

GENERAL AGREEMENT ON TARIFFS AND TRADE

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

Introduction;

1. In terms of the Decision of 13 May 1959 by the CONTRACTING PARTIES at their fourteenth session, the Group met again in Geneva from 18 to 22 January 1960 to consider the subjects mentioned in paragraph 24 of its previous report (document L/978 of 24 April 1959) and those subjects raised by the CONTRACTING PARTIES at the aforesaid meeting (document SR.14/2 of 19 May 1959, refers).
2. Mr. V. Pochelu (France) continued as Chairman of the Group. The membership of the Group is as shown in Part 1 of Annex A.
3. The list of observers is given in Part 2 of Annex A.
4. This report should be read in conjunction with the earlier report mentioned above and in particular, should take into account the considerations in paragraph 4 of that document.

Initiative relating to anti-dumping actions

5. The Group agreed that, since the criterion of material injury was one of the two factors required to allow anti-dumping action, the initiative for such action should normally come from domestic producers who considered themselves injured or threatened with injury by dumping. Governments would, however, have the right to take such initiative when the conditions set forth in Article VI existed.
6. As regards the application of anti-dumping duties in the interests of third countries, the Group was of the opinion that the initiative should come from the third country concerned.

a pre-selection system

7. In considering the pre-selection system in comparison with other systems the Group of Experts thought it desirable to re-affirm the following principles:

(a) Anti-dumping duties should never be used for the purpose of ensuring normal protection for a domestic industry; such protection was the task of the tariff.

(b) The imposition of anti-dumping duties was justified only:

(i) where a product was in fact found to be dumped, and,

(ii) where the dumping caused or threatened material injury to a domestic industry - the judgment of which rested with the governmental authorities of the importing country.

8. The Group considered that the ideal method of fulfilling these principles was to make a determination in respect of both dumping and material injury in respect of each single importation of the product concerned. This, however, was clearly impracticable, particularly as regards injury.

9. Failing such a method, the pre-selection system seemed to be the most satisfactory, since under such a system anti-dumping duties were applied only after a specific complaint had been investigated and a finding of dumping and material injury made. Provided the pre-selection system was administered at a high level, it could substantially reduce the number of cases in which anti-dumping duties were actually applied. An additional advantage of the system was that it involved a certain amount of publicity which in itself might serve as a deterrent to dumping.

10. The Group was, in general, of the opinion that anti-dumping measures adopted after the pre-selection procedure had been followed should be directed only against such firms as had been found responsible for the dumping, or at most against those countries from which the dumped imports came.

Basic price systems

11. The Group recognized that, where basic price systems were operated so as to limit anti-dumping action in a particular case to the margin of dumping judged to be materially injurious, these systems were fully within the terms of Article VI and in fact constituted part of a pre-selection system. Nevertheless, the majority of the Group considered that such systems might be open to abuse and they were not therefore in favour of their adoption. Most members of the Group felt that it was, in any case, understood that the basic price system was satisfactory only provided that:

(a) The basic price was less than, or at most equal to the lowest normal price in any of the supplying countries;

(b) domestic importers or foreign exporters had in all cases the opportunity to demonstrate that their products, although they were sold below the basic price, were not sold at a dumping price, and

(c) the governments using this system periodically revised the basic price on the basis of the fluctuations of the lowest normal price in any of the supplying countries.

"Production costs" and "sales costs" where the latter are a part of production costs

12. It was presumed by the Group that the term "production costs" included all those items involved, directly or indirectly, in the cost of producing an article. While the precise apportionment of these costs to various headings might differ in various countries, the term would normally cover such items as, for example, the cost of materials and components, labour, general overheads, depreciation on plant and machinery and interest on capital investment.

13. The Group noted the provision in paragraph 1(b)(ii) of Article VI that to the cost of production, when this criterion was being used for the determination of normal value, there was to be "a reasonable addition for selling cost and profit". The effect of this was to construct what might be regarded as a notional ex-factory sales price on the domestic market of the exporting country in circumstances where there was no such actual price or not one that could be used for the determination of normal value. As in the case of "production costs", the practices of various countries differed on the items to be included under the heading of "selling costs". Typical examples were such items as advertising costs and sales commission. The Group agreed, however, that whatever the particular method used for determining both production and sales costs the aim should always be to arrive at a normal value which was genuinely comparable with the export price. Only thus could it be properly determined whether or not merchandise was being sold at less than its normal value, in the meaning of Article VI.

Investigations in exporting countries

14. The Group of Experts took note of the practices followed by various countries in carrying out investigations in exporting countries (document L/1071).

15. The majority of the Group recognized that an investigation by an official representative of an importing country in an exporting country might raise delicate problems. However, the Group was unanimous in recognizing that the obligation to impose anti-dumping measures only in cases where all the facts justifying the action were clearly apparent - in particular, the existence of dumping prices - led to the necessity of carrying out investigation in the exporting country concerned when the information collected did not appear to be adequate. It was duly stressed, however, that such investigations should not be initiated unless there were valid reasons to suspect the existence of dumping practices.

