NINTH REPORT OF THE COMMITTEE ON ANTI-DUMPING PRACTICES

DRAFT

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 and L/4408. The present report refers to the work of the Committee from the annual meeting of the Committee in October 1976 to the annual meeting held on 24 to 28 October 1977. In addition to the annual meeting the Committee held a special meeting on 23-25 February 1977.

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 (adhered on 17 May 1977), Portugal, Spain, Sweden, Switzerland, United Kingdom, United States and Yugoslavia.

The Chairman of the Committee was Mr. Eggert (Finland) at the meeting in February 1977 and Mr. Lemmel (Sweden) at the meeting in October 1977.

Meeting on 23-25 February 1977

3. At the meeting in February 1977 the Committee continued its discussion on the question of establishing an analytical inventory of problems and issues arising under the Code and its application by the parties to the Code. It was agreed that the
secretariat should draft a new version of document COM.AD/W/63\(^1\) reflecting the suggestions made at the meeting which document, together with any further comments submitted in writing by the members of the Committee, would constitute the basis for the discussions of the inventory at the next meeting of the Committee.

4. One member of the Committee referred to a provisional anti-dumping duty introduced by the European Communities on imports of ball bearings, tapered roller bearings and parts thereof. Pointing to the fact that the procedural process had been much too short for the Communities to take a valid decision on the provisional measure, he questioned whether sufficient evidence had been established to justify the conclusions drawn so far in this case. Furthermore, he doubted whether the investigation had been conducted in accordance with Article 6(a) of the Anti-Dumping Code, since the producers had been given only a short period to supply additional evidence and to prepare the defence of their interest in the hearing. He questioned furthermore whether the investigation had been conducted in conformity with Articles 6(b) and 8(b) of the Code, since it, according to his authorities, should have been possible to name the suppliers concerned individually. He stressed in this connexion that small suppliers should have been excluded from the application of the provisional measures. He also pointed out that while the provisional measure covered all categories of bearings, the investigation so far conducted had been limited to only sixteen categories of bearings. It could therefore be questioned whether the findings were representative. Referring to Article 10(c) of the Code he stressed the difficulty in identifying the reason for the provisional measure and the criteria applied in this decision. He requested the Communities to provide among other things positive findings in quantitative as well as qualitative terms which could prove the existence of the alleged dumping margin and injury.

\(^{1/}\) Issued as COM.AD/W/68
5. The representative of the Communities replied that the preliminary investigation had lasted nearly six months after the complaint had been lodged in October 1976. During this procedure the producers had been allowed four weeks to present their position, which time-period had later on been extended to six weeks. The producers had subsequently been invited to justify their position in Brussels in January 1977. Despite efforts on the side of the Communities it had at that occasion not been possible to reach an amicable settlement. Concrete evidence of dumping and the difficult situation of the industry had led to the decision in early February 1977 to impose provisional duties, an action which in the Community's opinion was fully consistent with the provisions of the Code. He stressed that it had not been possible for obvious reasons to examine all types of ball bearings in the preliminary investigation but that a broader range of products would be examined in the definitive investigation. He also pointed out that Article 8(b) permitted the authorities to name the supplying country concerned when it is impractical to name all individual suppliers. He added that a detailed justification of the Community action had been published in the Official Journal of the Communities.

6. Some members criticized the repeated application in the United States of the provisions of Section 337 of the Tariff Act of 1930 and expressed concern regarding the differences between these provisions and those of the Anti-Dumping Code in respect of concepts and procedures. The representative of the United States replied that a communication had been dispatched to the International Trade Commission presenting the views expressed by members of the Committee on this point at the last meeting.
7. The Committee took note of a communication from Israel circulated in document COM.AD/W/67, concerning its newly introduced anti-dumping legislation.

Meeting of 24-28 October 1977

8. The Committee examined the anti-dumping laws and regulations of Portugal and Poland, which adhered to the Code on 30 March 1972 and 17 May 1977 respectively, and of the European Coal and Steel Community. In addition, the Committee examined revised texts of the legislation of the European Economic Community and the United States. These legal texts were discussed in order to examine their conformity with the requirements of the Anti-Dumping Code.

