted under Article 16 of the Agreement covering the period 1 July 1972-30 June 1973

(a) Canada (COM.AD/28/Add.1)

1. The discussion on the cases covered by the Canadian Report under Article 16 concentrated on the following aspects:

(i) Determination of injury
(ii) Treatment of duty drawbacks and intermediate taxes
(iii) Treatment of sales at a loss
(iv) Other questions
(1) Determination of injury

2. The representative of Spain informed the Committee that the Anti-Dumping Tribunal of Canada, on reviewing its earlier decision of 25 August 1971 in the women's footwear case, had found no threat of injury to the Canadian industry. He expressed satisfaction with this recent decision and the consequent elimination of the anti-dumping duties on women's footwear. He submitted a communication in which the views of his Government on Canadian anti-dumping procedures in the case of Spanish women's footwear were set out in detail, as well as his Government's concern that these procedures might be followed also in the investigation recently opened on bottled Spanish green olives. The representative of the European Communities shared the views expressed by the representative of Spain with regard to the women's footwear case. He expressed the hope that in future the provisions of the Code concerning the relation between the dumping and the injury would be strictly observed.

3. The representative of Canada requested that his delegation be given full opportunity to rebut in writing the points made in the Spanish communication (COM.AD/W/35). He stated that, in the footwear case, the decision to revoke the original finding of threat of injury was in no way a reflection on the validity of the original finding. The decisions to impose as well as to eliminate the anti-dumping duties had been taken in the light of the particular situation at different points of time in conformity with the provisions of Article VI and the Code.

4. The representative of Spain said with reference to a case of packed Spanish olives that an anti-dumping investigation had been initiated because, in the Canadian authorities' view, dumped imports of this product had caused, were causing or might cause material injury to Canadian production of like products (COM.AD/W/35). He wondered what criteria the Canadian authorities had followed in the determination of the "like product", since Canada was not a producer of olives.

5. The representative of Canada replied that in the Canadian interpretation of Article VI and the relevant provisions of the Code, the definition of "like product" was not related in any way to "value added" by domestic producers.

(ii) Treatment of duty drawbacks and intermediate taxes

6. The representative of Spain recalled the discussion at the 1972 meeting and pointed out, inter alia with reference to the case of women's footwear (COM.AD/W/35) that the Canadian authorities had repeatedly refused to allow as an element of adjustment in export prices the rebate of indirect taxes to which Spanish exporters were entitled. This was not, in his Government's opinion, in conformity with the specific provisions of Article VI:4. He was concerned that under the practices followed in this respect the Canadian authorities might conclude that dumping existed in respect of Spanish exports of packed olives.
7. The representative of Canada recalled his statement made at the 1972 meeting that his authorities would undertake a review of the Canadian practice on the question of intermediate taxes and duty drawbacks. It had now been decided to recommend to Cabinet that for purposes of determining normal value the regulations should be changed so that an allowance could be granted for rebates of indirect taxes actually paid on materials and components incorporated in exported products. This change would be implemented in cases under investigation.

8. The representative of Spain welcomed this statement and said that his authorities were prepared to collaborate with Canadian authorities on the question of intermediate taxes.

(iii) Treatment of sales at a loss

9. The representative of Japan recalled that the question of sales at a loss had been raised at the previous meetings (COM.AD/19, paragraphs 12-15 and COM.AD/26, paragraphs 5-6). He supported the views expressed at the 1972 meeting by the representative of the United Kingdom and shared by the delegations of the EEC, Sweden and the United States, that sales, where the price did not fully cover the costs of manufacture, could nevertheless be considered to have been made in the ordinary course of trade. If a new model of a product was produced, the old one might have lost its market value and therefore it was a common business practice to sell these products at a price which did not cover full costs. Recalling the Canadian statement that this issue would be considered by Canada on a case-by-case basis, he asked whether there had been any change in the way in which the Canadian authorities implemented the anti-dumping procedures and what were the results of examination made on this basis.

10. The representative of Canada said that his authorities' position remained the same as it had been at the discussion in 1972 (COM.AD/26, paragraph 8). He recalled that the question whether sales at a loss were or were not made in the ordinary course of trade was treated in Canadian practice as a matter of fact to be determined on the basis of a particular set of circumstances.

(iv) Other questions

11. The representative of Spain supported by the representative of the European Communities expressed concern that the Canadian authorities had applied their anti-dumping legislation for the purposes of protecting uncompetitive domestic industries. He pointed out in addition that sales of Spanish exporters of women's footwear had been substantially reduced as a consequence of the application of an anti-dumping duty which, in his view, was unjustified under the Code and expressed the fear that this might not remain an isolated case. He concluded that the Spanish authorities reserved the right to present a claim for compensation in respect of the damage incurred by anti-dumping action on exports of women's footwear to Canada.
12. The representative of Canada said that his authorities were prepared to justify the action taken on the imports of women's footwear from Spain and Italy. This action was taken in conformity with the provisions of Article VI and the Code.