16. The Group was of the opinion that it would be desirable that a country wishing to carry out such an investigation should first approach the government in the exporting country unless it was known that the government in the exporting country did not object to such investigations being carried out in its territory. The Group believed that the government of the exporting country concerned would not oppose the investigation considering that to some extent this would be in the interest of its exports.

17. The Group stressed that any information gained during an investigation should be treated as strictly confidential and used only for the purposes of the enquiry.

Governmental or administrative hearings in importing countries

18. The Group took note of the practices followed as regards hearings in importing countries. Several systems were at present in force: public hearings, private hearings, opportunity afforded to all interested parties to be heard when the results of investigations were submitted to Parliament, etc.

19. Regardless of the system, the Group was of the opinion that it would be desirable not to impose an anti-dumping duty (by way of decrees or ordinances, etc.) unless the interested parties had been afforded an opportunity to be heard by the competent authorities.

Contacts between governments concerned prior to the imposition of anti-dumping measures

20. The Group was of the opinion that it would be desirable that the government of the interested country be advised, wherever practicable, before imposing any anti-dumping measure. Some members of the Group were of the opinion that in addition to considerations of courtesy between governments such contacts would be likely to limit the number of cases where anti-dumping duties were imposed.

Imposition of anti-dumping duties on behalf of third countries and opportunity for such countries to take measures to counteract dumping

21. The Group was of the opinion that the situation of third countries was fully dealt with in Article VI, paragraph 6, which related to cases where countries could levy an anti-dumping duty on behalf of third countries.
22. In these circumstances, and contrary to one of the basic principles of Article VI, paragraph 6 (a) the imposition of an anti-dumping duty was not contingent upon the existence of injury caused to an industry of the importing country, but upon injury caused or threatened to an industry of one or more third countries which were suppliers of the importing country.
23. In order to avoid any misunderstanding, the Group wished to stress that a third country, in order to justify a request to an importing country to impose measures against another country, should produce evidence that the dumping engaged in by the other country was causing material injury to its domestic industry and not only to the exports of the industry of that third country. However, in cases where the importing country granted a request from a third country, anti-dumping measures should not be imposed until and unless the CONTRACTING PARTIES had approved the proposed measure (Article VI, paragraph 6).
24. The Group, while noting that such cases might be infrequent, called the attention of the CONTRACTING PARTIES to the possibility that this procedure might be too slow for the approved measures to be fully effective. The Group felt that it should be left to the CONTRACTING PARTIES to determine whether it would be desirable to propose methods to expedite any decision which might have to be taken, for instance, by instituting a panel which could meet at short notice whenever necessary.
25. In any case, there was no doubt that the initiation of the procedures of resorting to the CONTRACTING PARTIES laid down in Article VI, paragraph 6, should be left to the discretion of the importing country. Consequently, the Group was of the opinion that where the importing country found it impossible or undesirable to grant the request from a third country which claimed injury, the third country had no right to retaliatory measures but could have resort to Articles XXII and XXIII of the General Agreement.

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

26. In equity, and having regard to the most-favoured-nation principle the Group considered that where there was dumping to the same degree from more than one source and where that dumping caused or threatened material injury to the same extent, the importing country ought normally to be expected to levy anti-dumping duties equally on all the dumped imports.

Freight dumping

27. After an exchange of views, the Group decided that what was generally known as freight dumping did not fall under the provisions of Article VI and was thus outside the terms of reference of the Group. Therefore, the Group decided to direct the attention of the CONTRACTING PARTIES to this problem. The Group further noted that the CONTRACTING PARTIES had discussed a particular case of freight dumping during the fourteenth session.

"Sales dumping" by importers selling at a loss

28. It was noted that it sometimes happened that importers sold imported products 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 was not below the normal domestic value of the comparable article in the country of export, this was 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 a refund or any other consideration was given by the exporter, this should be taken into account in determining the export price and if the consequent export price was less than the normal value, the result would be a dumping price.

29. The Group of Experts furthermore drew attention to Note 1 relating to paragraph 1 of Article VI included in Annex I to "Notes and Supplementary Provisions" to the text of the General Agreement which read:

"1. Hidden dumping by associated houses (that is, the sale by an importer at a price below that corresponding to the price invoiced by an exporter with whom the importer is associated, and also below the price in the exporting country) constitutes a form of price dumping with respect to which the margin of dumping may be calculated on the basis of the price at which the goods are resold by the importer."

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

30. The Group felt that the responsibility for ensuring the adequate implementation of international stabilization agreements affecting certain commodities should, in the first instance, be left to the bodies or institutions provided for in such agreements; this applied regardless of whether the agreements provided for floor or ceiling prices. It was the function of those institutions to deal with complaints concerning the infringement of any such agreement, in particular in cases when prices charged were lower than the fixed minimum price. Of course if while conforming with such an international agreement products were sold at a dumping price, recourse to the provisions of Article VI of GATT would be justified.

