

GENERAL AGREEMENT ON TARIFFS AND TRADE

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CONTRACTING PARTIES
Fourteenth Session

REPORT OF GROUP OF EXPERTS ON ANTI-DUMPING AND COUNTERVAILING DUTIES

1. The terms of reference of the Group, which were suggested by Norway and Sweden and adopted by the CONTRACTING PARTIES at their thirteenth session, are set out in document L/908. The Group met in Geneva from 13 to 17 April 1959.
2. Mr. V. Pochelu (France) was appointed Chairman of the Group. The membership of the Group is shown in paragraph 1 of Annex A.
3. The list of observers is given in paragraph 2 of Annex A.
4. At the outset of their discussions, the Group agreed that it was essential that countries should avoid immoderate use of anti-dumping and countervailing duties, since this would reduce the value of the efforts that had been made since the war to remove barriers to trade. These duties were to be regarded as exceptional and temporary measures to deal with specific cases of injurious dumping or subsidization. The Group also agreed that they were not concerned with questions of policy which might lead to changes in the terms of Article VI of the General Agreement, although they might try to clarify the meaning of certain terms in that Article. Their main concern was with the exchange of information regarding the technical requirements of existing legislation on anti-dumping and countervailing duties, and the experience gained from the operation of such legislation. In view of the limited time available, the Group confined their discussions to anti-dumping duties and were not able to deal with questions on countervailing duties, but have suggested (see paragraph 24 of this report) that these should be the subject of study at a later date. As a result of their exchanges, the Group was able to reach understandings on various points, and these are set out in the report with the hope that they will be of assistance to contracting parties in the use of any anti-dumping or countervailing measures which might be necessary, in the spirit of the provisions of the General Agreement.

"Export Price"

5. In their discussion on the first point for study in their terms of reference, the Group noted that although paragraph 1 of Article VI of the General Agreement refers to the price at which products are introduced into the commerce of another country, the same paragraph later speaks of the price of the product "exported".

The Group concluded that the latter was a guide as to how the "dumped price" should most appropriately be established. The Group further noted that paragraph 1 of Article VI also stipulated that "due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability". In view of this, it seemed that the essential aim was to make an effective comparison between the normal domestic price in the exporting country and the price at which the like product left that country, not the price at which it entered the importing country.

6. The Group took the view that it was the export price that had to be compared with the normal domestic price and agreed that the export price would ideally be the ex-factory price on sales for export; an equally satisfactory price would be the f.o.b. price, port of shipment. In the exceptional case where the actual f.o.b. price on an invoice could not appropriately be used (for example, where the export sale was between associated houses), the export price might be taken to be a notional f.o.b. price calculated by making adjustments such as would normally be made to convert a c.i.f. or other price to f.o.b. The aim should in any event be to arrive at a price which was genuinely comparable with the domestic price in the exporting country.

Normal value: adjustments for quantities and sales conditions

7. The Group first considered the problem of the determination of the normal value or the domestic market price in the exporting or producing country in the light of the definition in paragraph 1(e) of Article VI of the General Agreement, i.e., where the price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country. In the course of their discussions, the Group noted that the legislation of some countries did not make provision for adjustments to take account of differences in quantities sold on the home market and quantities exported; some members of the Group took the view that if there were differences in these amounts these should be taken into account in order to meet fully the requirement in paragraph 1 of Article VI that "due allowance shall be made in each case for differences in conditions and terms of sale". The Group recognized that, while it was logical and reasonable to make adjustments to take account of different quantities and that countries should follow the general principle of adjustments in each case, difficulties might nevertheless arise in securing the necessary information on which such adjustments should be based. Furthermore, it was thought that each case had to be considered on its merits in the light of the objective of comparison of like quantities.

Normal value: other factors for comparison

8. The Group further agreed that in order to effect a true comparison between the export price and the normal value of the product in the home market, countries should aim at a comparison of prices at the same level in

the trade - e.g., wholesale - and at the same date or dates as near to each other as possible. They should also take into account any such relevant factors as differences in taxation.

Use of average normal values

9. The Group discussed the problems that arose from the fact that rarely was there only one selling price of a product on the domestic market. More frequently, there were a whole range of different domestic prices for a particular product, varying according to the quantity sold and the terms of individual contracts. The Group agreed that, despite the difficulties of determining the normal domestic price in the exporting country where these circumstances occurred, it would not be desirable to adopt a uniform system of averaging of relevant price quotations; such a system could in certain circumstances nullify attempts to deal with genuine dumping and could in other circumstances lead the importing country to conclude that there was a margin of dumping where in fact dumping had not occurred. The Group agreed that the use of weighted averages should be confined to cases where it was impossible to use a more direct method of establishing the normal domestic price.

