MEETING ON 27 SEPTEMBER 1972

Note by the Secretariat

1. The Working Party on Acceptance of the Anti-Dumping Code was established by the Council at its meeting on 29 September 1970 to examine special problems of developing countries in connexion with the Agreement on the Implementation of Article VI and any proposals and suggestions for a solution to these problems, which may lead to a wide and early acceptance of the Agreement, and to report to the Council.

2. The Working Party held its first meeting on 23 September 1971 and discussed some proposals made by developing countries. In the course of the meeting a number of additional suggestions were made. A Note by the secretariat on the meeting has been distributed in document Spec(71)127 and Corr.1.

3. The Working Party held its second meeting on 27 September 1972 under the chairmanship of Mr. A. Buxton (United Kingdom).

4. India had submitted the following draft text (Spec(72)93) to be incorporated as a note to Article 2(a) of the Agreement on the Implementation of Article VI:

"The application of Article 2(a) would not be appropriate in the case of exports from developing countries as the sales in domestic markets of such exporting countries do not permit proper comparison for the purpose of that Article. For the purpose of price comparison in such cases it would be therefore appropriate to use 'particular market situation' provisions of Article 2(d) and determine normal value on the basis of comparable price of the product when exported to any third country market."

The representative of India explained that none of the additional suggestions made at the 1971 meeting (Spec(71)127, paragraphs 12-13) was acceptable to his Government. The proposed text represented an amendment of the original Indian proposal in Spec(71)98, taking into account views expressed at the 1971 meeting of the Working Party.

5. Several members of the Working Party, signatories to the Anti-Dumping Agreement, reiterated that it would be very difficult for them to accept a formal amendment of the text of the Agreement. It would be much easier to agree to a common understanding to be recorded in the minutes of the Committee on Anti-Dumping Practices or, possibly, to an explanatory note to the Agreement. Some of them stressed, however, that the substance of the provisions was more important than their form.
6. With regard to the first sentence of the Indian text, the representative of India noted that the intention had not been to imply that price comparisons as envisaged in Article 2(a) of the Code would always be inappropriate for imports from developing countries. Nevertheless there was clear need for the recognition of the fact that in the case of a large number of products exported by these countries the domestic prices had no direct relationship with the prices at which the goods could be sold by them in the international markets.

7. The Working Party agreed on the following amended text of the first sentence of the Indian draft:

"The application of Article 2(a) would not be appropriate for the exports from developing countries in the cases where sales on domestic markets of such exporting countries do not permit proper comparison for the purpose of that Article."

8. In respect of the second part of the draft text, there were differences of opinion in the Working Party with regard to the use of the cost of production as an alternative to export prices as basis for price comparisons, in cases where it had been recognized that the domestic price did not permit a proper comparison. Members of the Working Party representing developed countries noted that the Indian proposal would exclude the use of production costs. They felt that, although production costs were sometimes difficult to establish, it would not be justified to exclude completely their use as a basis for comparison. They suggested that the second sentence of the Indian draft text should stop after the words "Article 2(d)"; the normal price comparison provisions of the Code would then apply.

9. Members of the Working Party from developing countries pointed out that several elements in the calculation of production costs as provided for in the Code caused great uncertainty. What was, for example, to be understood by "a reasonable amount for profits"? As had already been pointed out at the 1971 meeting, in a number of developing countries efforts were made to insulate export production from the inflationary pressures to which domestic production was subjected, by making available adequate supplies of imported raw materials and components at international prices and by giving priority in the allocation of scarce domestic resources. The domestic production, however, did not necessarily always benefit from such schemes. The calculation of the cost of production of exported products in these circumstances would pose serious problems.

10. The representative of a developing country suggested that more flexibility should be given to the Indian proposal by amending the words "determine normal value" to read "normal value would generally be determined". This suggestion received some support but was not generally acceptable.

11. In view of the differences of opinion in the Working Party with regard to the provisions on price comparisons, it was agreed, in order to give the members of the Working Party time for further reflection, that the discussion would be continued at a later meeting. The text to be discussed then would be the amended Indian draft text with the latter part of the second sentence in square brackets.
"The application of Article 2(a) would not be appropriate for the exports from developing countries in the cases where sales in domestic markets of such exporting countries do not permit proper comparison for the purpose of that Article. For the purpose of price comparison in such cases it would be therefore appropriate to use 'particular market situation' provisions of Article 2(d) and determine normal value on the basis of comparable price of the product when exported to any third country market."

12. It was agreed that the Chairman of the Working Party would present to the Council an oral report on the work done in the Working Party. The next meeting of the Working Party would be held in 1973. Some members asked that the possibilities be borne in mind to hold the meeting at an earlier date than that of the regular meeting of the Committee on Anti-Dumping Practices in September.

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1 Cf. document (C/M/81, page 7).