13. The representative of Sweden expressed concern with the practice of comparing an allegedly dumped price with that prevailing in the domestic market of the exporting country instead of with the price obtained in third country markets, when sales of the exporter in the home market were negligible. The representative of Canada stressed that the price comparison normally foreseen in the Code was with the domestic price in the exporting country.

14. The representative of Sweden said that he was concerned at the number of anti-dumping cases pending in Canada and the rate of opening of investigations which involved very costly proceedings. In reply, the representative of Canada said that about eighty enquiries per year, over the past three years, had only resulted in ten or twelve investigations per year having been initiated. He added that efforts were being made to speed-up the decision-making process.

15. The representative of Spain expressed concern that, in the women's footwear case, the Anti-Dumping Tribunal had taken unusually long time to complete the review of its earlier decision. The representative of Canada replied that, in fact, the delay was requested by the legal representatives of the importers in Canada.

(b) United States

16. The discussion on the cases covered by the United States report under Article 16 concentrated on the following aspects:

(i) Determination of material injury
(ii) Determination of normal value
(iii) Questions relating to products made to measure
(iv) Other questions

17. The representative of the European Communities, supported by the representative of Sweden, noted with satisfaction that the Tariff Commission had abandoned the theory under which it would be sufficient for imposition of an anti-dumping duty to establish that the dumping constituted "a more than de minimis factor in contributing to an injury". He pointed out, nevertheless, that unless the rules of the Code with regard to injury were brought into the United States legislation or at least that country's regulations, there was no certainty as to what attitude the Tariff Commission might adopt in the future.
18. The representative of the United States recalled that his country had made it clear at the time of the drafting of the Code that it would not be feasible to amend the American Anti-Dumping Act upon acceptance of the Code, but added that the present United States law was being applied in a manner consistent with the provisions of the Code.

19. The representative of the European Communities expressed concern with recent determinations of the Tariff Commission that a threat of injury existed, on the basis of either imprecise considerations or remote possibilities. He had particularly in mind the case of instant potato granules from Canada on which anti-dumping duties were imposed and the cases of printed vinyl film from Argentina and Brazil on which provisional action had been taken. In that context, he recalled that in order to avoid any evasion of the relatively strict provisions concerning injury, Article 3(e) of the Anti-Dumping Code specifically stipulated that any determination of a threat of injury must be based on "clearly foreseen and imminent" circumstances.

20. The representative of the United States asserted that the decision of the Tariff Commission in the case of instant potato granules from Canada was fully consistent with the provisions of Article 3(e) of the Code relating to threat of material injury. Quoting from the decision of the Tariff Commission, he asserted that most of the sales were made at less than fair value and noted the increased Canadian production capacity. On the question of the imminence of the injury he pointed out that Canadian exports of potato granules, which had entered the United Kingdom free of duty, would, as of January 1974, become subject to a significant duty rate which would be revised upwards annually until 1977. He stressed that Canadian exporters would need the United States market as a new outlet and that with substantial excess capacity in the United States, any substantial sales of Canadian instant potato granules at less than fair value would likely result in marked disruption of the United States market. With reference to the cause of printed vinyl film from Argentina and Brazil, he observed that it would be more appropriate to discuss these cases at next year's meeting since in both of these cases the rulings had been made after 30 June 1973, thus outside the reporting period under consideration.

21. The representative of the European Communities did not share the views expressed by the representative of the United States on the case of instant potato granules from Canada.

22. With reference to the action by the Treasury Department, the representative of the European Communities noted with regret the lack of consistency with the provisions of Article 5(b) of the Code calling for simultaneous consideration of both dumping and injury. With reference to the case of welded wire mesh from Belgium, he pointed out that there was a significant market for that product in the United States but imports had fallen between 1967 and 1971 and had ceased after 1971; the dumping determination was made after all imports had ceased. In the case
of impression fabric of man-made fibre from Japan, action had been taken notwithstanding the fact that the exporter was no longer in the market. In these and other cases where the Tariff Commission had found that no injury existed the action taken by the United States administration had caused protracted uncertainty in the business circles concerned, had involved considerable expense for the legal defense of the firms accused and had caused losses in the United States market, despite the fact that the accusation had finally been found unjustified. In order to avoid any repetition of such consequences, which were neither fair nor equitable, there was a need for the strictest observance of the provisions of the Code under which adequate evidence of both dumping and injury was a prerequisite for the initiation of an anti-dumping procedure and introduction of provisional measures.