Countervailing duties

31. The Group addressed itself to the different points which appeared relevant to a study of countervailing duties. It considered that the remarks formulated earlier with respect to anti-dumping duties applied to a large extent to countervailing duties. (A notable example of where they did not apply was, of course, in respect of normal value.)
32. Article VI of the General Agreement provided that an importing country could impose countervailing duties on the products which had received, directly or indirectly, an export or production subsidy, the importation of which caused, or threatened to cause, material injury to a domestic industry. The fact that the granting of certain subsidies was authorized by the provisions of Article XVI of the General Agreement clearly did not debar importing countries from imposing, under the terms of Article VI, a countervailing duty on the products on which subsidies had been paid.
33. A large majority of the Group considered that the criterion of material injury should be an equally fundamental prerequisite for the imposition of countervailing duties as for the imposition of anti-dumping duties. However, one expert wished to call attention to the fact that the legislation of his country did not provide for injury as a criterion for the imposition of countervailing duties.
34. With respect to the meaning of the word "subsidies", a large majority of the experts considered that it covered only subsidies granted by governments or by semi-governmental bodies. Three experts considered that the word should be interpreted in a wider sense and felt that it covered all subsidies, whatever their character and whatever their origin, including also subsidies granted by private bodies. It was agreed that the word "subsidies" covered not only actual payments, but also measures having an equivalent effect.
35. Paragraph 3 of Article VI stipulated that no countervailing duty could be collected beyond the "estimated" amount of the bounty or of the subsidy granted. In order to arrive at this estimate, the majority of the Group considered it normal, and at least desirable, that the country which became aware of the existence of a subsidy and which ascertained the injury which this subsidy caused, should enter into direct contact with the government of the exporting country. It was also desirable that the latter country should give information requested without delay. This would after all be in its own interest in that it would avoid the imposition of a countervailing duty on its exports at a rate which, failing this information, might be fixed at too high a level.
36. The Group considered that it was perfectly justified that in conformity with the procedures of paragraph 4 of Article VI, countervailing duties should not be imposed on a product by reason of the exemption of such product from duties or taxes imposed on the like product when destined for consumption in

the country of origin or exportation, or by reason of the refund of such duties or taxes. If, however, it were established that the exemption or the reimbursement exceeded the real charge which the product would have to pay in the exporting country, the difference could be considered as constituting a subsidy.

Advisability of introducing a procedure whereby the CONTRACTING PARTIES are to be notified whenever a country introduces anti-dumping or countervailing duties

37. The Group expressed itself in favour of inviting contracting parties to transmit to the GATT secretariat any information relating to changes in their legislation concerning anti-dumping and countervailing duties, and also to notify the secretariat of the introduction, alteration or removal of anti-dumping and countervailing duties. The secretariat, in turn, was to inform the contracting parties of the notifications received.

38. Some experts suggested that the secretariat should submit to the CONTRACTING PARTIES during one of the two annual meetings a compilation of the anti-dumping measures and countervailing duties in force and of the changes which had occurred.

Conclusion

39. In conclusion, the Group considered that the range of problems which it had discussed at its two meetings indicated the complexity and importance of the whole subject. This underlined the need for governments to use their anti-dumping powers with great care in the recognition of the effect which such powers could have on international trade.

GROUP OF EXPERTS ON ANTI-DUMPING
AND COUNTERVAILING DUTIES

Chairman: M. V. Pochelu (France)

1. The Group consisted of the following members:

Mr. Theo B. Audett (United States)	Mr. Morris J. Fields (United States)
	Mrs. M. Potter (United States)
Dr. O. Benes (Czechoslovakia)	
Mr. P.W. Carey (United Kingdom)	
Mr. F. de la Barre d'Erquelines (Belgium)	Mr. S. Tuloen (Belgium)
	Mr. J.A. Maquet (Belgium)
Mr. J.M. Gimon (France)	Mr. R. Goldin (France)
Mr. L.V. Goldwater (Australia)	Mr. J. Somerville (Australia)
	Mr. L.D. Thomson (Australia)
Mr. H.J.P. Kruger (Union of South Africa)	
Dr. W. Mueller-Thuns (Federal Republic of Germany)	Dr. H. Laubereau (Federal Republic of Germany)
Mr. I. Lundsten (Norway)	
Mr. D.W. McGill (Canada)	Mr. F. Stone (Canada)
Mr. H. Miyazaki (Japan)	Mr. T. Goto (Japan)
Mr. S.E. Orrö (Sweden)	Mr. O. Forshell (Sweden)
Mr. W.H.B. Shaw (Federation of Rhodesia and Nyasaland)	
Mr. H. Simonet (Austria)	Mr. F. Manhard (Austria)

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

Observers (Governments)

Brazil: Mr. J.F. Mangia	Italy: Mr. P. Savini
Finland: Mr. K.V. Mäkelä	Mr. V. Fiorillo
Mr. A.K. Hämmäläinen	Yugoslavia: Mr. B. Komatina
	Turkey: Mr. N. Cuhruk

Observers (Organizations)

EEC Commission:	M. J. Dubois
	M. P. Luyten
EEC Council:	M. K.D. Jagstaidt