GENERAL AGREEMENT ON TARIFFS AND TRADE

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Group of Experts on Anti-dumping and Countervailing Duties

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ANTI-DUMPING AND COUNTERVAILING DUTIES

Memorandum received from the United Kingdom Government

1. The United Kingdom Government considered that it might be useful to summarize the United Kingdom's views on some of the questions which have been suggested for discussion at the second meeting of the group of experts on anti-dumping and countervailing duties.

I Initiative relating to anti-dumping actions

2. The United Kingdom anti-dumping legislation empowers the Board of Trade to initiate action. Since, however, it is the view of the United Kingdom that sparing use should be made of anti-dumping powers, and that the criterion of material injury to an industry should be taken very seriously, in practice the Board of Trade await applications for duties from industries which consider themselves injured or threatened with injury as a result of dumping before making enquiries in a particular case. The fact that the initiative is expected to come from the affected industry is emphasized by the requirement (as a matter of policy, not law) that the applicant for a duty shall produce at least *prima facie* evidence both of dumping and material injury before the Board of Trade will undertake to consider the application.

II The preselection system

3. It follows from what has been said above that the United Kingdom favours the preselection system; that is, an anti-dumping investigation is carried out only in respect of those commodities where a specific application, substantiated by some evidence of dumping and resultant material injury, has been made, and not in respect of all goods which enter the United Kingdom at a price below the normal value in the exporting country.

III Basic price systems

4. While the United Kingdom does not itself operate a basic price system in relation to anti-dumping action, the United Kingdom Government consider that the type of system operated by the Swedish Government and described in paragraph 31

of the Swedish Memorandum L/943 is reasonable where its effect is to limit anti-dumping action in a particular case to the degree of the dumping judged to be materially injurious, allowing dumping which is not so judged to continue. This is consistent with the spirit of Article VI of the GATT.

IV "Sales costs" and "production costs" where the "production costs" criterion is used to establish normal value

5. In the United Kingdom view, there is advantage in national legislation laying down rules for the determination of the cost of production of goods where this criterion has to be used for the determination of normal value. Detailed provisions have been made for this purpose under the United Kingdom legislation. "Production costs" should presumably include all those items involved in the cost of producing an article. In the United Kingdom regulations the term includes the cost of materials (including components), wages and salaries, overheads, depreciation on plant and machinery, interest on capital outlay and the cost of interior packing ordinarily sold with the goods when they are sold retail. Exterior packing would not be included. To this would be added a reasonable sum for profit if the actual profit were not ascertainable.

6. "Sales costs" would appear to be relevant rather to the determination of what adjustments should be made to the domestic and export prices of an article in order to ensure proper comparability in the determination of normal value (that is, when the "production costs" criterion is not being used). If, for example, heavy advertising was necessary in respect of a product sold on the domestic market but not on the same article sold for export, this could be regarded as a legitimate sales cost and should then be deducted from the domestic price when the latter was compared with the export price. But in the United Kingdom sales costs would not normally be included in production costs.

V Investigations in exporting countries

7. The United Kingdom recognizes the delicacy of this question. It is clearly desirable that anti-dumping action should not be taken until the facts about prices have been established beyond reasonable doubt. Sometimes this is only possible by discussion with the overseas manufacturers or exporters and by the examination of original documents (invoices, sales records, etc.). The Board of Trade only carry out such investigations with the consent of the overseas government and industry concerned. It is axiomatic that any information about prices or the nature of the trade gained during such an investigation should be treated as strictly confidential and used only for the purpose of the anti-dumping enquiry. Despite the difficulties inherent in such investigations, the United Kingdom Government considers that they are preferable to anti-dumping action taken on ill-founded premises or on incomplete or inadequate information.