9. On a question concerning the time-limit for the submission of evidence as prescribed in Article 12 of the Portuguese legislation, the representative of Portugal stated that his country's legislation had been in force for too short a time to tell which time-limits would be applied in practice but that it had been found essential to prescribe a fixed minimum time on which interested parties could rely. In reply to another question he explained that a notice was to be published in the Official Gazette both on the opening of anti-dumping investigations and of the results of such investigations.

10. The representative of the United States stated that in an effort to increase the transparency of his country's anti-dumping proceedings, his government had decided to make available all filed petitions to interested parties. In reply to a question put by a member of the Committee who expressed concern over the possibility that such a measure would have a snowball effect and provoke other petitions, he explained that petitions were made available, inter alia, only after it had been
established that their content was in conformity with the requirements of the Anti-Dumping Regulations. Another member of the Committee, referring to Section 205(b) of the Anti-Dumping Act of the United States, stated that the problem of sales at a loss had been discussed earlier in the Committee at a number of occasions. In this connexion the view had been expressed by several members that sales at a loss in the home-market would in itself not imply that the home-market could not be used for price comparisons. In his view, account should be taken of the actual economic situation when price comparisons were made. Such comparisons should not be conducted in a way that embargoes were created on imports in cases where all major firms in a particular sector were selling at a loss in a declining international market. He expressed the opinion that Section 205(b) should be revised since it now permitted an arbitrary administration in violation of the Code. Another member of the Committee stressed that even if sales at a loss created a problem, especially during a recession, price comparisons had to be carried out on a case-by-case basis as prescribed by the Code. The mandatory rules established in Section 205(b) seemed doubtful to his authorities. The representative of the United States stated that systematic sales below costs of production over an extended period of time, in substantial quantities and at prices which did not permit recovery of all costs within a reasonable period of time could not be regarded as "in the ordinary course of trade" and could therefore be disregarded. Section 205(b) did not, however, give the American authorities the option of applying the highest dumping-margin found. It was only after sales at a loss in the home market and in other export markets had been disregarded
and when remaining sales, made at not less than cost of production, were inadequate for comparison purposes that constructed prices were relied on. In reply to a question by a member of the Committee on Section 206 of the Act the representative of the United States stated that the figure of 8 per cent for profit to be included in a constructed value seemed reasonable to him since the profits of all United States manufacturing corporations of durable and non-durable goods had, according to the Economic Report of the President of the United States transmitted to the Congress in January 1977, in general been at least at that level during the last thirty years.

11. Referring to the Polish anti-dumping legislation, one member of the Committee asked what provisions existed concerning the publication of decisions to initiate investigations as well as of decisions taken with regard to provisional and final measures. The representative of Poland promised to submit a reply to this point as soon as he received instructions from his authorities.

12. The Committee agreed to revert to the legislation of Poland and Portugal at its next meeting. As was the case with national legislation of other members of the Committee, any member had the right to revert at any time to particular aspects of the national legislation of the countries mentioned in paragraphs 8-12 in the light of the practical application of these legislations by the competent authorities.

13. The Committee examined the reports submitted in accordance with Article 16 of the Agreement on the Administration of Anti-Dumping Laws and Regulations in the member countries. 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 1976-30 June 1977 is reproduced in the Annex.
14. Austria, Czechoslovakia, Finland, Hungary, Japan, Malta, Portugal, Spain, Sweden, Switzerland and Yugoslavia had notified that no anti-dumping cases were pending or initiated in the period under review.