23. The representative of the United States could not agree with the statements that the Treasury initiated investigations without proper evidence of injury. The Code asked for simultaneous consideration of injury and dumping. Since the United States adoption of the Code, more information with respect to injury was required prior to commencing an investigation than had been previously requested by the United States authorities. He noted the fact that during the last year about half of the complaints were rejected because there was not sufficient basis for action; furthermore, there were more negative than affirmative injury determinations by the Tariff Commission. With reference to the cases of welded wire mesh from Belgium and of impression fabric of man-made fibre from Japan, he pointed out that according to the statistical data of the United States, there had been substantial imports of these products both in 1971 and 1972 and complaints had been filed on the basis of these imports. Noting that the United States had not proved insensitive in the past to comments made in the Anti-Dumping Committee, he stated that his Government was taking and would continue to take a pragmatic approach to any disagreement that existed, and he urged that members of the Committee should take this into account.

24. The representative of the European Communities expressed concern with initiation of investigations in the United States upon complaints not representative of the major proportion of the industry as provided in Article 5(a) of the Code. For example, in the case of colour separating machines from the United Kingdom, one single firm had filed the complaint. Moreover, there was no substantiation of the allegations of injury in the complaint and no "national" industry adversely affected. Furthermore, the dumping finding was related to all models and not merely to the model that was the subject of the complaint.

25. The representative of the United States said that the example cited by the representative of the European Communities in no way demonstrated that the United States had failed to observe the Code requirement that complaints must be by firms representing an industry in the sense of the Code. With specific reference to the case of colour separating machines, he pointed out that the complainant represented two thirds of the United States production. He agreed that the United States authorities had looked at only one model in the investigation whereas the determination covered a broader category, but he pointed out that the model in question represented 60 per cent of all sales. Given the fact that there was a machine on the market which was easily substitutable, it had been necessary to make the determination apply to all merchandise of the same class or kind.
26. With reference to the case of mandelic acid from the United Kingdom, the representative of the European Communities expressed concern at the initiation of an anti-dumping case where the exporter had made no sale to the United States but only an offer. The representative of the United States agreed that no sales at less than fair value had taken place at the time that the investigation had been opened; on the other hand the complainant had presented very convincing evidence that a dumping bid had been made, which, in case of success would have effectively eliminated the sole United States manufacturer of this product from the market. This was due to the fact that the United States purchaser was the principal consumer of mandelic acid in the United States and made its purchases approximately once a year. In such situations the opening of an investigation on the basis of bids was fully justified.

27. The representative of Sweden supported the views expressed by the representative of the European Communities on the simultaneity of dumping and injury investigations. He pointed out, with reference to the cases of high speed tool steel and stainless steel plate that, at the Treasury Department stage, there was no valid reason to suspect that dumping according to the provisions of the Code could be established.

28. The representative of Japan expressed satisfaction that remarks made at the previous meeting (COM. AD/26, paragraphs 33 and 34), that special care should be taken, where export control agreements existed, in observing the injury requirements as provided for in the Code, had been taken into account by the United States.

(ii) Determination of normal value

29. The representative of Sweden, referring to the case of stainless steel plate, expressed concern with the practice of comparing an allegedly dumped price with that prevailing in the domestic market of the exporting country instead of with the price obtained in third country markets, when sales of the exporter in the home market were negligible.

30. The representative of the United States pointed out that the exporters had maintained that their home market sales, accounting for roughly 10 per cent of their total non-United States sales, did not permit a proper comparison. In his view, this was difficult to accept because the Swedish market was reported to be highly competitive.

31. The representative of the United States also pointed out that the use of home market prices as a basis for fair value comparisons was the normal rule under the Code and stated that his Government always used home market prices, except where domestic sales in the exporting country were inadequate for comparison purposes.

32. The representative of the European Communities expressed his continued concern at the application of the unadjusted dry-weight method in the transformer case (COM. AD/26, paragraph 35). Moreover, the assessment of anti-dumping duties on which assurances had been given that all speed would be used, had not been completed and no margin had been assessed.
33. The representative of the United States reiterated his reply made at the 1972 meeting (COM.AD/26, paragraph 36) that the unadjusted dry weight method had been used for the determination of fair value by the Treasury and that other, more precise methods would be considered for the calculation of the precise margin of dumping. Questionnaires were sent to the various manufacturers in order to obtain information for the assessment of dumping duties; in all cases, extension of time for filing replies were requested, and this had caused delay in determining the extent, if any, to which dumping duties were assessable.