Order in which the criteria of paragraph 1 of Article VI should be used

10. The Group next considered the problem of the determination of the normal value or the domestic market price in the exporting or producing country in the light of paragraph 1(b) of Article VI which states that "in the absence of such domestic price (as defined in paragraph 1(a) of Article VI - see paragraph 7 of this report) a product is to be considered as being introduced into the commerce of an importing country at less than its normal value if the price of the product exported from one country to another is less than either (1) the highest comparable price for the like product for export to any third country in the ordinary course of trade or (2) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit". The Group had some discussion on whether the criteria in paragraph 1(b)(i) and paragraph 1(b)(ii) of Article VI were alternative and equal criteria to be used at the discretion of the importing country, or whether paragraph 1(b)(ii) could only be used in cases where it had not been possible to determine a normal market value under paragraph 1(a) or paragraph 1(b)(i) of Article VI. The Group was of the opinion that paragraph 1(b)(i) and paragraph 1(b)(ii) laid down alternative and equal criteria to be used at the discretion of the importing country but only after it had failed to establish a normal market value under paragraph 1(a) of Article VI. The Group noted that the legislation of some countries required the use of the criterion under paragraph 1(b)(i) while the legislations of other countries required the use of the criterion under paragraph 1(b)(ii). The Group thought that no order of priority for these two criteria could be imposed but, though it might often be easier to collect the necessary information for the use of the criterion under paragraph 1(b)(i), the use of the criterion under paragraph 1(b)(ii) was sometimes preferable in that, since

it was normal and reasonable for different prices to be charged in different markets, the use of the criterion under paragraph 1(b)(i) could often produce misleading results. The Group agreed that the criteria under paragraph 1(b) of Article VI could only be used where no domestic price existed as defined in paragraph 1(a) or in cases where there were sales to the home market but where it was not possible to determine normal value from these sales, for example because they did not fall within "the ordinary course of trade" as required in paragraph 1(a).

Indirect dumping

11. In their examination of the problem of the determination of the normal value or the domestic market price in the exporting or the producing country, the Group then considered the question of dumping of goods where the exporting country is not the producing country of the goods concerned. Most members of the Group reported that their countries had had little or no experience of indirect dumping and that, where legislation existed to deal with this problem, the legislation had not been used. The Group noted that since the wording of Article VI, paragraph 1(a), referred only to the comparable price in the exporting country, there was some doubt whether action against indirect dumping was strictly in accordance with the letter of the Agreement. However, despite this doubt, the Group were generally of the opinion that it was reasonable for countries to have the right to protect themselves against indirect dumping (whether of processed or unprocessed goods), particularly in view of the provision of article VI which permits the imposition of countervailing duties to offset the effects of subsidies whether these are granted in the producing country or the exporting country, and in this connexion the Group noted the conclusions recorded in paragraph 5 of the Report of the Review Working Party on Other Barriers to Trade (BISD, Third Supplement, page 223).

Like product

12. In discussing the meaning of the term "like product", the Group agreed that this term should be interpreted as a product which is identical in physical characteristics subject, however, to such variations in the presentation which are due to the need to adapt the product to special conditions in the market of the importing country (i.e. to accommodate different tastes or to meet specific legal or statutory requirements). Some members drew attention to the fact that such an approach was also in conformity with the note concerning the term "like product", referred to in Article VI, in the Analytical Index to the General Agreement where it is stated that the words "'like product' meant in this instance the same product". For the purpose of an adjustment as mentioned above, however, downward or upward corrections of the price of the like product should be permitted so as to take into account the differences in the type of the products destined for the home market and for the various export markets.

13. The Group pointed out that the meaning of "like product" as agreed by them should not be interpreted either too broadly so as to cover products of a different kind with higher prices on the internal market, nor too stringently so as to elude the application of paragraph 1(a) of Article VI.

14. During the discussion of the term "like product" the Group found some discrepancy in the English and French texts of paragraph 1 of Article VI. In the English text the words "the like product" are used and in the French text the words "un produit similaire", which are slightly vaguer, are used. The Group nevertheless thought that this slight discrepancy between the two texts would have no practical effect if the term "like product" were interpreted as suggested by the Group.

Material injury

15. At the outset of their discussions on the use of the injury concept, the Group stressed that anti-dumping measures should only be applied when material injury, i.e., substantial injury, is caused or threatens to be caused. It was agreed that no precise definitions or set of rules could be given in respect of the injury concept, but that a common standard ought to be adopted in applying this criterion and that decisions about injury should be taken by authorities at a high level. It was suggested that legislation which provided for "injury" only should be applied as if the word "material" were stated therein.

16. With respect to cases where material injury is threatened by dumped imports, the Group stressed that the application of anti-dumping measures had to be studied and decided with particular care.

17. In concluding the discussion on the use of the injury concept and in relating it to the term "industry" it was the general consensus that, before deciding to impose an anti-dumping duty, the importing country should ensure that dumped goods:

- (a) are causing material injury to an established industry; or
- (b) clearly threaten material injury to an established industry; or
- (c) materially retard the establishment of a domestic industry.

The term "industry"

18. The Group then discussed the term "industry" in relation to the concept of injury and agreed that, even though individual cases would obviously give rise to particular problems, as a general guiding principle judgements of material injury should be related to total national output of the like commodity concerned or a significant part thereof. The Group agreed that the use of anti-dumping duties to offset injury to a single firm within a large industry (unless that firm were an important or significant part of the industry) would be protectionist in character, and the proper remedy for that firm lay in other directions.