15. One member of the Committee pointed to the extraordinary large number of investigations reported by Australia and in particular to what he considered a striking disproportion between investigations opened and the actual actions taken. He questioned whether all the cases which had been accepted for a formal investigation had been scrutinized with the care prescribed in Article 5 of the Code. Taking up a particular case he asked why the normal customs clearance for the product in question had been suspended, without any formal opening of an investigation and without the exporter being informed of the measure. The representative of Australia replied that all the cases listed in the report had received sufficient scrutiny before the opening of an investigation. As regards the particular case mentioned he noted that it did not fall under the reporting period in question. He added however that the exporter in this case had not provided sufficient information concerning the goods to be imported. Thus, the withholding of customs clearance had not been made for anti-dumping purposes. In reply to the question put by another member of the Committee he explained that his authorities preferred not to get involved in agreements between private parties which lead to the termination of procedures. As soon as a formal notification had been received from a complainant that he did not want the investigation to proceed, the enquiry was terminated.
16. Referring to a case in the Canadian report, one member noted that the firm under investigation had not exported the product in question since 1976 and had formally expressed its intention not to sell it in the foreseeable future. He questioned therefore whether this case should not be terminated as soon as possible in accordance with Article 5(c) of the Code. The representative of Canada replied that a number of exporters from different countries were involved in this case and that all these cases had to be taken into account together before a preliminary determination could be made. Another member of the Committee noted that no case in Canada had been terminated as a result of an amicable settlement. He asked furthermore why Section 11 of the Canadian Act had been applied in one case. As regards another case he questioned whether the very small quantity of goods delivered from his country could reasonably constitute a case for opening an investigation. The representative of Canada replied that rules for price undertakings had never been included in Canadian law and that such a solution was consequently never applied. He explained that Section 11 had been relied on since relevant information had not been obtained in the time period available. As regards the second case, he added that all imports that were dumped were normally subject to assessment as to whether injury had been caused. Taking up a particular case in the Canadian report a member of the Committee regretted that no explanations had been given in order to justify the use of production costs in the price comparison made and that the normal value had been arbitrarily established under Section 11 of the Canadian Anti-Dumping Act. This had taken place in spite of the fact that relevant information on actual sales prices on the domestic market had been furnished which in his opinion view should have been considered even if sales at a loss had occurred in a number of cases. In his view, the Canadian authorities
had in the course of the investigation not met the requirements of Articles 2(d), 6(f), 6(g) and 10(c) of the Code. The representative of Canada referring to the fact that the case had now been brought before the courts of law in his country, limited himself to mention that cost of production information had not been received which in the Canadian opinion had been absolutely relevant in this case. For this reason Section 11 of the Act had been resorted to. The Canadian authorities had also done its utmost in order to provide as much information as it reasonably could that was not confidential. They had consequently acted in conformity with the relevant provisions of the Code.

17. Two members of the Committee stated that their anti-dumping authorities were engaged in discussions with the aim of establishing a procedure for the exchange of information concerning the administration of their anti-dumping laws on a more systematic basis. They hoped that this would be a useful arrangement which might eventually be implemented between other members of the Committee.

18. In reply to a question on which basis prices were determined for anti-dumping purposes in cases involving imports from State-trading countries, the representative of the European Communities referred to the interpretative note 2 to paragraph 1 of Article VI of the General Agreement which dealt with such matters. This text had been included in the legislation of the Communities. When the domestic price in question was deemed as unreliable, comparisons were normally made with export prices and in some circumstances with the domestic prices of market economy countries with due allowance made for differences in standards of living.
19. One member of the Committee referred to the final anti-dumping measures on ball bearings and tapered roller bearings imposed by the European Communities in July 1977 (cf. paragraph 4 above). He pointed to the fact that the exporters concerned had offered price undertakings not only to cover future transactions but also past transactions. Nevertheless, the Communities had imposed a duty and had decided that the final imposition of that duty should be suspended in so far as a price undertaking was in force. In his view, Article 7(a) of the Code gave the possibility of accepting price undertakings and terminating anti-dumping proceedings. It was, however, not permitted under the Code to accept an undertaking and to continue the proceedings, except in order to continue the injury investigation as provided in Article 7(b) of the Code. He added that the information on the reasons and criteria for the application of the anti-dumping measure so far made available had fallen short of the obligation under Article 6(h) of the Code. The representative of the Communities replied that a price undertaking had not been offered until July 1977 when his authorities had already established clear evidence of high dumping margins and of serious injury resulting therefrom. In view of the fact that price undertakings could not be made retroactive, the offer had come much too late and was in addition clearly unsatisfactory. In view of this, his authorities had decided to collect the duties provisionally imposed while suspending the final measure thereafter. He added that a justification in accordance with the Code on the findings of dumping and injury had been included in the Communities' regulation in which the anti-dumping measure had been published.
20. Referring to a case in the report of the United Kingdom, one member of the Committee stated that the information furnished on the determination had fallen far too short to justify the alleged existence of a dumping margin and of material injury and was in consequence not in compliance with the requirements of Article 6(h) and 10(c) of the Code. The representative of the United Kingdom replied that his authorities had fulfilled the commitment laid down in the relevant articles of the Code by clearly indicating the reasons for the decisions and the criteria applied. The extent to which information could have been given in this case had however been limited by the requirement of confidentiality. On a question from another member as to how margins of dumping were calculated in cases concerning imports from State-trading countries, the representative of the United Kingdom stated that the legal obligation of his authorities in such cases was to find, where possible, an analogue product in a market economy country, after which appropriate adjustments were to be made inter alia for different stages of development between the two countries concerned.

