

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/3176

24 February 1969

Limited Distribution

Original: English

UNITED KINGDOM ANTI-DUMPING LEGISLATION

The United Kingdom mission has transmitted to the secretariat the following memorandum on the anti-dumping legislation of the United Kingdom and the text of the Customs Duties (Dumping and Subsidies) Amendment Act 1968.

The text of the United Kingdom Customs Duties (Dumping and Subsidies) Act, 1957, is reproduced on pages 146-152 of the GATT publication "Anti-Dumping and Countervailing Duties", July 1958 (ref. No. GATT/1958-2).

1. Under the Customs Duties (Dumping and Subsidies) Act, 1957, as amended by the Customs Duties (Dumping and Subsidies) Amendment Act, 1968, the Board of Trade may impose anti-dumping duties where it appears to them that dumping is taking place (as defined in Article VI of the GATT) provided they are satisfied, in the case of imports from contracting parties to the GATT, that this is causing or threatening material injury to a United Kingdom industry or is materially retarding the establishment of a new industry; and provided also that they consider it would be in the national interest to take such action. During the passage of the amending legislation in 1968, Board of Trade Ministers indicated the Board's intention to pay strict regard to the Anti-Dumping Code.

2. Under the legislation, the material injury test need not necessarily be applied in the case of imports from countries which are not contracting parties to the GATT. However, it is the Board's policy to apply this criterion in the case of non-GATT members also.

3. Action is normally initiated by way of an application from the United Kingdom industry concerned, "industry" for this purpose being as defined in the Anti-Dumping Code. The Board of Trade also have power to act on the basis of an application from an industry in the territory of another contracting party to the GATT if it can be shown that material injury is being caused or threatened to that industry.

4. Before a case is accepted for full investigation, the Board require the applicants to satisfy them that there is prima facie evidence that the imported goods are being dumped and that the dumping is causing or threatening the United Kingdom industry, or at least the major part of it, with material injury or is materially retarding the establishment of a new industry. Once a prima facie case has been accepted, the Board of Trade themselves take on the task of making the further necessary enquiries, and they consider simultaneously the evidence of both dumping and injury. Acceptance of a case for investigation is first communicated to the

governments of the exporting countries and then made public by an official announcement which invites comments and representations from any interested party. All concerned are given ample opportunity to present evidence in writing, or orally, or both.

5. In order to determine whether dumping is taking place and, if so, to what extent, Board of Trade officials investigate in detail the prices of the suppliers' shipments to the United Kingdom, their domestic prices and other relevant factors; and if necessary, they visit the suppliers overseas (in agreement with the suppliers and after notifying the representatives of the suppliers' government) so as to examine their records on the spot. In these investigations, price comparisons are made at the same level of trade, on the basis of sales made at about the same time, and all relevant terms and conditions of sale, differences in taxation, etc. are taken into account provided reasonable supporting evidence can be produced. In the case of imports from State-trading countries, the Board have power, where they consider other comparisons to be inappropriate, to establish a fair market price by reference to the price being charged to the United Kingdom by other suppliers, with adjustments to ensure that the comparison is effectively one between the prices for two comparable sales.

6. Before reaching a verdict the Board also seek to assess in detail the extent to which there is material injury or the threat of it as a result of the dumping. This is normally done on the basis of a detailed investigation by Board of Trade professional accountants of the sales and financial records of the main United Kingdom firms concerned. The injury has to be serious in character and demonstrably due to the dumping; the effect on the United Kingdom industry of any other factor is excluded. Each case is assessed on its merits. In the case of a threat of material injury, the Board have to be satisfied that the threat is real, clearly foreseen and imminent.

7. If, at the end of the day, the Board conclude that there has been dumping and that this has resulted in material injury or the threat of it, the Board then have to consider if it would be in the national interest to take action against it. User interests, balance-of-payments aspects and all other relevant factors are taken into account at this stage.

8. Any duties imposed have to be ratified by Parliament within twenty-eight sitting days.

9. Action normally takes the form of an anti-dumping duty or duties. However, in a number of cases satisfactory undertakings offered by the overseas suppliers have been accepted in lieu of the imposition of duties. A public announcement is normally made when the case is concluded.

10. Under the Customs Duties (Dumping and Subsidies) Amendment Act, 1968, the Board of Trade have power to take provisional anti-dumping action in appropriate cases, pending completion of the necessary full investigation. However, the Board announced in Parliament that it was their intention to use this power only sparingly and only in cases where serious damage might otherwise result. The main categories for which such action may be considered are where there is a real danger of forestalling, that is to say of importers seeking to bring in relatively large quantities for stockpiling in anticipation of a duty and secondly, in the case of products, mainly in agriculture, where trade varies greatly with the time of the year. Applicants for provisional action are required to show why they consider this to be appropriate in their case.