VI Governmental or administrative hearings in importing countries

8. There are no public hearings in the United Kingdom in respect of anti-dumping applications. But an opportunity is given to all parties with a bona fide interest in the sale, consumption or use of the commodity concerned to make whatever representations they wish to the Board of Trade, either orally or in writing. The majority of applications are publicly advertised in the press, and representations invited. If, exceptionally, there is no time for this procedure the principal parties who are known to have an interest in the case are informed of the application and invited to express their views. It is the normal practice for the Board of Trade to give a summary of the application on a confidential basis to objectors, and a summary of objections to the original applicants. Overseas governments are normally notified shortly before an application is publicly advertised.

9. In the United Kingdom view public hearings are not necessary as long as a reasonable opportunity is afforded to all interested parties to comment and give information. A disadvantage of a public hearing is that manufacturers and traders may feel reluctant to divulge details of their costs and prices, although they may be prepared to reveal these on a confidential basis to a Government Department.

VII Prior contacts between governments concerned

10. As explained in the preceding paragraphs the Board of Trade notify overseas governments as a matter of courtesy before publicly advertising the fact that they are considering an application for an anti-dumping duty. In the United Kingdom view the responsibility for dumping normally rests with the industry or firm concerned and not with the Government and it is therefore unnecessary and undesirable that applications in respect of dumping should normally involve discussion between governments. Some governments exercise more control over their industries than others but since the factual information concerning prices has ultimately to come from the industry selling the goods concerned the United Kingdom favours direct contact with the industry.

11. The foregoing does not apply in the same way to applications for countervailing duties. Subsidies are usually the responsibility of governments or quasi-governmental authorities and here it is appropriate for the government of the importing country to discuss the matter with the government alleged to be giving the subsidy. For this reason the United Kingdom practice is for the Board of Trade to discuss with the overseas government concerned before publicly advertising an application for a countervailing duty in the hope that the matter may be settled without resort to duties.

VIII Imposition of anti-dumping duties on behalf of third countries

12. Article VI of the GATT allows, with certain conditions, the imposition of anti-dumping or countervailing duties by one country on the goods of another when an exporting industry of a third country suffers or is threatened with material injury as a result of the dumping or subsidization. The United Kingdom legislation incorporates this permissive power.

13. The onus of making out a case for the imposition of duties on behalf of an industry in a country other than the importing country should clearly rest with that industry or its government. The complainant should establish to the satisfaction of the government of the importing country both the facts of dumping or subsidization and of resultant material injury. If the government of the importing country is then satisfied as to the facts of the case and on material injury it will presumably decide, in the light of its own national interest, whether or not a duty should be imposed. In seeking the consent of the CONTRACTING PARTIES, in accordance with the requirement of paragraph 6 of Article VI of the GATT, the government of the importing country would naturally expect to have the support of the government of the country whose exporting industry is materially injured by the dumping or subsidization in presenting the case for a duty.

14. The question has been raised as to what measures can be taken by an exporting country which suffers from dumped competition from another exporting country if the government of the importing country refuses to take anti-dumping measures. In the United Kingdom view, the decision whether or not to impose anti-dumping or countervailing duties on behalf of an industry in a third country should rest solely with the importing country which, in taking its decision, will presumably have taken into account its relations with the other exporting country which has made the complaint. What would be unacceptable, in the United Kingdom view, is that any retaliatory measures on the part of the complainant should be allowable because his complaint is not acted on by the importing country. Not all contracting parties possess anti-dumping powers and those that do should clearly be free to use them or not as they think fit, subject to their various international obligations.

IX Relationship between the application of anti-dumping duties and the most-favoured-nation clause

15. It has been suggested (by the Czechoslovak Government in paragraph 6 of their memorandum reproduced in L/943 of 26 November 1958) that if an anti-dumping duty is imposed on goods from one country it should be imposed as well on similar dumped goods from other sources in order to ensure that there is no discrimination and no infringement of the most-favoured-nation principle. Most-favoured-nation treatment, however, is relevant to the ordinary protective tariff; anti-dumping action is a separate matter and is the legitimate method endorsed by the GATT for the offsetting of a certain form of competition which becomes unfair when it is materially injurious. In the United Kingdom view, it would be wrong for an importing country to apply anti-dumping duties automatically to the products of other countries than that which is principally the subject of an application, unless those products are dumped to the same degree and are equally the cause of material injury. It might happen that the dumping from one source was at prices which might be considered materially injurious whereas the products from another country, although dumped, were not injurious to the same extent because the degree of dumping was less or the quantity of imports markedly smaller. In such circumstances it might very well be reasonable to impose an anti-dumping duty on the goods from the one source and not on those from the other, and in the United Kingdom view there would be no conflict with the most-favoured-nation principle in such action.