21. Referring to the preamble of the Anti-Dumping Code which stipulates that "anti-dumping practices should not constitute an unjustified impediment to international trade", a member of the Committee expressed concern about the proliferation of anti-dumping systems used in the interest of protectionism. In a specific case affecting the imports of hot rolled carbon steel plate from his country into the United States, the withholding of appraisement was not justifiable due to lack of sufficient evidence for the preliminary determination of dumping and its dubious conformity with the Anti-Dumping Code. Sufficient information on the reasons for
the decision and the criteria applied had not been supplied, as required by Article 10(c) of the Anti-Dumping Code. As to the determination of injury, he wondered how the national legislation of the importing country dealt with sufficient evidence of injury as a procedural prerequisite, in the absence of provisions to that effect. Concerning the examination of "all factors having a bearing on the state of the industry in question", he asked in what way this examination of all factors had been conducted. With respect to the scope of "domestic industry", he suspected that the measure had been taken in the absence of "sufficient evidence of injury" and he asked for clarification. Concerning the principal cause of injury, he further asked which other factors had adversely affected the industry in question, and how the allegedly dumped imports had constituted the principal cause of injury. Finally, he referred to the question of the determination of the dumping margin. He also pointed out that the disregard by the United States authorities of the home-market price had been in violation of Article VI of GATT which provided that the export price should be compared with the home-market price in so far as the latter existed. With respect to section 205(b) of the United States Anti-Dumping Act, he requested evidence of why the home-market price had been considered inadequate as a basis for the comparison with the export price. On the question of sales at a loss, he pointed out that the United States authorities would determine that sales had been made in the market of his country at less than cost of production, unless the exporters were willing to supply information on their cost of production. He also asked for evidence that all the conditions for disregarding sales at less than the cost
of production in the determination of the home-market price had been fulfilled.
On the question of the calculation of "constructed value" he stressed that the
provisions of Article 206(a) of the United States anti-dumping law allowed a dis­
cretionary determination on profit which violated Article 2(d) of the Anti-Dumping
Code.

22. Another member of the Committee stressed that the initiation of an investi­
gation should be made on request by the industry affected, with clear evidence of
dumping and injury, as stipulated in Article 5(a) of the Anti-Dumping Code. He
further pointed out that the Code did not require that notice of an opening of an
investigation be given. Moreover, it was essential to ascertain that the complai­
nant represented a major part of the total domestic production. Through a proper
formulation of the anti-dumping questionnaire, the question of the market share
represented by the complainant could easily be solved. In the case of ex officio
procedures the criteria of Article 5(a) had to be fully met with evidence both of
dumping and of injury. As to the examination of injury on a regional basis, the
provision of the Code relating to the definition of injury were much stricter.