(iii) Questions relating to products made to measure

34. With reference to the case of paper making machinery, the representative of Sweden asked for information on the criteria used in price comparisons between products made to measure. He 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, since the specifications varied to a large extent between different sales. In addition, he stressed the fact that the importer had based his purchase not on price considerations but on the technological characteristics of the product; this fact seemed to underline the difficulty of price comparisons in such a case. There should be special caution on the part of the authorities before initiating investigations on the ground of complaints of dumping in the case of an imported product made to measure.

35. The representative of the United States noted that the Code made no exemption for products built on special order. He agreed that it was indeed difficult to determine a basis of fair value comparison for such products. On the other hand it was unthinkable that such products should be allowed to be freely dumped. In the case of paper making machinery the price comparison had, in fact, been made on a fair basis. Of several alternative methods of comparison, the one selected was a price-cost factor which had been suggested by the Swedish company which exported the product to the United States. He added that a much greater margin would have resulted if other methods of comparison authorized under the Code had been used.

(iv) Other questions

36. The representative of the European Communities pointed out that in withholding appraisement the provisions of Article 10 should have been met in the sense that any provisional measures should be taken with particular care to avoid damage. The representative of the United States replied that in almost all the cases where appraisement had been withheld, it had been found ultimately that there had, in fact, been dumping margins. This demonstrated the care exercised by the United States before invoking provisional measures.
37. The representative of Japan recalled his statement at the 1972 meeting that determinations should be made on a company-by-company basis (COM. AD/26, paragraph 44). He noted that efforts had been made in order to introduce determinations on such a basis. He also stated that where dumping findings were made on a country basis, a revocation of the finding should be made for those companies which had been found, through investigation prior to the finding, not to have engaged in sales at less than fair value and for those companies which had not been subject to the anti-dumping investigation, if it was found that such companies were not engaged in sales at less than fair value for a period of around six months, instead of two years, after the finding was made.

38. The representative of the United States replied that, following bilateral discussions, the country determination procedure had been amended and that the period required before consideration of revocation would be undertaken had been shortened. However, it was difficult to agree to a revocation of a dumping finding within a period as short as six months. Under the new procedure followed by the United States, any company had the opportunity to disclose all of its sales; if, on such a basis, it was found, before issuance of the dumping finding, that the company concerned had not engaged in sales at less than fair value, the company would be excluded from any anti-dumping measures applied.

39. The representative of the European Communities and Sweden noted with satisfaction that the report by the United States showed a trend towards a quicker resolution of cases and they welcomed the fact that relatively few new investigations had been opened. However, they stressed that continuing efforts should be made to reduce the length of time needed to settle a case, because delays created considerable uncertainty and had serious effects on exporters both in terms of costs and loss of market share.

40. The representative of the United States pointed to the very substantial reduction in the average number of days taken to complete investigations and said that efforts would be made to further shorten the investigation period, always bearing in mind, however, the necessity of keeping the decision making process strictly fair.

B. Examination of national legislation

(a) Spain (L/3932 and Add.1)

41. Replying to a question by the representative of Sweden, the representative of Spain confirmed that the "abnormal price" system that was previously applied by Spain, had been abolished.

42. The representative of the European Communities said that there had not been sufficient time available to examine the Spanish legislation in detail. The Committee agreed that it would continue the examination of the legislation of Spain at its next meeting.
(b) Austria (L/3740)

43. The Chairman recalled that as agreed at the 1972 meeting, the examination of the legislation of Austria would be continued at this year's meeting.

44. The representative of the European Communities, pointing to a slight anomaly in the translation of the German words "glaubhaft machen" in Article 12 of the Austrian law, said that he assumed that, in the event of a conflict between the Austrian law and the Code, the provisions of the Code would prevail. The representative of Austria confirmed that if a practical problem should arise, his authorities would observe the provisions of the Code, which had been given the form of law in Austria. He furthermore recalled that so far no investigations had been opened under the new Anti-Dumping Law.

45. The Chairman noted that the examination of the Austrian legislation had thus been terminated.

(c) Portugal (COM. AD/18)

46. The Chairman recalled that as agreed at the 1972 meeting, the examination of the legislation of Portugal would be continued at this year's meeting.

47. The representative of Portugal, reporting on the progress made in bringing the Portuguese legislation into full conformity with the Code, stated that new legislation was being drafted for this purpose and that the relevant texts would be circulated before long.