Provisional anti-dumping measures

19. The Group discussed the question of provisional anti-dumping measures. It was recognized that in certain circumstances the use of such measures might be justified in order to limit the material injury to a domestic industry, even though it was noted that Article VI made no mention of them. On the other hand, it was generally felt that provisional measures should be used sparingly and for the shortest possible time in order to interfere as little as possible with normal trade and in order that they should not assume a protectionist character. For this reason, any such measures should preferably be introduced after the responsible administration of the importing country had carried out an initial confidential investigation that revealed that there was a serious case to consider further. Moreover, where possible, the provisional measures should not lead to a situation in which either the exporter or the importer of the product under investigation would suffer if the eventual decision were not to impose an anti-dumping duty. The Group agreed that it was desirable that such provisional measures should not be of retroactive application and that they should preferably take the form of bond or cash deposits as mentioned in Interpretative Note 1 to paragraphs 2 and 3 of Article VI. Furthermore, they should be based on provisions which would, as far as possible, permit the importer to determine the maximum duty which could be assessed.

Hearings and collection of information

20. The Group recognized the importance and the attention which should be given to the form and the scope of the investigations carried out in order to obtain the necessary evidence on which to make decisions in anti-dumping cases. However, as countries had not submitted to the Group detailed information on their current practices in this respect, the Group suggested that the secretariat be invited by the CONTRACTING PARTIES to collect such information which could then be studied together with the other problems mentioned in paragraph 24.

Decision and publication of anti-dumping measures

21. There was agreement that decisions concerning the application of anti-dumping measures should be taken at a high administrative level and that all such decisions should be published in an official form. It was also suggested that the reasons for the decision should be made public in the appropriate form so as to avoid the impression that the decisions had been taken in an arbitrary way.

Retroactive effect of the imposition of anti-dumping duty

22. The Group stressed that final decisions should not have any retroactive effect, except that in cases where provisional measures were applied it should be permitted to collect anti-dumping duties against the merchandise covered by such provisional measures.

The duration of validity of anti-dumping decrees

23. It was generally agreed that anti-dumping duties should remain in force only so long as they were genuinely necessary to counteract dumping which was causing or threatening material injury to a domestic industry. In this connexion it was noted that any country imposing a duty would naturally be free to review it and the Group agreed that it might well be desirable for it to do so from time to time in the light of information at its disposal. It was further agreed that it should be open to exporters of the product concerned, if they considered that they had the necessary evidence, to request the importing country to carry out a review of the facts. This might be carried out confidentially in order to avoid disturbing trade.

Subjects for discussion at a later date

24. The Group suggested that the CONTRACTING PARTIES might consider it advisable to arrange for further discussions to be held at a later date on some questions which, in view of the limited time available, had not been fully covered, and on certain other questions on which the Group had no discussion. These points are listed below:

- (a) Initiative relating to anti-dumping actions.
- (b) The preselection system.
- (c) Basic price systems.
- (d) "Sales costs" and "production costs" where the "production costs" criterion is used to establish "normal value".
- (e) Investigations in exporting countries.
- (f) Governmental or administrative hearings in importing countries.
- (g) Prior contacts between governments concerned.
- (h) Imposition of anti-dumping duties on behalf of third countries.
- (i) Relationship between the application of anti-dumping duties and the most-favoured-nation clause.
- (j) Freight dumping.
- (k) "Sales dumping" by importers selling at a loss.
- (l) Countervailing duties in general.

25. The Austrian expert drew attention to the general reservation made by his Government (L/963/Add,6).

26. Finally the Group suggested the CONTRACTING PARTIES should call upon the secretariat to collect all information necessary to bring the GATT publication "Anti-Dumping and Countervailing Duties" up to date and to issue this information in a special document.

ANNEX A

1. The Group consisted of the following members:

Mr. Theo B. Audett (United States)	
Dr. O. Benes (Czechoslovakia)	
M. P.H. Bouchard (France)	M. J.M. Gimon (France)
Mr. P.W. Carey (United Kingdom)	Mr. S.D. Wilks (United Kingdom)
Mr. B. Friedman (Sweden)	Mr. S.E. Orrö (Sweden)
Mr. L.V. Goldwater (Australia)	
Dr. E. Horn (Federal Republic of Germany)	Dr H. Laubereau (Federal Republic of Germany)
Mr. H.J.P.L. Kruger (South Africa)	
Mr. I. Lundsten (Norway)	
M. M. Maquet (Belgium)	M. F. de la Barre d'Erquelines (Belgium)
Mr. H. Miyazaki (Japan)	Mr. J. Kato (Japan)
Mr. T.H. Mills (Canada)	
Mr. T.R. Pittard (Rhodesia/Nyasaland)	
Mr. H. Simonet (Austria)	

M. V. Pochelu (France) was appointed Chairman of the Group.

2. Observers were nominated by the following countries and organizations:

Italy:	M. P. Savini
Switzerland:	M. A. Schnebli
Organisation for European Economic Co-operation:	M. E. Poincilit Miss M.A. Cotterill
European Economic Community:	
Commission:	M. R. Jaume M. P. Luyten
Council:	M. K.D. Jagstaidt