11. Provisional action takes the form of a "provisional charge to duty", to be met by the provision of security to the satisfaction of the Commissioners of H.M. Customs and Excise, normally by deposit of money. Retroactive duties may subsequently be imposed but only in accordance with the terms of Article 11(i) of the Anti-Dumping Code. The United Kingdom do not exercise the additional retrospective powers permitted in Article 11(ii) and (iii) of the Code.

CUSTOMS DUTIES (DUMPING AND
SUBSIDIES) AMENDMENT ACT 1968

Chapter 33

Arrangement of Sections

Section

1. Power to impose retrospective duties after provisional charge.
2. Special provisions as to products of GATT countries.
3. Fair market price.
4. Suspension of duties.
5. Short title, citation, construction and extent.

Schedule - Supplemental provisions as to provisional charge to duty
and as to retrospective duties.

An Act to make further provision as regards the imposition of duties of
customs where goods have been dumped or subsidized, and as regards
duties so imposed. [3 July 1968]

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects, the Commons of the
United Kingdom in Parliament assembled, with a view to affording better
protection against dumping and subsidies affecting imported goods have freely
and voluntarily resolved that such further provision as hereinafter appears shall
be made for the imposition of certain duties; and do therefore most humbly
beseech Your Majesty that it may be enacted, and be it enacted by the Queen's
most Excellent Majesty, by and with the advice and consent of the Lords Spiritual
and Temporal, and Commons, in this present Parliament assembled, and by the
authority of the same, as follows:

1. (1) Subject to the provisions of this Act, an order imposing a duty of
customs under the Customs Duties (Dumping and Subsidies) Act 1957 on goods of
any description may impose the duty for a period before the making of the order
if during that period a provisional charge to the duty (or a greater duty) was
imposed on goods of that description by an order made under that Act and
remaining in force.

(2) Subject to the provisions of this Act, an order imposing on goods of any description a provisional charge to duty (in this Act referred to as a "preliminary order") may be made under the Customs Duties (Dumping and Subsidies) Act 1957 if at any time it appears to the Board of Trade, on the facts so far before them, that the conditions of section 1(1)(a) or (b) of that Act as to the dumping or subsidization of imports into the United Kingdom are fulfilled and that in the circumstances it is expedient to impose such a charge.

(3) A preliminary order, if not previously revoked, shall cease to have effect at the expiration of three months beginning with the date it comes into force, except in so far as it is extended by a further order made within that period, and in so far as it is so extended, shall cease to have effect at the expiration of six months beginning with that date.

(4) No duty shall be leviable by virtue only of a provisional charge imposed by a preliminary order; but the Schedule to this Act shall have effect as to the operation of a preliminary order and as to the giving of security for duty which may become payable by reference to a preliminary order, and generally as to matters arising out of the imposition of a provisional or retrospective charge to duty by virtue of this section.

(5) A preliminary order (including an order extending a previous order) shall not be taken to be an order imposing or increasing a duty of customs for the purposes of section 13(3) and (4) of the Import Duties Act 1958 as they apply by virtue of section 11(1) of the Customs Duties (Dumping and Subsidies) Act 1957, and shall accordingly be subject to annulment in pursuance of a resolution of the Commons House of Parliament.

(6) The report made yearly by the Board of Trade under section 11(2) of the Customs Duties (Dumping and Subsidies) Act 1957 shall deal with orders under which a provisional charge to duty has operated during the year as orders under which duties have been chargeable during the year, and with any retrospective operation in relation to the preceding year of orders made during the year.

2. (1) An order imposing a duty of customs, or a provisional charge to such a duty, shall not be made under the Customs Duties (Dumping and Subsidies) Act 1957 in respect of the dumping or subsidization of goods of any description as being goods which originated in or were exported to the United Kingdom from a treaty country, unless the conditions mentioned in this section are fulfilled; but sub-sections (2) to (4) below shall not restrict the making of orders in other cases.

(2) An order imposing a duty of customs shall not be made unless the Board of Trade are satisfied that the effect of the dumping or of the giving of the subsidy either:

(a) is such as to cause or threaten material injury to an established industry in the United Kingdom, or such as to retard materially the establishment of an industry in the United Kingdom; or

- (b) is such as to cause or threaten material injury to an established industry in another treaty country in which originate any like goods (that is, any identical or comparable goods) imported into the United Kingdom.

(3) An order imposing a provisional charge to duty shall not be made unless the facts so far before the Board of Trade indicate that the effect of the dumping or of the giving of the subsidy is such as to cause or threaten material injury to an established industry in the United Kingdom.

(4) An order shall not be made imposing a duty on goods of any description retrospectively by virtue of section 1(1) above, unless the Board of Trade are satisfied, as regards importations made during or before the period of the provisional charge, that the effect of the dumping or of the giving of the subsidy has been such as to cause material injury to an established industry in the United Kingdom.