(d) United States (L/3805)

48. The representative of the European Communities referred to suggestions made by his own and other delegations at the 1972 meeting regarding the revision of the United States Anti-Dumping Regulations (COM. AD/26, paragraphs 68-91), and regretted that the United States had not taken this opportunity to bring its legislation into full conformity with the Code.

49. The representative of the United States said that the previous year's discussion in the Committee had resulted in two important amendments in the proposed revision of the Regulations. First, the proposal to disallow all advertising expenses except those directly related to the sales as circumstances of sale adjustments under consideration had been liberalized to allow a general advertising expense of the particular product under consideration. Second, in response to expressions of concern that the simple discontinuance of investigations would produce an indefinite period of uncertainty for exporters, provisions were added to allow for termination of discontinued investigations. Further, it was reported that the possibility of commencing an investigation by withholding appraisement was only intended for exceptional circumstances,
e.g. where there was a violation of an assurance given. The reassurance given at the previous meeting on this point had proved entirely valid also in practice, in that recourse to such action had not been necessary.

(e) Greece (COM.AD/27)

50. Referring to the reply given to question 1 in document COM.AD/27, the representative of the European Communities asked whether account was taken in Greece of all the differences in taxation affecting price comparability for which the Code provided for price adjustments, or were these differences taken into account only when also provided for in the Greek legislation? The representative of Greece took note of the question and said that he would submit a reply at a later stage.

51. The representative of the European Communities expressed concern with the fact that although Greece had adhered to the Code already in 1968, its legislation had not yet been adapted to the provisions of the Code. In his view the process of harmonization was unreasonably slow in this case. The representative of Greece stated that his authorities had run into certain technical difficulties and that thorough studies of other countries' legislation were required. He assured the Committee, however, that the task would be completed as soon as possible. Meanwhile, any recourse in Greece to anti-dumping measures would only be taken in the strictest conformity with the provisions of the Anti-Dumping Code.

(f) European Economic Community (L/3925)

52. The Committee took note of the modifications to the Anti-Dumping Regulations of the European Economic Community notified in document L/3925.

C. Adherence of further countries to the Code

(a) Developed countries

53. The Chairman explained that, as there had been no substantial change from the previous year in the positions taken by the Governments of Australia, New Zealand and South Africa, it had not been considered useful to continue the informal discussions with these Governments at the present stage.

54. The Committee noted that an inter-departmental committee had been established in Australia inter alia to examine the feasibility of Australia adhering to the Code and to report to the Australian Government by 1 December 1973. The hope was expressed that the work thus initiated would lead to an early acceptance of the Code by Australia.

1 A communication from the Government of Australia announcing the decision to adhere to the Code has been circulated in document L/3963.
(b) Developing countries

55. The Chairman recalled that the Working Party on the Acceptance of the Anti-Dumping Code had met in the two previous years (Spec(71)127 and Spec(72)125) without a solution having been found. At this year's meeting one would either have to work out a realistic compromise, or one would have to consider reporting to the Council and to the CONTRACTING PARTIES that it would not be possible to get further at the present stage. Some progress had been made at last year's meeting, but there were still difficulties with accepting the text in square brackets in the Indian proposal as set out in document Spec(72)125. No further communications had been received since the last meeting of the Working Party; he hoped, however, that a compromise could be found this year.

56. The representative of the United States expressed doubts as to the possibility of reaching a compromise unless the developing countries were prepared to give up some of their demands. The view that the present Indian text was unacceptable was shared by many other delegations.

57. The representative of Sweden, supported by the representative of Canada, said that his Government could accept the Indian text without square brackets, or the substitution of "normal value would generally be determined" for the words "determine normal value", as suggested in the Working Party at last year's meeting (Spec(72)125, paragraph 10).

58. The Chairman took note of the views expressed and reiterated that he hoped a compromise could be reached in the Working Party. [*]

D. Examination of questionnaires used in price investigations

59. The representative of Japan said that since this question had been discussed at length at the previous meeting (COM.AD/26, paragraphs 107-112), it would not be necessary to discuss it in detail at this meeting. He stressed, however, the importance his Government attached to the harmonization of the questionnaires, such harmonization providing numerous advantages in improving investigation procedures.

*The Working Party met on 10 October and agreement was reached on an ad referendum text which is being considered by member governments. A note on this meeting has been circulated in Spec(73)52.*
E. Other business

60. The representative of Japan said that his delegation would shortly submit a note on the Policy of the United States on Voluntary Undertakings.\(^1\) The Committee agreed that members of the Committee could submit comments on the document not later than three months after its circulation; the United States would thereafter have three months to reply to the original note and comments received from other members.

\(^1\)The note has been distributed in document COM.AD/29, dated 22 October 1973.