23. The representative of the United States stated that the consideration by his
authorities of the complaints and of the responses by the concerned parties had
been fully in agreement with the Code requirements. He stressed that it was a
mistake to believe that the attitude of total lack of co-operation on the part of
the exporters could in any way lead to a favourable result. On the question of
insufficient reasons for the decision and the criteria applied, he observed that
the information had been made available to interested parties, and that his autho­
rities had fully explained the grounds for their decision. He pointed out that in
the petition by the Gilmore Steel Corporation the injury allegation had been
adequate to justify an investigation. The criteria of market price suppression, reduced profit ability, increased market share by the imported product, and reduced employment in the United States, were all met. He observed that "all factors having a bearing on the state of the industry in question" had been examined and would be considered in further proceedings. As to the definition of "domestic industry", he stated that injury to a portion of the industry could not generally be isolated from the injury incurred by the entire industry. On the question of the principal cause of injury, he observed that it was the position of the United States that the language of the Code had not necessarily to be reproduced either in the national statutes or decisions. The spirit of the Code was more important and in this specific case there had been an initial determination of sufficient sales at a less than fair value. He stressed that the exporters had submitted information, but that his authorities had not been able to use these data. Article 2(d) of the Code permitted the disregard of these data when they related to sales not in the ordinary course of trade. Consistent sales below cost of production had been found by his authorities. Section 205(b) stipulated that the home market price had to be disregarded and reference had to be made to the second criterion, i.e. third-countries export price in cases of too numerous sales at a loss. The interested parties had declined to give the United States authorities any third-country export prices, and the third criterion, a constructed price, had therefore been used. He furthermore rejected the suggestion that applying a pre-tax profit margin of 8 per cent was unfair. He added that the cost of production amendment contained in the Trade Act was a significant improvement of the United States anti-dumping law. With respect
to the confidentiality of the information submitted by the interested parties, he underscored that all reasonable steps were taken by his authorities to safeguard the confidential nature of the data collected.

24. In respect of the notice published by the United States Government, the representative referred to in paragraph 21 above reiterated that he was not yet convinced of the necessity of initiating an investigation in this case. He questioned the representativeness of the firms which supplied less than 1 per cent of the United States market. With regard to the transparency of the procedure of initiation he asked for additional data which could justify the injury determination.

25. With respect to the principal cause of injury, one member of the Committee supported the view expressed by the representative of the United States by stating that the practice followed by his country's authorities had been practically the same as the practice of the United States administration.

26. Taking up a case in the report of the United States, a member of the Committee pointed out that due allowances had not been made in the determination for all differences affecting the price comparability of the product in question as prescribed in Article 2(f) of the Code. He requested therefore that an expeditious revision of the determination of sales at less than fair value should be initiated. The representative of the United States replied that allowance had been made for all cost differentials which according to the evidence provided were relevant in this case. He stated that at any rate further evidence could be provided should a final injury determination be made.
27. One member of the Committee referred to the case concerning water circulating pumps reported by the United States which had also been discussed at a previous meeting (BISD 23S/13, paragraph 9). He stressed that the change in the ownership of the firm constituted such a change in the circumstances that a reconsideration of the case was warranted as provided in Article 9 of the Code, in particular if the new owner made a request to this effect offering a price undertaking. The representative of the United States replied that a change of ownership in itself was in his opinion not a factor that warranted an automatic reopening of the investigation under Article 9. He pointed instead to the legal possibilities in existence in his country to apply for a discontinuance of the case or for a reconsideration of the injury determination. He added that anti-dumping duties were assessed on an entry-by-entry basis and thus limited to sales at less than fair value.

28. In a reply to a question, the representative of Japan explained that the report of his country should be interpreted to say that no anti-dumping actions whatsoever had taken place during the period.

29. After some discussion on the analytical inventory of problems and issues arising under the Code and its application by the parties to the Code, the Committee invited its members to submit, if they so wished, by 15 December 1977 lists of issues in the anti-dumping field which they wished to be discussed at a future meeting of the Committee.
### Summary of Anti-Dumping Activities

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<th>Australia</th>
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<td>3. Cases on which provisional action taken</td>
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