X "Sales dumping" by importers selling at a loss

16. It sometimes happens that importers well an imported product at a loss, for example in order to gain a foothold in a market. However, provided that the f.o.b. export price of the article is not below the normal domestic value of the comparable article in the country of export this is not dumping in the GATT sense. It could become dumping if the importer were in some way recompensed for his loss by the exporter. If the Board of Trade suspected that there were separate payments between the exporter and importer outside the invoice value, they would regard the import of the goods in question as a sale between a buyer and a seller not independent of each other and would then determine the export price by reference to the price of the imported goods when sold on the United Kingdom market, making the necessary deductions for such items as freight and insurance in order to arrive at a notional f.o.b. price. Unless an importer who sells at a loss is recompensed in some way by the exporter he is unlikely to continue the practice for any length of time or on a sufficient scale to cause material injury to the industry in the importing country.

XI Methods of dealing with the dumping of commodities for which floor prices are fixed by international stabilization programmes

17. In deciding whether or not to act against the dumping of a commodity for which there is a floor price fixed by an international stabilization programme, the importing country will presumably consider the effect of such a programme in relation to the question of any injury caused or threatened by the dumping and also in the determination of where its national interest lies. For example, if an importing country is a party to an international stabilization programme with fixed floor prices and goods are then imported at these prices but are nonetheless technically dumped, it may well consider that it is not a suitable case for anti-dumping action. On the other hand, the existence of a stabilization programme with floor prices need not in itself prevent the use of anti-dumping powers consistently with Article VI.

XII Countervailing duties

18. Much of what has been said above about anti-dumping duties applies also, in the United Kingdom view, to countervailing duties. Article VI of the GATT provides that an importing country may impose countervailing duties on goods which have been the subject of an export or production subsidy, whether direct or indirect, and the import of which causes or threatens material injury to a domestic industry. The fact that certain subsidies are permitted under Article XVI of the GATT clearly does not take away the right of an importing country to impose a countervailing duty under Article VI on goods affected by such subsidies. In the United Kingdom view, the criterion of material injury is as important in countervailing as in anti-dumping cases, although this is not reflected in the legislation of all countries.

19. In the United Kingdom legislation the term "subsidy" relates only to the giving of a bounty or subsidy on the production or export of goods by a government or other similar authority. It does not cover any private subsidy, for example the subsidization of one section of an industry by another section. It is for this reason, among others, that the United Kingdom Government normally discusses applications for countervailing duties with the government of the exporting country privately before publicly advertising them, in an effort to reach a settlement without resort to duties.

20. A particular problem in dealing with subsidies, especially if they are indirect in form, is the measurement of their extent. Article VI of the GATT appears to recognize this difficulty when in paragraph 3 it provides that no countervailing duty shall be levied in excess of an amount equal to the estimated bounty or subsidy determined to have been granted on the manufacture, production or export of a product. This is another reason why the United Kingdom Government favour discussion with the government of the exporting country; the real extent of the subsidy may thus be ascertained and an excessive duty avoided.

XIII The advisability of a procedure for notifying the CONTRACTING PARTIES whenever a country introduces anti-dumping or countervailing duties

21. In the United Kingdom, anti-dumping or countervailing duties are imposed by an Order which is published and publicly debated in the House of Commons. They are then included in the published tariff until such time as they are repealed. The United Kingdom Government would see no objection to advising the CONTRACTING PARTIES, through the secretariat, of any duties imposed; and there might be advantage in a record of such duties imposed by all contracting parties being kept by the secretariat.