(5) In this section "treaty country" means a country in relation to which Her Majesty's Government in the United Kingdom is for the time being bound under the provisions of the General Agreement on Tariffs and Trade concluded at Geneva in the year 1947.

(6) In the Customs Duties (Dumping and Subsidies) Act 1957 the proviso to section 1(1) is hereby repealed.

3. (1) Section 7(3) of the Customs Duties (Dumping and Subsidies) Act 1957 (which allows the fair market price of goods in a country to be determined in certain circumstances by reference to the price obtained for goods exported from the country, or by reference to the cost or estimated cost of production with additions in respect of the selling cost and profit) shall be amended:

- (a) by substituting for the words "selling cost" the words "administrative, selling or other costs"; and
- (b) by adding at the end of the sub-section the words:

"The price by reference to which a determination is made under this sub-section may be the highest admissible price, but should be a representative price."

(2) Notwithstanding anything in section 7(2) or (3) of the Customs Duties (Dumping and Subsidies) Act 1957, where it appears to the Board of Trade that the system of trading in a country is such, as a result of government monopoly and control, that there cannot appropriately be determined in accordance with that section a fair market price in the country for particular goods, then there shall be taken as representing that fair market price such price as the Board may determine by reference to any price obtained for goods of that description

(that is to say, any identical or comparable goods) when exported to the United Kingdom from another country, with adjustments for the purpose of ensuring that the comparison to be made between the price arrived at as representing the fair market price and the export price is effectively a comparison between the prices on two similar sales.

4. (1) Without prejudice to the generality of the powers conferred by sections 2 and 11(1) of the Customs Duties (Dumping and Subsidies) Act 1957, a duty imposed by an order under that Act may by a further order be removed (or varied) for any period or periods, whether continuous or not.

(2) Where an order suspending a duty under the Customs Duties (Dumping and Subsidies) Act 1957 by removing it for any period or periods is revoked in whole or in part by a subsequent order, then for purposes of section 13(3) and (4) of the Import Duties Act 1958 as they apply by virtue of section 11(1) of the Customs Duties (Dumping and Subsidies) Act 1957 the subsequent order shall, as regards the annulment of the suspension, be deemed not to be an order imposing or increasing a duty of customs; and accordingly, unless for other reasons it requires to be approved by resolution of the Commons House of Parliament, it shall be subject to annulment in pursuance of a resolution of that House.

5. (1) This Act may be cited as the Customs Duties (Dumping and Subsidies) Amendment Act 1968.

(2) The Customs Duties (Dumping and Subsidies) Act 1957 and this Act shall be construed as one, and may be cited together as the Customs Duties (Dumping and Subsidies) Acts 1957 and 1968.

(3) It is hereby declared that this Act extends to Northern Ireland.

SCHEDULE

Supplementary Provisions as to Provisional Charge
to Duty and as to Retrospective Duties

1. Subject to the provisions of this Schedule, a preliminary order shall, as regards the period for which it is in force, have the same operation (except that duty shall not be levied) as if the charge to duty had not been provisional; and the lapsing of the provisional charge on the revocation or expiration of the preliminary order shall not affect the liability to any penalty, forfeiture or prosecution in respect of things done during the period of the provisional charge.

2. (1) Where any imported goods which are or may be subject to a provisional charge are entered for home use, whether on importation or from warehouse, then notwithstanding anything in paragraph 1 above or in the Customs and Excise Act 1952 delivery of the goods without payment of duty shall not be refused by reason of the provisional charge if the importer gives security to the satisfaction of the Commissioners of Customs and Excise for the payment of any duty which may be retrospectively charged on the goods by reference to that provisional charge; and security shall be so given where payment of the duty provisionally charged would, if the duty were leviable, be required.

(2) Where security is given by virtue of this paragraph, the customs Acts as they apply by virtue of paragraph 1 above shall have effect as if the security were one given under section 255 of the Customs and Excise Act 1952 (security for duty not immediately ascertainable).

3. (1) Without prejudice to the generality of paragraph 1 above, the like relief in respect of a provisional charge to duty may be given by way of remission of the charge as if the charge were not provisional; and the amount of any relief given in respect of a provisional charge on any goods shall, if a duty is retrospectively charged on the goods by reference to that provisional charge:

- (a) be set off against the amount of the retrospective duty; and
- (b) be treated as given on account of any corresponding relief from the retrospective duty.

(2) The power under section 4 of the Customs Duties (Dumping and Subsidies) Act 1957 to provide for the allowance of drawback shall extend:

- (a) to providing for drawback in respect of a provisional charge to duty to be allowed by way of remission of the charge as if duty secured were duty paid; and
- (b) to providing for drawback of retrospective duty to be allowed on the export of goods at any time after the coming into force of the preliminary order by reference to which the duty is charged.